STATE REP. BY THE INSPECTOR OF POLICE

v.

M. MURUGESAN & ANR.

(Criminal Appeal No. 45 of 2020)

JANUARY 15, 2020

[L. NAGESWARA RAO AND HEMANT GUPTA, JJ.]

Code of Criminal Procedure, 1973:

s. 439 – Bail application under – High Court after deciding the application retained the file and collected data from all the States and in its order gave observations regarding reforms in the criminal justice system – High Court also constituted a Committee and directed it to give its recommendations on the reforms – Appeal to Supreme Court – Held: Jurisdiction u/s. 439 is limited to grant or not to grant bail – The jurisdiction of High Court came to an end when an application for grant of bail was finally decided – High Court committed grave error in retaining the file after grant of bail.

Allowing the appeal, the Court

HELD : 1. The matter before the High Court was as to whether the accused are entitled to be admitted to bail, that is the jurisdiction conferred on the Court in terms of Section 439 of Cr.P.C. Before granting bail, the High Court is enjoined upon an obligation to issue notice of an application for bail to the Public Prosecutor if a person is accused of an offence which is triable exclusively by the Court of Session or which, though not so triable, for punishment of imprisonment for life. Single Bench of the High Court has committed grave illegality in retaining the file after grant of bail. The jurisdiction of the High Court came to an end when an application for grant of bail under Section 439 Cr.P.C. was finally decided. [Paras 4 and 5][556-G-H; 557-A-B]

2. Single Judge had collated data from the State and made it part of the order after the decision of the bail application as if the Court had the inherent jurisdiction to pass any order under the guise of improving the criminal justice system in the State. The jurisdiction of the Court under Section 439 Cr.P.C. is limited to grant or not to grant bail pending trial. Even though the object

A **of the Hon'ble Judge was laudable, but the jurisdiction exercised was clearly erroneous. The effort made by the Hon'ble Judge may be academically proper to be presented at an appropriate forum but such directions could not be issued under the colour of office of the Court. [Para 11][563-F]**

B *State of Punjab v. Davinder Pal Singh Bhullar & Ors.* **(2011) 14 SCC 770 : [2011] 15 SCR 540 ;** *Simrikhia v. Dolley Mukherjee and Chhabi Mukherjee & Anr.* **(1990) 2 SCC 437 : [1990] 1 SCR 788 ;** *Sangitaben Shaileshbhai Datanta v. State of Gujarat* **2018 SCC OnLine SC 2300 ;** *Reserve Bank of India v. General*
C *Manager, Cooperative Bank Deposit A/C HR. Sha & Ors.* **(2010) 15 SCC 85 : [2010] 9 SCR 1107 ;** *Santosh Singh v. Union of India & Anr.* **(2016) 8 SCC 253 : [2016] 5 SCR 761 – relied on.**

Case Law Reference

D **[2011] 15 SCR 540**	**relied on**	**Para 6**
[1990] 1 SCR 788	**relied on**	**Para 7**
[2010] 9 SCR 1107	**relied on**	**Para 9**
[2016] 5 SCR 761	**relied on**	**Para 10**

E CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 45 of 2020.

From the Judgment and Order dated 24.04.2019 of the High Court of Judicature at Madras in Crl.O.P. No. 1618 of 2019.

F M. Yogesh Kanna, Ms. Meha Aggarwal, Karthik R., Advs. for the Appellant.

Ms. Nidhi, Vaisal Dathan, Advs. for the Respondents.

The Judgment of the Court was delivered by

G **HEMANT GUPTA, J.**

1. The State is aggrieved against an order passed by the High Court of Judicature at Madras on 24th April, 2019 constituting a Heterogeneous Committee of named persons to give its recommendations on the reforms that can be brought into practice for reformation,

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rehabilitation and re-integration of the convict/accused person to society and best practices for improving the quality of investigation. The Committee was mandated to submit report within eight weeks and that the State was directed to furnish data for each District. The Committee was to scrutinize the same and submit the final data separately along with the report. The State was directed to provide office room for the Committee to conduct its meetings and to keep the documents and other materials in safe custody.

2. Such directions came to be passed in a matter pertaining to grant of bail under Section 439 of the Code of Criminal Procedure, 1973[1]. The High Court had admitted the accused to bail on 18th February, 2019 subject to certain conditions but passed an order to call for the details of the cases registered by the Police, final report filed, trial conducted and the result of such cases. The details were to bring to light the manner in which the entire criminal justice system is operating in the State. In pursuance of the directions so issued and the data provided, the impugned order was passed by the learned Single Bench.

3. The High Court after collecting the data in respect of the criminal cases registered, convictions and acquittals in each District proceeded to write a thesis on how the criminal justice system should function in the State. It was observed that the central aim of the criminal law is to reform the offender and to rehabilitate him in a bid to render him useful to society. The Court held as under:

> "16. The situation calls for a thorough revamping of the Criminal Justice system in this State. It looks like the police are caught into this Vicious cycle. That shows on the poor record of convictions in serious crimes. Instead of finding a complete cure for the disease, police seem to be looking for temporary solutions without curing the disease. Unless we agree that there is a serious problem, there is no scope for change/improvement.
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> 17. "Once a Criminal Always a Criminal" is the result of the present system prevailing in this state. We have forgotten the fundamental purpose of Criminal Justice system which is reformation, rehabilitation and re-integration of the convict into society. If an accused is pushed to the extremes by this system where he finds that even if he wants to turn a new leaf in his life, this system will not allow him, he will rather surrender to his fate and turn out to

[1] for short, 'Code'

A be a hardened criminal. A welfare state can never stoop down to such a level.

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20. It goes without saying that the quality of investigation has come down drastically and the data provided by the police, referred supra, makes it evident. The alacrity shown by the police in registering FIR and effecting arrest, is not seen in investigating the case, laying final report and taking the case to its logical end. The recent circular dated March 20 issued by DGP states that all the police stations will henceforth have exclusive investigation wing. As per the directions, the investigation wing will be responsible for investigation and prosecution of all cases registered in the station, including cases identified by the law and order wing. Further, the police officers attached to the investigation wing shall not be diverted to any bandobust work except with the prior approval of the zonal IG or commissioner of police. This is a step on the right direction. A conscious effort should be made by the investigating wing in every police station with the active coordination of the directorate of prosecution to take every criminal case to its logical end. The police should not be under the impression that their work gets over with registering FIR and effecting arrest. One of the main challenges for the prosecution in Serious crimes is the witness turning hostile due to various reasons. Witness protection scheme, 2018, which has now become the law of the land in view of the judgement of the *Hon'ble Supreme Court in Mahender Chawla case (2019 (1) MWN Crl 340 (SC))*, must be implemented effectively. The investigation officers must be updated on a regular basis on the March of law. Cyber crimes have reached monumental proportions and criminals committing these offences are clearly having an upper hand since these criminals are intelligent crooks and police officers require regular training and exposure to tackle these crimes. A complete overhaul is required to enhance the quality of investigation."

4. The matter before the High Court was as to whether the accused are entitled to be admitted to bail, that is the jurisdiction conferred on the Court in terms of Section 439 of the Code. Before granting bail, the High Court is enjoined upon an obligation to issue notice of an

application for bail to the Public Prosecutor if a person is accused of an offence which is triable exclusively by the Court of Session or which, though not so triable, for punishment of imprisonment for life.

5. We find that the Hon'ble Single Bench has committed grave illegality in retaining the file after grant of bail to the accused on 18th February, 2019. The jurisdiction of the High Court came to an end when an application for grant of bail under Section 439 of the Code was finally decided.

6. In ***State of Punjab*** v. ***Davinder Pal Singh Bhullar & Ors.***[2], the High Court of Punjab & Haryana after deciding a criminal appeal continued to pass order in respect of offenders in other cases not connected with the matter which was dealt with by the High Court. This Court deprecated the invocation of jurisdiction in a matter not connected with the appeal and that too after passing of the final order. The Court held as under:

> "86. In view of the law referred to hereinabove, the Bench was not competent to entertain the said applications and even if the same had been filed in the disposed of appeal, the court could have directed to place the said applications before the Bench dealing with similar petitions.
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> 91. There could be no justification for the Bench concerned to entertain the applications filed under Section 482 CrPC as miscellaneous applications in a disposed of appeal. The law requires that the Bench could have passed an appropriate order to place those applications before the Bench hearing Section 482 CrPC petitions or place the matters before the Chief Justice for appropriate orders."

7. This Court in ***Davinder Pal Singh Bhullar*** referred to a case reported as ***Simrikhia*** v. ***Dolley Mukherjee and Chhabi Mukherjee & Anr.***[3] wherein the Court observed that inherent powers under Section 482 of the Code cannot be exercised to do something which is expressly barred under the Code. It was held that inherent powers cannot be exercised assuming that the statute conferred an unfettered and arbitrary

[2] (2011) 14 SCC 770
[3] (1990) 2 SCC 437

A jurisdiction, nor can the High Court act at its whim or caprice. The Code does not confer unlimited/unfettered jurisdiction on the High Court as the "ends of justice" and "abuse of the process of the court" have to be dealt with in accordance with law and not otherwise. The High Court has not been given nor does it possess any inherent power to make any order, which in the opinion of the court, could be in the interest of justice B as the statutory provision is not intended to by-pass the procedure prescribed. It was also held that the High Court can always issue appropriate direction in exercise of its power under Article 226 of the Constitution of India at the behest of an aggrieved person, if the court is convinced that the power of investigation has been exercised by an C investigating officer mala fide or the matter is not investigated at all, but even in such a case, the High Court cannot direct the police as to how the investigation is to be conducted but can insist only for the observance of due process as provided in the Code. The Court held as under:

> D "51. The inherent power of the court under Section 482 CrPC is saved only where an order has been passed by the criminal court which is required to be set aside to secure the ends of justice or where the proceeding pending before a court, amounts to abuse of the process of court. Therefore, such powers can be exercised by the High Court in relation to a matter pending before a criminal E court or where a power is exercised by the court under CrPC. Inherent powers cannot be exercised assuming that the statute conferred an unfettered and arbitrary jurisdiction, nor can the High Court act at its whim or caprice. The statutory power has to be exercised sparingly with circumspection and in the rarest of rare cases. (Vide *Kurukshetra University* v. *State of* F *Haryana* [(1977) 4 SCC 451 : 1977 SCC (Cri) 613 : AIR 1977 SC 2229] and *State of W.B.* v. *Sujit Kumar Rana* [(2004) 4 SCC 129 : 2004 SCC (Cri) 984] .)
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> 52. The power under Section 482 CrPC cannot be resorted to if there is a specific provision in CrPC for the redressal of the G grievance of the aggrieved party or where alternative remedy is available. Such powers cannot be exercised as against the express bar of the law and engrafted in any other provision of CrPC. Such powers can be exercised to secure the ends of justice and to prevent the abuse of the process of court. However, such

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expressions do not confer unlimited/unfettered jurisdiction on the High Court as the "ends of justice" and "abuse of the process of the court" have to be dealt with in accordance with law including the procedural law and not otherwise. Such powers can be exercised ex debito justitiae to do real and substantial justice as the courts have been conferred such inherent jurisdiction, in absence of any express provision, as inherent in their constitution, or such powers as are necessary to do the right and to undo a wrong in the course of administration of justice as provided in the legal maxim *quando lex aliquid alicui concedit, concedere videtur id sine quo res ipsa esse non potest*. However, the High Court has not been given nor does it possess any inherent power to make *any order*, which in the opinion of the court, could be in the interest of justice as the statutory provision is not intended to by-pass the procedure prescribed. (Vide *Lalit Mohan Mondal* v. *Benoyendra Nath Chatterjee* [(1982) 3 SCC 219 : 1982 SCC (Cri) 697] , *Rameshchandra Nandlal Parikh* v. *State of Gujarat* [(2006) 1 SCC 732 : (2006) 1 SCC (Cri) 481] , *CBI* v. *Ravi Shankar Srivastava* [(2006) 7 SCC 188 : (2006) 3 SCC (Cri) 233] , *Inder Mohan Goswami* v. *State of Uttaranchal* [(2007) 12 SCC 1 : (2008) 1 SCC (Cri) 259] and *Pankaj Kumar* v. *State of Maharashtra* [(2008) 16 SCC 117 : (2010) 4 SCC (Cri) 217] .)

53. The High Court can always issue appropriate direction in exercise of its power under Article 226 of the Constitution at the behest of an aggrieved person, if the court is convinced that the power of investigation has been exercised by an investigating officer mala fide or the matter is not investigated at all. Even in such a case, the High Court cannot direct the police as to how the investigation is to be conducted but can insist only for the observance of process as provided for in CrPC. Another remedy available to such an aggrieved person may be to file a complaint under Section 200 CrPC and the court concerned will proceed as provided in Chapter XV CrPC. (See *Gangadhar Janardan Mhatre* v. *State of Maharashtra* [(2004) 7 SCC 768 : 2005 SCC (Cri) 404] and *Divine Retreat Centre* v. *State of Kerala* [(2008) 3 SCC 542 : (2008) 2 SCC (Cri) 9] .)

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A 64. An inherent power is not an omnibus for opening a Pandora's box, that too for issues that are foreign to the main context. The invoking of the power has to be for a purpose that is connected to a proceeding and not for sprouting an altogether new issue. A power cannot exceed its own authority beyond its own creation. It is not that a person is remediless. On the contrary, the B constitutional remedy of writs is available. Here, the High Court enjoys wide powers of prerogative writs as compared to that under Section 482 CrPC. To secure the corpus of an individual, remedy by way of habeas corpus is available. For that the High Court should not resort to inherent powers under Section 482 CrPC as C the legislature has conferred separate powers for the same. Needless to mention that Section 97 CrPC empowers the Magistrates to order the search of a person wrongfully confined. It is something different that the same court exercising authority can, in relation to the same subject-matter, invoke its writ jurisdiction as well. Nevertheless, the inherent powers are not to provide D universal remedies. The power cannot be and should not be used to belittle its own existence. One cannot concede anarchy to an inherent power for that was never the wisdom of the legislature. To confer unbridled inherent power would itself be trenching upon the authority of the legislature."

E 8. This Court in a judgment reported as ***Sangitaben Shaileshbhai Datanta*** v. ***State of Gujarat***[4] was examining a question where a court after grant of bail to an accused ordered the accused and their relatives to undergo scientific test viz. lie detector, brain mapping and Narco-Analysis. This Court held that direction of the court to carry out such F tests is not only in contravention to the first principles of criminal law jurisprudence but also violates statutory requirements. The Court held as under:

"7. Having heard the counsels for the parties, it is surprising to note the present approach adopted by the High Court while G considering the bail application. The High Court ordering the abovementioned tests is not only in contravention to the first principles of criminal law jurisprudence but also violates statutory requirements. While adjudicating a bail application, Section 439 of the Code of Criminal Procedure, 1973 is the guiding principle

H [4] 2018 SCC OnLine SC 2300

wherein Court takes into consideration, *inter alia*, the gravity of the crime, the character of the evidence, position and status of the accused with reference to the victim and witnesses, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of his tampering with the witnesses and obstructing the course of justice and such other grounds. Each criminal case presents its own peculiar factual matrix, and therefore, certain grounds peculiar to a particular case may have to be taken into account by the court. However, the court has to only opine as to whether there is *prima facie* case against the accused. The court must not undertake meticulous examination of the evidence collected by the police, or rather order specific tests as done in the present case.

8. In the instant case, by ordering the abovementioned tests and venturing into the reports of the same with meticulous details, the High Court has converted the adjudication of a bail matter to that of a mini-trial indeed. This assumption of function of a trial court by the High Court is deprecated."

9. In another judgment reported as ***Reserve Bank of India*** v. ***General Manager, Cooperative Bank Deposit A/C HR. Sha & Ors.***[5], Reserve Bank of India challenged an order passed on an application under Section 439 of the Code, wherein an argument was raised that the poor depositors are not paid by the Bank out of the amount which has been received by the Bank. The Court issued directions that the Bank should start distributing the amount which is so far recovered by them from the accused. The Bank was directed to furnish details of the money paid to the poor depositors. The accused as well as the Investigating Officer and the Administrator of the Bank were directed to remain present in the Court. This Court found that such directions are beyond the scope of an application for bail filed by the accused under Section 439 of the Code. The Court held as under:

"6. We are of the opinion that the far-reaching consequences of the directions of the High Court are in a way beyond the scope of an application for bail filed by an accused under Section 439 of the Code of Criminal Procedure and the High Court, as much as anyone else, must stay confined to the issues relevant to the matter

[5] (2010) 15 SCC 85

A before it. It was thus not open to the High Court to pass orders which could affect the working of banks all over the country."

10. In ***Santosh Singh*** v. ***Union of India & Anr.***[6] while dealing with a public interest litigation petition filed by a petitioner who was deeply distressed with the rapidly degrading moral values in the society
B touching every aspect of life where making money has become the sole motto of society, this Court held as under:

"18. While there can be no dispute about the need of providing value-based education, what form this should take and the manner in which values should be inculcated ought not to be ordained by
C the court. The court singularly lacks the expertise to do so. The petitioner has a grouse about what she describes as the pervading culture of materialism in our society. The jurisdiction of this Court under Article 32 is not a panacea for all ills but a remedy for the violation of fundamental rights. The remedies for such perceived grievances as the petitioner has about the dominant presence of
D materialism must lie elsewhere and it is for those who have the competence and the constitutional duty to lay down and implement educational policies to deal with such problems.

19. There is a tendency on the part of public interest petitioners to assume that every good thing which society should aspire to
E achieve can be achieved through the instrumentality of the court. The judicial process provides remedies for constitutional or legal infractions. Public interest litigation allows a relaxation of the strict rules of locus standi. However, the court must necessarily abide by the parameters which govern a nuanced exercise of judicial
F power. Hence, where an effort is made to bring issues of governance before the court, the basic touchstone on which the invocation of jurisdiction must rest is whether the issue can be addressed within the framework of law or the Constitution. Matters of policy are entrusted to the executive arm of the State. The court is concerned with the preservation of the rule of law.

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23. It is unrealistic for the court to assume that it can provide solutions to vexed issues which involve drawing balances between

H [6] (2016) 8 SCC 253

conflicting dimensions that travel beyond the legal plane. Courts are concerned with issues of constitutionality and legality. It is difficult to perceive how matters to which solutions may traverse the fields of ideology, social theory, policy-making and experimentation can be regulated by this Court such as by issuing a mandamus to enforce a scheme of instruction in a particular subject in school education. Should a subject be taught at all? Should a set of values or a line of enquiry and knowledge be incorporated as a separate subject of discourse in an educational system? Would a horizontal integration of a given set of values across existing subjects better achieve a desirable result? Is it at all desirable to impose another subject of study upon the already burdened school curriculum?

24. These are vexed issues to which more than one solution may appear just. That is exactly the reason why a resolution of such matters must rest with those who have the responsibility to teach and govern over matters of education. Every good that is perceived to be in the interest of society cannot be mandated by the court. Nor is the judicial process an answer to every social ill which a public interest petitioner perceives. A matter such as the present to which a solution does not rest in a legal or constitutional framework is incapable of being dealt with in terms of judicially manageable standards."

11. We find that learned Single Judge has collated data from the State and made it part of the order after the decision of the bail application as if the Court had the inherent jurisdiction to pass any order under the guise of improving the criminal justice system in the State. The jurisdiction of the Court under Section 439 of the Code is limited to grant or not to grant bail pending trial. Even though the object of the Hon'ble Judge was laudable but the jurisdiction exercised was clearly erroneous. The effort made by the Hon'ble Judge may be academically proper to be presented at an appropriate forum but such directions could not be issued under the colour of office of the Court.

12. In view of the above, we find that the order passed by the High Court on 24th April, 2019 is not sustainable in law and the same is set aside. Consequently, the appeal is allowed.

Kalpana K. Tripathy Appeal allowed.