

(2000) 08 GAU CK 0015

Gauhati High Court (Imphal Bench)

Case No: Criminal Org. Application No. 12 of 1998

Laishram Leirenmachha @
Bijoychandra Singh

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision: Aug. 10, 2000

Acts Referred:

- Constitution of India, 1950 - Article 134, 134(1), 136
- Criminal Procedure Code, 1973 (CrPC) - Section 360 , 632
- Penal Code, 1860 (IPC) - Section 342, 344, 354, 365
- Probation of Offenders Act, 1958 - Section 4

Citation: (2000) 3 GLT 15

Hon'ble Judges: W.A. Shishak, J

Bench: Single Bench

Advocate: N. Kerani Singh, for the Appellant; A. Nilamani Singh, for the Respondent

Final Decision: Allowed

Judgement

W.A. Shishak, J.

The applicant herein is praying for grant/issue of a certificate of fitness that the case of the applicant is a fit one for appeal to the Supreme Court of India and that the case of the applicant involves a substantial question of law of general importance in the facts and circumstances and nature of the present case.

2. Facts may be stated briefly. The applicant was charged for the commission of offences punishable u/s 365/342/354 IPC on a complaint lodged against him and two other persons (applicant's own uncles) by the Respondent No. 2 before the court of Chief Judicial Magistrate, Thoubal, Manipur. The allegation was that on 17.1.91 at about 4.30 P.M. the complainant (Respondent No. 2), while returning home on her cycle was kidnapped by the applicant and the said two other persons and that she was kept confined in the room of the applicant till she escaped at about

8.30 P.M. on the same day. It was further alleged that during the period of confinement the Respondent No. 2 was molested by the applicant. Three witnesses were produced on behalf of the complainant. However, no defence witnesses was examined. It is averred that though no materials on record corroborated and supported the prosecution case, the trial Court convicted the applicant alone on the basis of the unfounded allegation. It may be stated that the other two co-accused persons had been discharged on 23.8.91. Hearing on the quantum of sentence was taken up on 12.8.91. One of the submissions made on behalf of the applicant was to invoke the relevant provision of Probation of Offenders Act. It may be stated that the applicant was convicted and sentenced to undergo six months rigorous imprisonment u/s 365 IPC and three months rigorous imprisonment and also six months rigorous imprisonment under Sections 342 and 344 IPC, directing that the sentences would run concurrently.

3. Criminal Appeal No. 7/92/1/93 was filed before the learned Sessions Judge, Manipur West. The said appeal was disposed of by order dated 17.9.93. While dismissing the said appeal a direction was issued that the trial Court should hear on the quantum of fine to be imposed on the accused. It is contended that the Appellate Court failed to consider and peruse relevant points of law including the submission for invoking the power of releasing the accused on probation without convicting him at once to undergo the sentences as provided u/s 360 of the Code of Criminal Procedure or u/s 4 of the Probation of Offenders Act.

4. Being aggrieved by the order of the Appellate Court passed on 17.9.93, the applicant filed Criminal Revision Case No. 17/1993 before this Court. Shri Th. Priyananda Singh, learned Counsel was engaged on behalf of the applicant and he was assisted by his junior Shri N. Kumarjit Singh. Before hearing took place Shri Priyananda Singh died. Thereafter the case was conducted by his junior Shri Kumarjit Singh. It is rather unfortunate to state that because of some misunderstanding between the applicant and Shri N. Kumarjit Singh, learned Counsel withdrew from the case. While doing so, however, notice or information had not been given to the applicant. It came to the notice of the applicant on 18.5.98 as he was served with a notice from the High Court to engage a fresh counsel to conduct his case. On receipt of the said notice the applicant met Shri Kumarjit and informed him of his mistake in not contacting him in connection with the pending case and he begged his excuse. Thereafter a fresh Vakalatnama was executed and signed by the applicant in favour of the lawyer. In such a situation the applicant was under the impression that the matter pending before the High Court would be looked after by the lawyer. The case came up for hearing on 26.8.98. However, on that day the applicant was not represented by any lawyer. It is contended that the applicant did not have any personal knowledge of the fixation of the case for hearing on 26.8.98. Hence he could not appear personally also. This Court took up the matter for disposal on merit on the ground that though notice had been served, the applicant did not appear on that day. Accordingly after hearing Mr. A Nilamani Singh, learned Sr.

Counsel who appeared on behalf of the Respondents the said revision petition was disposed of by order dated 26.8.98. While dismissing the revision petition the court recorded in paragraph 8 as follows:

8. In the instant case, as already stated, both the Trial Court and the Appellate Court below has found the Petitioner quickly beyond the reasonable doubt on the appreciation of the evidence on record. Since there is concurrent finding of both the courts below on the appreciation of the evidence on record, I do not find any infirmity in the finding for warranting interference.

Para 9 states:

In the result, this Revision petition is dismissed. The Petitioner is on bail. His bail bond stands cancelled. The S.P., Thoubal is directed to arrest the Petitioner and produce him before the learned C.J.M., Thoubal who shall commit him into prison to serve the sentence.

5. I have heard Mr. N. Kerani Singh, learned Sr. Counsel for the applicant as well as Mr. A Nilamani Singh learned Sr. Counsel for the Respondents. Mr. N. Kumaijit Singh, learned advocate has filed affidavit explaining the circumstances as to how the applicant was not effectively represented at the time of hearing. In paragraph 5 of his affidavit Mr. Kumaijit has stated that he was indeed instructed to appear for the applicant and to conduct the revision petition. He accepted brief and assured the applicant that he would appear for him before the High Court. Sub-paragraph of paragraph 5 of the affidavit states:

On 19.5.1998 itself the Petitioner executed and signed a fresh Vakalatnama in my name and favour to conduct the Revision petition. However, through bonafide mistake and inadvertance my juniors failed to file die fresh Vakalatnama before the Court in time and subsequently I forgot about it.

Para 6 of the affidavit states:

That, during the relevant period from 23.8.1998 to 31.8.1998 I was out of station and on my request to the Registry of Gauhati High Court, Imphal Bench, my name has been shown among the Advocates who are out of station from 24.8.1998 till 28.8.1998. Therefore, I had no knowledge of listing of the Revision Petition for hearing on 26.8.1998.

Para 7 of the affidavit further states:

That, I further affirm that in the cause list of 26.8.1998 in the part-II Column of hearing, the name of Shri Leirenmachha Singh has been shown as L. Bijoychandra. In all the previous cases and also in the Revision petition Shri Leirenmachha Singh (revision Petitioner) was never written as L. Bijoychandra although it is his alias name. Consequently, my juniors could not understand and recognise whether L. Bijoychandra is L. Leirenmachha Singh. Over and above the name of Mr. A. Nilamani

Singh and his junior Advocate A. Bimol Singh who are actually the counsel for the Respondents are shown as counsel for the Petitioner in the cause list. Such situation caused a confusion to my juniors, and the petition was decided on 26.8.1998 without affording to us a chance of submitting/advancing argument for and on behalf of Shri L. Leirenmachia Singh.

6. Facts and circumstances of the case are now very clear. Mr. N. Kerani Singh submits that review is barred by Section 632 of Code of Criminal Procedure and as such the applicant has no other forum except of appeal before the Hon'ble Supreme Court if certified by this Court. Mr. Kerani submits that in the facts and circumstances stated above, miscarriage of justice has occurred, inasmuch as no effective or fair hearing took place before the revision petition was disposed of. It is further submitted by Mr. Kerani that a mistake or any inadvertence committed by counsel engaged by the revision Petitioner should not cause so much suffering and injustice to the present applicant. Mr. Kerani's submission is that since no counsel represented the applicant at the time of hearing the applicant was not at all heard, but ultimately has to suffer the consequences of the dismissal of the revisions petition in his absence.

7. It is also submitted by Mr. Kerani Singh that the provision of Section 360 Code of Criminal Procedure read with Section 4 of Probation of Offenders Act would apply in the present case, inasmuch as the sentence is for six months. According to Mr. Kerani Singh though this plea was taken the learned Chief Judicial Magistrate did not apply his mind, inasmuch as this point was not at all considered while considering the quantum of sentence on 12th August, 1991. It is also further submitted that the learned District and Sessions Judge also did not apply mind as far as the prayer of the applicant that the provision of Section 360 Code of Criminal Procedure and Section 4 of Probation of Offenders Act would apply in the present case. It is, therefore, submitted by Mr. Kerani Singh that since the revision petition was dismissed without hearing the applicant/Petitioner, there is miscarriage of justice and that too without any fault of the applicant himself, inasmuch as he had already engaged lawyers to defend him in the Court.

8. Mr. Nilamani Singh appearing on behalf of Respondents submits that the applicant is not a trustworthy person. It is submitted by him that Shri N. Kumaijit Singh was engaged two times and though it is stated that on 19.5.1998 a fresh Vakalatnama was executed in favour of Shri N. Kumaijit Singh, no such Vakalatnama is available. It is also submitted that the Petitioner/applicant defaulted on several occasions and not only on 26.8.98 when the case heard ex parte. Nothing is said as to how the names of Mr. A. Nilamani and his junior Mr. A. Bimol Singh were shown as counsel for the Petitioner in the cause list dated 26.8.98. It appears, in view of the clear statements made in the affidavit filed by Shri N. Kumaijit Singh, a learned member of the High Court Bar, I have no doubt in my mind that the applicant had indeed engaged Mr. N. Kumaijit Singh and his juniors to defend the applicant. Copy

of the cause list dated 26.8.98 has also been filed. Mr. Kumaijit is shown to be out of station. As such on 26.8.98 Shri N Kumarjit Singh, Advocate was not available at Imphal. Under the circumstances stated in the affidavit, in my view, it was not possible for any-one to represent the applicant/Petitioner on the date of hearing. Factually as clearly recorded by this Court, only Mr. A. Nilamani, learned Sr. Counsel was heard on behalf of the Respondents and none was heard on behalf of the Petitioner/applicant.

9. Mr. Nilamani further submits that the Petitioner should approach the Hon"ble Supreme Court under Article 136 and that this Court should not issue certificate of fitness in the facts and circumstances of the present case. It is also submitted by Mr. Nilamani Singh that though plea of probation was raised before the learned C. J.M., no such plea was further raised before the Appellate Court and also revisional Court. Therefore, it is submitted that the applicant is not entitled to get certificate of fitness under Article 134(1)(c) and Article 134 of the Constitution of India.

10. I have carefully perused the relevant orders passed by the Courts below and also by this Court. I have also perused the averments made in this application and the affidavit filed by Shri N. Kumaijit Singh, Advocate. Looking to the entire facts and circumstances which I have recorded above, I am of the view that it will be in the best interest of justice to allow this application.

11. In the result, I hold that the case of the applicant is a fit one for appeal to the Supreme Court of India and that the case of the applicant involves substantial question of law of general importance.

In view of above, this petition is disposed of.