

rape had been cooked up, to salvage some of the family honour. This is often the tendency in such matters. The High Court has therefore gone completely wrong in dismissing the appeal even after its categorical observations. We accordingly allow the appeal, set aside the conviction of the appellant and order his acquittal. The appellant is on bail; his bail bonds are discharged.

Appeal allowed.

AIR 2011 SUPREME COURT 1353

(From : Karnataka)

G. S. SINGHVI AND ASOK KUMAR GANGULY, JJ.

Civil Appeal No. 2015 of 2011 (arising out of S. L. P. (C) No. 20821 of 2010), D/- 22-2-2011.

Kokkanda B. Poondacha & Ors. v. K. D. Ganapathi & Anr.

(A) Constitution of India, Arts. 226, 227 — Writ jurisdiction/supervisory jurisdiction of High Court — Interference qua interlocutory orders — High Court could not interfere with order of trial Court without considering question whether said order was vitiated due to want of jurisdiction or trial Court had exceeded its jurisdiction or order passed by it has resulted in failure of justice.

2010 AIR SCW 6387 and AIR 2003 SC 3044, Rel. on. (Para 10)

(B) Civil P. C. (5 of 1908), O. 16, R. 1(1), (2) and S. 151 — Advocates Act (25 of 1961), S. 49 — Bar Council of India Rules (1975), Rr. 12, 13, 14 and 15 — List of witnesses — One party to proceedings cannot cite advocate representing other side as witness without disclosing as to how his testimony is relevant — It amounts to depriving other side of services of advocate.

Judgment of Karnataka High Court, D/- 24-2-2010, Reversed.

One party to the proceedings cannot cite the advocate representing the other side as a witness and thereby deprive the latter of

the services of the advocate without disclosing as to how his testimony is relevant to the issues arising in the case.

The respondents had not attributed any role to the advocate Kamath in relation to the subject matter of the suit. The concerned advocate was engaged by the plaintiffs appellants in 1996 i.e. almost 11 years prior to the filing of application by the respondents under O. 16, R. 1(1) and (2) read with S. 151 CPC. During this long interregnum, the respondents never objected to his appearance as an advocate of the appellants by pointing out that he was interested in the subject matter of the suit. Notwithstanding this, the respondents cited him as a witness in the list filed along with the application. The sole purpose of doing this was to create a situation in which the advocate would have been forced to withdraw from the case. Respondents had included the name of advocate in the list of witnesses proposed to be summoned by them with an oblique motive of boarding him out of the case.

Further, if the parties to the litigation are allowed to file list of witnesses without indicating the purpose for summoning the particular persons as witnesses, the unscrupulous litigation may create a situation where the cases may be prolonged for years together. Such litigants may include the name of the advocate representing the other side as a witness and if the Court casually accepts the list of witnesses, the other side will be deprived of the services of the advocate. Therefore, it would be a prudent exercise of discretion by the Court to insist that the party filing the list of witnesses should briefly indicate the purpose of summoning the particular person as a witness.

Judgment of Karnataka High Court, D/- 24-2-2010, Reversed. (Paras 15, 16)

Cases Referred: Chronological Paras

2010 AIR SCW 6387 (Rel. on) 6, 9

AIR 2003 SC 3044 (Rel. on) 7, 8

AIR 1983 SC 925 6, 11

AIR 1979 SC 281 14

Ms. Kiran Suri, for Petitioner; S. N. Bhat, for Respondents.

JUDGMENT :— Leave granted.

2. Whether the respondents (defendant Nos.5 and 6 in the suit filed by the appellants), could cite the advocate representing the appellants as a witness in the list filed under Order XVI Rule 1 (1) and (2) read with Section 151 of the Code of Civil Procedure (CPC) without giving an iota of indication about the purpose of summoning him in future is the question which arises for consideration in this appeal filed against order dated 24.02.2010 passed by the learned Single Judge of the Karnataka High Court whereby he set aside the order passed by the trial Court partly dismissing the application of the respondents.

3. Appellant Nos.1 to 3 and one Parvathy filed suit, which came to be registered as O.S. No.75 of 1996, for partition and separate possession of 1/6th share each in the suit property and also for grant of a declaration that sale deed dated 10.7.1997 executed by defendant Nos.2 to 4, who were, later on, transposed as plaintiff Nos.5 to 7 (appellant Nos.4 to 6 herein), was not binding on them. Defendant Nos.5 to 7 (including respondent Nos.1 and 2 herein) filed written statement on 19.2.1998. Respondent Nos.1 and 2 filed additional written statement on 9.8.2002. After two years and seven months, they filed an application dated 11.3.2005 under Order XVI Rule 1 (1) and (2) read with Section 151 C.P.C. supported by an affidavit of respondent No.1 for permission to file the list of witnesses, which included the name of Shri N. Ravindranath Kamath, Advocate, who was representing the appellants in the suit from the very beginning.

4. The trial Court partly allowed the application of respondent Nos.1 and 2 and granted leave to them to file the list of witnesses but rejected their prayer for permission to cite Shri N. Ravindranath Kamath as witness No.1. The reasons assigned by the trial Court for partially declining the

prayer, of respondent Nos.1 and 2 are extracted below:

“.....While citing advocate of the opposite party as a witness, the defendants 3 and 4 ought to have given reason for what purpose they are citing him as a witness and examining him in their favour. Once the advocate for the opposite party is cited as a witness in the list, the opposite party loses precious service of his advocate. In that circumstances, the party will suffer. Under the circumstances, so as to know for what purpose the defendant Nos.2 and 3 are citing and examining the N.R. Kamath advocate for the plaintiff in their favour have to assign reason. The Court has to be very cautious and careful while considering such an aspect of the matter of examining and citing the advocate for the opposite party in their favour. The Court has to determine as to whether the evidence of said advocate is material for the decision of the case or not? Unless defendant Nos.2 and 3 assigned reason in the application or in the affidavit as to why they are citing the advocate for the opposite party and examining in their favour, the application filed by defendant Nos.2 and 3 is not maintainable and the said application is not sustainable under law. In the above said judgment, in para 2, it is clearly held that, “but appellants then filed a petition seeking permission to cite the advocate of the respondents as a witness”. But herein this case, the defendant Nos.2 and 3 are not seeking permission to cite the advocate for the plaintiff as a witness. Defendant Nos.2 and 3 not only have to seek permission of this Court to cite the advocate for the plaintiff as a witness, but also he has to give good reasons for what purpose he is citing him as a witness and examining in his favour. Without assigning any reasons and without seeking permission to cite the advocate for the plaintiff as a witness in the witness list, application to that extent is not tenable and same is liable to be dismissed to that extent.”

5. The respondents challenged the order

2011

of the trial Court by filing a petition under Articles 226 and 227 of the Constitution insofar as their prayer for citing Shri N. Ravindranath Kamath as a witness was rejected. The learned single Judge allowed the petition and set aside the order of the trial Court by simply observing that reasons are not required to be assigned to justify the summoning of a particular person as a witness.

6. Mrs. Kiran Suri, learned counsel for the appellants relied upon the judgment of this Court in *Shalini Shyam Shetty v. Rajendra Shankar Patil* (2010) 8 SCC 329 : (2010 AIR SCW 6387) and argued that the order under challenge is liable to be set aside because the High Court committed serious error by interfering with the order of the trial Court without recording a finding that the said order is vitiated due to want of jurisdiction or any patent legal infirmity in the exercise of jurisdiction and that refusal of the trial Court to permit the respondents to cite Shri N. Ravindranath Kamath as a witness had prejudiced their cause. She further argued that the respondents are not entitled to cite and summon as a witness the advocate representing the appellants because in the application filed by them, no justification was offered for doing so. In support of this argument, Mrs. Suri relied upon the judgment of this Court in *Mange Ram v. Brij Mohan* (1983) 4 SCC 36 : (AIR 1983 SC 925).

7. Shri S. N. Bhatt, learned counsel for the respondents argued that even though his clients had filed application belatedly, the trial Court was not justified in declining their prayer for citing Shri N. Ravindranath Kamath as a witness merely because he was representing the appellants. Learned counsel submitted that at the stage of filing the list of witnesses, the plaintiffs or for that reason the defendants are not required to disclose the nature of the evidence to be given by the particular witness or its relevance to the subject matter of the suit etc. and the trial Court had grossly erred in not granting leave to the respondents to cite

Shri N. Ravindranath Kamath as one of their witnesses. Shri Bhatt relied upon the judgment in *Surya Dev Rai v. Ram Chander Rai and others* (2003) 6 SCC 675 : (AIR 2003 SC 3044) and argued that even after amendment of Section 115, C.P.C., the High Court can, in exercise of supervisory power under Article 227, correct the error of jurisdiction committed by the Subordinate Court.

8. We have considered the respective submissions. We shall first consider the question whether the High Court could interfere with the order of the trial Court without considering the question whether the said order was vitiated due to want of jurisdiction or the trial Court had exceeded its jurisdiction in deciding the application of the respondents and the order passed by it has resulted in failure of justice. In *Surya Dev Rai's* case (*supra*) (AIR 2003 SC 3044), the two Judge Bench, after detailed analysis of the various precedents on the scope of the High Court's powers under Articles 226 and 227 of the Constitution, culled out nine propositions including the following:—

“(2) Interlocutory orders, passed by the courts subordinate to the High Court, against which remedy of revision has been excluded by CPC Amendment Act 46 of 1999 are nevertheless open to challenge in, and continue to be subject to, certiorari and supervisory jurisdiction of the High Court.

(3) Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction i.e. when a subordinate court is found to have acted (i) without jurisdiction – by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction – by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

(4) Supervisory jurisdiction under Ar-

above noted statement on the duties of an advocate towards his client, we have no hesitation to hold that the same was not only misconceived but was mischievous ex-facie. Neither in the written statement nor the additional written statement filed by them before the trial Court, the respondents had attributed any role to Shri N. Ravindranath Kamath in relation to the subject matter of the suit. The concerned advocate was engaged by the plaintiffs-appellants in 1996 i.e. almost 11 years prior to the filing of application by the respondents under Order XVI Rule 1(1) and (2) read with Section 151 CPC. During this long interregnum, the respondents never objected to the appearance of Shri N. Ravindranath Kamath as an advocate of the appellants by pointing out that he was interested in the subject matter of the suit. Notwithstanding this, the respondents cited him as a witness in the list filed along with the application. The sole purpose of doing this was to create a situation in which the advocate would have been forced to withdraw from the case. Luckily for the appellants; the trial Court could see the game plan of the respondents and frustrated their design by partly dismissing the application. The learned single Judge ignored that the respondents had included the name of Shri N. Ravindranath Kamath in the list of witnesses proposed to be summoned by them with an oblique motive of boarding him out of the case and passed the impugned order by recording one line observation that the respondents were not required to give reasons for summoning the particular person as a witness.

16. We may add that if the parties to the litigation are allowed to file list of witnesses without indicating the purpose for summoning the particular person(s) as witness(es), the unscrupulous litigants may create a situation where the cases may be prolonged for years together. Such litigants may include the name of the advocate representing the other side as a witness and if the Court casually accepts the list of wit-

nesses, the other side will be deprived of the services of the advocate. Therefore, it would be a prudent exercise of discretion by the Court to insist that the party filing the list of witnesses should briefly indicate the purpose of summoning the particular person as a witness.

17. In the result, the appeal is allowed, the impugned order is set aside and the one passed by the trial Court is restored. The respondents shall pay cost of Rs.50,000/- to the appellants.

Appeal allowed.

AIR 2011 SUPREME COURT 1358

(From : Calcutta)*

B. SUDERSHAN REDDY AND
SURINDER SINGH NIJJAR, JJ.

Criminal Appeal No. 168 with 1399 of
2007, D/- 25-2-2011.

Jugal Kishore Khetawat v. State of West
Bengal.

(A) Criminal P. C. (2 of 1974), S. 394
— Abatement of appeal — Appeal by
way of SLP under Art. 136 against —
Conviction for offence u/Ss. 302, 120-B
IPC — Death of appellant during pen-
dency — Near relative of deceased ap-
pellant can apply for leave to continue
appeal — Court u/Art.136 may grant
leave in appropriate cases.

Constitution of India, Art. 136

Where the appeal is against a conviction and sentence of death or of imprisonment, and the appellant dies during the pendency of the appeal, any of his near relatives may, within thirty days of the death of the appellant, apply to the Appellate Court for leave to continue the appeal; and if leave is granted, the appeal shall not abate. (Para 14)

Present appeal is not the one preferred under Chapter 29 of Code of Criminal Procedure under Article 136 of the Constitution of India. Supreme Court in ex-

* CRA No. 41 of 1999, D/- 25-9-2006 (Cal)

AIR 2011
exercise of it
grant leave
application b
appellant;
shall i
Section 39.
service in
so preferre
situation of
(B) Cri
— Supren
Power of
grant leav
Criminal
exercised
Cases Rel
AIR 2009 :
4276
AIR 1980 :
Ram Jet
Advocates,
Mathew, St
with him :
Sharma, M
dents.
ORDER
appeal Sm
been convi
under Secti
gation that
to commit r
and senten
learned Ac
Court, Alip
ferred by he
was dismis
leave petitio
situation of
and order d
High Court
order dated
2. That on
the husband
Jugal Kishore
seeking leav
appeal. In th
that "even th
the name of