(1978) 04 BOM CK 0017

Bombay High Court

Case No: Criminal Application No. 952 of 1976 in Criminal Appeal No. 15 of 1975

Chhatru Shobraj Taleraj	APPELLANT
Vs	
The State of Maharashtra	RESPONDENT

Date of Decision: April 3, 1978

Acts Referred:

- Constitution of India, 1950 - Article 134, 214, 215, 225
- Criminal Procedure Code, 1973 (CrPC) - Section 2, 393, 407, 482

Citation: (1978) 80 BOMLR 727 : (1978) MhLj 817

Hon'ble Judges: Masodkar, J; Kanade, J

Bench: Division Bench

Judgement

Masodkar, J.

This matter was placed before us on March 7, 1978, and we directed notice before admission to be issued to the State. It appears that the matter was so placed before this Bench because of the order made by the learned single Judge in a similar application) in Ratan Hiranand Khatri v. The State of Maharashtra (1976) Criminal Application No. 2659 of 1976. The learned single Judge appears to have made that order for two reasons, firstly, because the public prosecutor appearing for the State raised a point that every application u/s 482 of the Code of Criminal Procedure should be placed for hearing before the division Bench and not before single Judge and secondly, because the office informed that all applications u/s 561A of 1898 Code as well u/s 482 of 1973 Code were being placed for orders before division Bench and not before a single Judge. It is indeed clear from that order that the learned single Judge has not made any reference as such to be decided by larger Bench.

2. This application purporting to be u/s 482 of the Code of Criminal Procedure is filed by original accused Nos. 1, 2, 3, 4, 5, 8 and 9 complaining that Criminal appeal No. 15 of 1975 was disposed of against the petitioners without offering hearing to

them or without these accused having real opportunity of being heard and it purports to invoke inherent powers of the Court with regard to the decision rendered in the said appeal. The said appeal was filed by the State against the acquittal of the accused u/s 12(a) of the Bombay Prevention of Gambling Act recorded by the Metropolitan Magistrate, 28th Court, Esplanade, Bombay, in Case No. 751/P of 1973. As per Rules of this Court (The Bombay High Court Appellate Side Rules, 1960) application for leave to appeal came for hearing and was placed before the single Judge, it being the matter specifically covered by Rule 2II (e) of chap. I. The learned single Judge granted leave on January 7, 1975. Eventually, it appears that after the accused were served, the matter came up for hearing before the learned single Judge and the Court presided over by the learned single Judge (Sapre J.) decided the same and passed a judgment of conviction dated January 18, 1976. Thus, Criminal Appeal No. 15 of 1975 was allowed in which the present applicants stood convicted. As stated above, this application is filed on July 27, 1977, with a prayer that the said appeal be re-heard after setting aside the judgment of conviction.

3. The debated question that falls for consideration is whether such an application is tenable and can be dealt with by the learned single Judge or the Court presided over by the single Judge of the High Court particularly who decided the concerned appeal or is the same required to be heard by the division Bench of this Court. If upon careful consideration of the provisions of Section 482 of the Code and the rules framed by this High Court (supra) we come to the conclusion that the single Judge''s Court is not deprived of its jurisdiction to hear such applications, then the matter will have to be placed before the learned single Judge. If, on the other hand, we come to the contrary conclusion, the matter will have to be further considered on the merits of the application.

4. We heard the learned Counsel for both the sides for considerable time. The debated disagreement between them as far as the narrow question that falls for consideration is that the nature of the application would determine the jurisdiction and power to deal with the same and not the fact that appeal in this Court was heard and decided by any particular Bench or Court. It is contended for the State by Mr. Kotwal that there being a practice, the application should always be dealt with by division Bench though it may relate to the judgment delivered by the learned single Judge of this Court. On the other hand, Mr. Gumaste contends that inherent power of the Court, of necessity, is available to the Court exercising the jurisdiction and the single Judge is very much the Court and mere practice would not affect the jurisdiction of the single Judge.

5. As far as the provisions of Section 482 of the Code of Criminal Procedure are concerned, it is well-settled that it does not confer any new power nor adds to the powers which ate in the very nature of things organic and as such available to a Court of justice. See Emperor v. Nazir Ahmed (1944) 47 Bom. L.R. 245 ., The State of

Uttar Pradesh Vs. Mohammad Naim, , A.H. Satranjiwala v. The State (1970) 74 Bom. L.R. 742 , Bombay Cycle and Motor Agency Ltd. Vs. Bhagwanprasad Ramragubir Pandey, and Public Prosecutor v. Nagi Reddy [1963] A.P. 144 F.B. The concept of inherent power of the Court cannot be conceived as divorced from its constitution. In law it is organic as opposed to superimposed; as one necessary for effective functioning as opposed to mere addition thereof. The provisions of this section are declaratory and are to be exercised as the section itself indicates by the High Court as and when occasion arises so as to make such orders necessary to give effect to any order of the Court made in accordance with the Code of Criminal Procedure or to prevent the abuse of the process of any Court or otherwise to meet the ends of justice.

7. The term "High Court" is defined in Section 2(2) of the Code of Criminal Procedure as having reference to the High Court established for a particular State. We are not concerned with the other part of that definition. Under the Constitution every State has to have a High Court which is the Court of record. (Articles 214 and 215). Respecting the existing High Courts, Article 225 makes it clear that in relation to the administration of justice in such High Courts the respective powers of the Judges are governed by the then existing laws which would include the Letters Patent; and High Court possesses power to make rules of the Court and to regulate the sittings of the Court and of members thereof sitting alone or in division Courts. This constitutional scheme read with Letters Patent of this Court shows that the power of the High Court can be well exercised by the Judge sitting alone or Judges sitting in division Courts. Under the rules, generally what jurisdiction shall be exercised by what Court is primarily laid down in chap. I. Thus the power which has the locus in the High Court is clearly exercisable by the Judge either sitting alone or the Judges sitting in division Courts and when that power is so exercised, it follows that the power is exercised as that of and by the High Court.

8. As far as the High Court is concerned, both under the Code of Criminal Procedure as well Letters Patent as applicable (Appendix B to the Bombay High Court Appellate, Side Rules, 1960) it is plain that broadly speaking the High Court in the matter of administration of criminal justice is a twin functionary. It has been conferred with powers of superintendence over the subordinate Courts administering criminal justice and, therefore, is made the Court of appeal or revision as well the Court of references; the process of appeal and revision being the one wherein the higher Court is enabled to call for the record and proceedings of the lower Court with a view to have judicial scrutiny thereof and to secure justice according to law. This involves exercise of powers in supervisory capacity. Thus, firstly the High Court established under the Constitution and as contemplated by the Code of Criminal Procedure is conceived as superior supervisory functionary for the purpose of dispensing criminal justice. Along with this and secondly the High Court is clothed and possessed of ordinary and extraordinary original criminal jurisdiction to try at its discretion the criminal cases arising within the bounds of its territorial

limits. It is not necessary for the present purposes to refer in detail to the provisions in this regard as are contained in the Letters Patent Clauses 22 to 28 and the Code of Criminal Procedure except mentioning the provisions of chaps. XXIX to XXXI of the Code. Under the Letters Patent, High Court possesses ordinary original jurisdiction (Clause 22) as well as extraordinary original criminal jurisdiction (Clause 24). Clause 38 deals with regulation of proceedings. Under the Code of Criminal Procedure too the High Court can exercise original jurisdiction by getting cases transferred to itself. (See Section 407 of the Code of Criminal Procedure).

9. This functioning of the High Court is carried through by the Courts either of the single Judges or division Courts. Clause 26 of the Letters Patent of this Court makes it clear that any function which is to be performed by the High Court in exercise of its original criminal jurisdiction may be performed by any Judge or any division Court thereof. If, therefore, power exists and as we have indicated above it is an organic power that is declared by Section 482, it will have to be logically inferred that it exists in the Court while either it acts as a single Judge''s Court or as a division Court; for whether it is a single or division Court both for the purpose of Letters Patent as well for the purpose of the Code of Criminal Procedure is a High Court that functions and exercises jurisdiction according to law.

10. The position is inconceivable that for the purpose of administration of criminal justice a Court presided over by a single Judge would be the High Court; but for the purpose of inherent exercise of the powers of the Court it will lack the same and some other Court will have to be moved. Such an antithesis or antilogy is not warranted nor can be easily inferred; for that is likely to rob the Court of its very necessary jurisdiction. In fact, such a construction would render the jurisdiction of the Court in many matters ineffective. Several matters and situations may arise that would call for invocation of the inherent powers of the Court and if we were to accede to the submission that though a single Judge is competent to decide the criminal cause, he would not be able to entertain the application with regard to that cause invoking the inherent power of the Court, we will be sanctioning the course of conflict and obvious contradictions that may involve serious consequences. In law the administration of justice has to be unified and coherent. Uniformity in administration of justice is a peerless principle. That offers unity, harmony and a very coherence to the task of the Courts. At the same time it assures the litigant people of fairness and certainty. Adding grace and grandeur it makes up the institutional image. Several fine strands depending upon the sense of values of the Judges manning the different divisions of the Court fuse and blend in this oneness or unity. We must ever be remindful while we approach our rules for interpretation that ours is not a mere hotchpotch or exercise in separateness but a harmony or unified existence of togetherness. Course that will subserve this will have to be followed.

11. We may mention that the scope of Section 482 does not fall for consideration nor is being debated before, us; though at one stage submission was made that having received the notice the accused may choose to remain absent and the provisions of Section 482 will not be available in such cases nor such would be the case of invoking any principle of natural justice, we are not called upon to consider that matter For the purpose of the debated question it is enough to observe that by very nature the provisions of Section 482 are declaratory and two types of matters would be brought before this Court by its invocation. Applications concerning the process of criminal justice, i.e., either pending or disposed of in the lower Courts may be one of them while applications concerning the causes which are pending or decided in this Court would be the other. The former class of cases may be termed as original applications filed before this Court. We are not dealing with such type of applications. We are dealing with the second type of cases concerning the criminal appeal which has been heard and decided by the learned single Judge of this Court and the application has been made for re-hearing the same. In other words, the application is made with regard to the process that had been initiated in this Court and decided one way or the other according to law by this Court acting by the single Judge of this Court.

12. Now to the Rules. Turning to them the relevant principle is that these will have to be interpreted so as to further and uphold the jurisdiction and not in its curtailment unless there are express provisions available in that regard. We do not find any support for the submission that though the appeal under the Rules may be heard by the learned single Judge of this Court, miscellaneous applications invoking the inherent powers of the Court with regard to such appeal should be placed for hearing before the division Bench of this Court.

13. Chapter I of the Rules (supra) deals with jurisdiction of single Judges and Benches of the High Court and Rule 1 states that the civil and criminal jurisdiction of the Court on the Appellate Side shall, except in cases where it is otherwise provided for by these rules, be exercised by a division Court consisting of two or more Judges. This shows that if there be a specific provision in the rules, the jurisdiction has to be exercised in the manner provided by the said rules. If there be no provision, then the division Court consisting of two or more Judges has to exercise the power of the High Court. Turning to Rule 2II, which deals with the jurisdiction of the single Judges with regard to criminal matters, we find that Clause (a) to (e) confer specific jurisdiction upon single Judge''s Courts and particularly Clause (e) deals with the applications for leave to appeal against acquittal wherein the offence with which the accused was charged is one punishable on conviction with a sentence of fine only or with a sentence of imprisonment not exceeding two years or with such imprisonment and fine. Clause (a) confers power to hear and decide appeals against acquittals wherein the offence with which the accused was charged is one punishable on conviction with a sentence of fine only or with a sentence of imprisonment not exceeding two years or with such imprisonment and fine. These

express provisions, therefore, show that the type of appeal with which the learned single Judge was dealing and has dealt with, specifically came under these clauses of the rule. Clause (f) deals with applications for bail or stay, not arising in or out of or relating to any appeal or application already pending in the High Court. Clause (g) deals with applications for leave to appeal to the Supreme Court in the matters disposed of by the Single Judge. Clause (h), which is a residuary clause with regard to applications, states that all miscellaneous applications, including applications for bail or stay in or out of on relating to matters under item (a) to (e) would be the matters to be disposed of by a single Judge. Thus applications with regard to appeals against acquittal fall clearly within the express terms of Clause (h). The words available in Clause (h) of this rule are advisably couched in a wider phraseology. All miscellaneous applications relating to matters under Clauses (a) to (e) are to be placed for decision before the single Judge. The nature of application invoking inherent power with regard to the appeals decided under Clause (a) would be that of miscellaneous application. In fact, it is so registered. Only because the appeal is decided or disposed of such an application would not cease to be an application relating to the matter that falls under Clause (a). The words "relating to" in common parlance mean "concerning" or "connected with". Apart from the concept of inherent jurisdiction, we find that terms of Clause (h) are clear enough to indicate that applications with regard to the decision rendered in appeal by a single Judge would go before the same Court, i.e., the Court presided over by a single Judge. Both propriety and principle of law require that this should be so. There is no warrant for restricting the words "relating to" as only when the appeal is alive or pending. Even thereafter an application concerning the same can very well be filed. Under Clause (h) of this rule, therefore, we have no hesitation in holding that it is the single Judge who is clothed with power to dispose of the present type of application which calls in question the process of hearing and eventual judgment of conviction in appeal filed by the State against acquittal of the accused. It is for that Court to see whether it will exercise its inherent power and whether there is need for such exercise of that power in the given facts and circumstances of the case.

14. We will refer to two decisions, cited before us one in The Assistant Collector of Customs v. Ratilal Bhanji Mithani (1967) Criminal Application No. 24 of 1967 and another in Ratan Hiranand Khatri v. The State of Maharashtra (1977) Criminal Application No. 2659 of 1976. In the first case the division Bench was called upon to consider as to whether the application filed u/s 561A of the Code of Criminal Procedure for cancellation of bail granted by the Chief Presidency Magistrate in respect of bailable offence should be placed for decision, before the single Judge or is required to be decided by the division Court of this High Court. The Court, speaking by Kantawala J., as he then was, held that it was the division Court which will be entitled to deal with such an application. While taking note of the submission that the words "miscellaneous application" are of wider import as indicative of every miscellaneous application, the Court observed to the following effect:

...It is contended on behalf of the applicants that the words ''arising in or out of or relating to matters under items (a) to (e) above'' in this Clause (g) go only with the words ''applications for bail or stay'' and they do not go with the words ''all miscellaneous applications''. Such a conclusion, in our opinion, does not follow on a normal construction of this clause. The words ''in or out of or relating to matters under (a) to (e) above'' appear at the end of the clause and they go both with all miscellaneous applications as well as applications for bail or stay. This clause, in our opinion, only deals with those miscellaneous applications which arise in or out of or relate to matters under items (a) to (e) above.

(Italics ours).

15. The Court further clarified that all miscellaneous applications have reference to the matters dealt with by the earlier sub-clauses. Specifically the Court observed:

...The wording of Clauses (f) and (g) clearly indicates that Clause (f) specifically deals with applications for bail or stay in cases which do not arise in or out of or do not relate to any appeal or application already pending in the High Court and Clause (g) of this Rule deals only with miscellaneous applications which arise in or out of or relate to matters under items (a) to (e) of this Rule.

16. Thus, this judgment goes to show that miscellaneous applications that arise in or out of or relate to the matters to be dealt with or actually dealt with by a single Judge under Clause (g) because of the specification to Clauses (a) to (e) will fall within the jurisdiction of a single Judge. These observations rather fortify what we have indicated above though no doubt the judgment itself was with regard to the matter for cancellation of bail granted by the lower Court and was not dealing with any miscellaneous application arising out of the matters dealt with by the High Court acting by its single Judge''s Court. It was suggested that this judgment rules that unless the cause is pending, single-Judge-Court is not entitled to deal with miscellaneous criminal application invoking High Court''s inherent, power. This is clearly not so. Moreover, we are unable to appreciate the submission that for the purpose of invoking the powers u/s 482 of the Code the cause must actually be pending or must be alive before the single Judge and then only and to that extent only that power will be exercisable, by the single Judge. Firstly, that would render such an application untenable once the appeal or revision is decided though it falls u/s 482 proper. Such a result cannot be conceived. Secondly, as has been already indicated Clause (h) has a wider phraseology and that is not restrictive in its connotation to the stage of pendency of appeal or revision; but, on the other hand, by the use of the words "relating to" it indicates that all applications concerning the appeals or matters whether pending or decided falling under Clauses (a) to (e) will have to be dealt with by the single Judge''s Court of this High Court. That is the plain intention and also the express interpretation of that clause.

17. The another judgment of division Bench which was brought to our notice is Ratan Hiranand Khatri v. The State of Maharashtra. It is of little assistance in the present debate; for the point before us was neither raised nor was considered there by the Court. On the assumption that such application lies before the division Bench, the matter has been decided.

18. We may with advantage quote from the Judgment of the Supreme Court the observations laying down some basic principles with regard to the practice and procedure of exercising the jurisdiction in the High Court while it acts by its different benches. In Sidheswar Ganguly Vs. The State of West Bengal, , the Court was concerned with the certificate of leave granted under Article 134(1)(c) of the Constitution of India by a division Bench other than the one which dealt with and dismissed a criminal appeal. Holding the process of grant of such certificate as without jurisdiction, the Court observed as follows (p. 145):

...It appears that the learned Chief Justice and his brother Judge, contrary to the legal position that one Bench of the High Court has no jurisdiction to sit in. judgment on the decision of another Division Bench, have, in fact, done so.

(Italics ours).

19. The principle underlying these observations, though made in a different context, is available and as such applicative even to the situation before us. If upon a closer look to the provisions of the Code of Criminal Procedure as well that of Letters Patent and rules of our High Court it is not permissible to open matters that fall within the jurisdiction, of a single Judge''s Court, it is that Court only which would possess inherent power with regard to matters in its jurisdiction. Neither under the Code nor under the Letters Patent the decision of a single Judge is subject to any further intra-Court appeal. For all purposes the decision of a single Judge is the decision of the High Court and finality attaches to it as contemplated by Section 393 of the Code of Criminal Procedure. See U.J.S. Chopra Vs. State of Bombay, and Roshanlal Poddar v. State 79 C.W.N. 816. This finality attached to the appellate Court judgment would contra-indicate any further challenge and that it cannot be subject to any further questioning in the same High Court. Further that would foreclose challenge in the same Court even to the process of reaching to the finality involving hearing of the appeal and making judgment. Along with this, the operative part of Section 482 indicates that it enables the Court to make orders to meet the ends of justice and also to make orders to give effect to the order made under the Code of Criminal Procedure. For that too approach will have to be to the same Court and none other. Any other approach elsewhere would subject the judgment of the single Judge to scrutiny by another Bench involving process akin to intra-Court appeal or revision. Results would be anomalous. Are we to conceive that an order made by a single Judge that require at some stage giving effect to it within the contemplation of Section 482 will have to be brought before the division Bench for that purpose? Would it be a logical supposition that though the appeal or revision is decided by

the single Judge competently, the so called or alleged defects in the hearing or in reaching, the conclusion in those proceedings can be the foundation and as such, subject to scrutiny because of Section 482 before the division Court in the High Court? The phrase "to meet the ends of justice" being not definitive and capable of elastic application, are we to suppose that at its foot the appeals or revisions disposed of by a single Judge''s Court are to be subjected to fresh scrutiny by the division Courts of this High" Court and the latter is competent to set aside final judgment? To suppose so or to grant this, is really permitting a process of intra-Court appeals or applications over the orders and judgments made or delivered competently by a single Judge''s Court acting as the High Court though even the Letters Patent clearly lay down that decision rendered by the single Judge''s Court is not appealable in the High Court itself. Clauses 15 and 26 as well 36 of the Letters Patent do not provide for any intra-Court proceedings in criminal cases. If this be the legal position with regard to the judgments of the single Judge''s Court of this High Court, in that it has been declared to be final, we fail to see how by recourse to Section 482 the same can be called in question before the division Bench of this High Court. In the light of the provisions of the Code of Criminal Procedure as well of the Letters Patent along with the propriety involved in such matters, the Rules of this High Court clearly indicate that such applications are necessarily and because of its character are required to be dealt with and should be placed before the Court that dealt with or decided the appeal. Practice and procedure, in our view, should yield to express terms of the rules and of law.

20. A faint submission was made that in a given case the Judge may not be available and the interpretation we have placed is likely to cause difficulties. We are not called upon to express our view on this aspect of the matter. Suffice it to say that the present is not the case of that type.

21. As we have found above, the application lies to the single-Judge-Court that decided the concerned criminal appeal. Taking this view, we direct that the application be placed before the learned single Judge for disposal according to law.