NATIONAL COMMISSION OF WOMEN

v.

STATE OF DELHI & ANR.

(Special Leave Petition (Criminal) No. 2506 of 2009)

JULY 23, 2010

[HARJIT SINGH BEDI AND CHANDRAMAULI KR. PRASAD, JJ.]

Penal Code, 1860:

s. 376 – A girl of 21 years subjected to sexual intercourse with the false promise of marriage – The girl committed suicide – Trial court convicting the accused u/s 306 with 10 years RI and u/s 376 with life imprisonment – Acquittal by High Court as regards offence punishable u/s 306 and reduction of sentence u/s 376 to the period already undergone viz. about 5 years and six months – Special leave petition filed by National Commission for Women challenging reduction of sentence u/s 376 – HELD: Sub-s.(1) of s.376 provides for imposition of a sentence of upto ten years or life but the proviso says that the court may for adequate and special reasons, impose a lesser sentence – The discretion exercised by a court, particularly a superior court, should not be lightly interfered with – Several factors had been taken into account by the High Court while imposing a lesser sentence and it would be improper for Supreme Court to interfere with the High Court's discretion on the quantum of sentence except in extraordinary circumstances – There is no such circumstance – Sentence/Sentencing – Constitution of India, 1950 – Article 136 – Code of Criminal Procedure, 1973 – s.377.

CODE OF CRIMINAL PROCEDURE, 1973:

s.377 – Appeal against sentence on the ground of its inadequacy – National Commission for Women filing SLP

A *before Supreme Court challenging the judgment of High Court by which it reduced the sentence u/s 376 IPC from life imprisonment to the period already undergone viz. 5 years and six months – HELD: Section 377 specifically provides that it is the State Government or the Central Government* B *which can issue a direction to the Public Prosecutor to present an appeal before the Court of Session or the High Court on the ground of inadequacy of the sentence – This section does not in any manner authorise an appeal to the Supreme Court – Therefore, the Commission was not entitled to maintain an* C *appeal in the Supreme Court against the order of the High Court – Penal Code, 1860 – s.376 – Constitution of India, 1950 – Article 136.*

Constitution of India, 1950:

D *Article 136 – Permission to file special leave petition – Revocation of – National Commission for Women filing special leave petition with permission to file the SLP – Challenging judgment of High Court reducing the sentence of life imprisonment u/s 376 IPC awarded by trial court to the* E *period already undergone which was about five years and six months – HELD: An appeal is the creature of a Statute and cannot lie under any inherent power – Supreme Court does undoubtedly grant leave to appeal under the discretionary power conferred under Article 136, at the behest of the State* F *or an affected private individual but to permit anybody or an organization pro-bono publico to file an appeal would cause utter confusion in criminal justice system – While an appeal by a private individual can be entertained but it should be done sparingly and after due vigilance and, particularly, in a case where the remedy has been shut out for the victims due* G *to malafides on the part of the State functionaries or due to inability of the victims to approach the Court – In the instant case, neither the State which is the complainant nor the heirs of the deceased have chosen to file a petition in the High Court – As this responsibility has been taken up by the*

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Commission at its own volition, this is clearly not permissible in the light of the judgments of this Court – Accordingly, Special Leave Petition is dismissed as not maintainable – Permission to file Special Leave Petition granted by the Court's order dated 2.4.2009 is, accordingly, revoked – Party – Penal Code, 1860 – s.376 – Code of Criminal Procedure, 1973 – s.377 – Administration of criminal justice. A B

Pritam Singh vs. State **AIR (37) 1950 SC 169;** *P.S.R. Sadhanantham vs. Arunachalam* **1980 (2) SCR 873 = 1980 (3) SCC 141 – relied on.**

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Case Law Reference:

AIR (37) 1950 SC 169	**relied on**	**para 8**
1980 (2) SCR 873	**relied on**	**para 8**

CRIMINAL APPELLATE JURISDICTION : SLP (Criminal) No. 2506 of 2009. D

From the Judgment & Order dated 9.2.2009 of the High Court of Delhi at New Delhi in Criminal Appeal No. 389 of 2008.

Priya Hingorani and Aman Hingorani (for Hingorani & Associates) for the Appellant. E

Mohan Parasaran, ASG, Vivek Narayan Sharma, D.K. Thakur and Anil Katiyar for the Respondents.

The following order of the Court was delivered F

O R D E R

1. This Special Leave Petition has been filed by the National Commission for Women (hereinafter called the 'Commission') statedly under the inherent powers of this Court challenging the order of the High Court dated 9 th February, G 2009, whereby the respondent No.2 has been acquitted for the offence under Section 306 of the Indian Penal Code and while maintaining his conviction under Section 376 of the Indian Penal Code, the sentence has been reduced to that already undergone, which is said to be about five years and six months. H

A 2. The facts are as under:

3.1 Sunita then aged 21 years, committed suicide by consuming aluminium phosphide tablets on 14th April, 2003. A suicide note Ex. P.4 (G) found near her body was proved to be written in her hand. In the suicide note, she pointed out that B she had taken tuitions from the accused, Amit, at her residence in Rajgarh Colony and during that period had developed a deep friendship with him leading to physical relations as well. He also held out a promise of marriage but later backed off and when she remonstrated with him and reminded him of his promise C he threatened to expose and defame her in case she insisted on meeting him. She stated in the suicide note that the accused continued to have sexual relations with her but also compelled her to have sexual relations with others as well. Frustrated and feeling exploited, Sunita thus committed suicide.

D 2.2 The learned Additional Sessions Judge, Karkardooma Courts, Delhi, by his judgment dated 21st April, 2008, relying primarily on the dying declaration which was the suicide note, convicted the accused under Section 306 of the IPC and sentenced him to rigorous imprisonment for 10 years with a fine E of Rs.5,000/- and in default of payment of fine, to undergo rigorous imprisonment for six months in addition, and to imprisonment for life under Section 376 of the IPC and a fine of Rs.5000/- and in default, to undergo rigorous imprisonment for six months; both the sentences to run concurrently.

F 2.3 An appeal was thereafter taken by the accused to the High Court. The High Court vide the impugned judgment held that a case under Section 306 was not made out and the accused was entitled to acquittal under that provision but on the question of the offence under Section 376 observed as G under:

> "We note that Sunita was aged 21 years and the appellant was aged 20 years when they indulged in a promiscuous relationship.

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At the age of 21, Sunita was matured enough to understand the moral worth of her acts. She was conscious that by having repeated sex with the appellant she could become pregnant and hence the appellant had told her to take Mala-D tablets.

There is some participative act committed by Sunita. It is not a case where the appellant forced herself on Sunita. There is no evidence that the appellant compelled Sunita to have sex with the other person. We note that the Sunita has only written that the appellant was compelling her to have sex with a third person. She has not written that she was actually made to have sex with a third person.

Considering the totality of the circumstances and noting that the appellant has suffered incarceration for five years and six months and would be entitled to remissions on account of his good conduct in jail; noting further that the appellant has redeemed himself in jail evidenced by the fact that he took his civil services examinations and qualified for being appointed to the Indian Administrative Services; we are of the opinion that the custodial sentence already suffered by the appellant would meet the ends of justice as a requisite punishment."

2.4 An order reducing the term of imprisonment for life to that already undergone was, accordingly, made.

3. The present Special Leave Petition has been filed by the National Commission for Women and the only plea raised is that the reasons given by the High Court for reducing the sentence awarded under Section 376 of the IPC were not acceptable as a helpless girl had been cruelly exploited and cheated by the accused. This matter came up for motion hearing before a Bench of this Court and permission to file the Special Leave Petition was granted and notice was issued on 2nd April 2009. Respondent No.1, that is the State of Delhi, has filed a counter affidavit, in effect supporting the

A case of the Commission although it has been conveyed to us by the learned Additional Solicitor General that the State does not propose to file an application for leave to appeal against the impugned judgment. The accused has also been served by publication but has not chosen to appear in response thereto.

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4. Ms. Priya Hingorani, the learned counsel for the petitioner, has forcefully argued that notwithstanding the fact that the State had not filed an appeal in the present matter an appeal at the instance of the Commission was maintainable under the inherent powers of this Court more particularly, as leave to file C the Special Leave Petition had already been granted by order dated 2nd April, 2009. It has, accordingly, being submitted that it was not now open to this Court to retract on the earlier order and revoke the permission and to doubt the very maintainability of the Special Leave Petition. On merits, it has been submitted D that the discretion exercised by the High Court while reducing the sentence for the offence under Section 376 of the IPC was not called for and merely because the accused had, in the meanwhile, cleared the Indian Administrative Services Examination was not a relevant consideration. We are unable E to accept the plea raised by the learned counsel.

5. Chapter XXIX of the Code of Criminal Procedure deals with "Appeal"(s). Section 372 specifically provides that no appeal shall lie from a judgment or order of a Criminal Court F except as provided by the Code or by any other law which authorizes an appeal. The proviso inserted by Section 372 (Act 5 of 2009) w.e.f. 31st December, 2009, gives a limited right to the victim to file an appeal in the High Court against any order of a Criminal Court acquitting the accused or convicting him G for a lesser offence or the imposition of inadequate compensation. The proviso may not thus be applicable as it came in the year 2009 (long after the present incident) and, in any case, would confer a right only on a victim and also does not envisage an appeal against an inadequate sentence. An appeal would thus be maintainable only under Section 377 to H

the High Court as it is effectively challenging the quantum of sentence. Section 377 is reproduced below:

> "377. *Appeal by the State Government against sentence:*(1) Save as otherwise provided in sub- section (2), the State Government may, in any case of conviction on a trial held by any Court other than a High Court, direct the Public Prosecutor to present an appeal against the sentence on the ground of its inadequacy—
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> (a) to the Court of session, if the sentence is passed by the Magistrate; and
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> (b) to the High Court, if the sentence is passed by any other Court.
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> (2) If such conviction is in a case in which the offence has been investigated by the Delhi Special Police Establishment, constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or by any other agency empowered to make investigation into an offence under any Central Act other than the Code, [the Central Government may also direct] the Public Prosecutor to present an appeal against the sentence on the ground of its inadequacy—
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> (a) to the Court of session, if the sentence is passed by the Magistrate; and
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> (b) to the High Court, if the sentence is passed by any other Court.
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> (3) When an appeal has been filed against the sentence on the ground of the inadequacy the Court of Session, or, as the case may be, the High Court shall not enhance the sentence except after giving to the accused a reasonable opportunity of showing cause against such enhancement and while showing cause, the accused may plead for his acquittal or for the reduction of the sentence."

A 6. This Section specifically provides that it is the State Government or the Central Government which can issue a direction to the Public Prosecutor to present an appeal before the Court of Session or the High Court on the ground of inadequacy of the sentence. This Section does not in any B manner authorize an appeal to the Supreme Court. We are, therefore, unable to comprehend as to how the Commission was entitled to maintain an appeal in the Supreme Court against the order of the High Court. An appeal is a creature of a Statute and cannot lie under any inherent power. This Court C does undoubtedly grant leave to the appeal under the discretionary power conferred under Article 136 of the Constitution of India at the behest of the State or an affected private individual but to permit anybody or an organization *pro-bono publico* to file an appeal would be a dangerous doctrine D and would cause utter confusion in the criminal justice system. We are ,therefore, of the opinion that the Special Leave Petition itself was not maintainable.

7. In *Pritam Singh v. State* AIR (37) 1950 SC 169 ; this Court while dealing with a criminal matter (after the grant of E leave under Article 136 of the Constitution) considered scope and ambit of this Article and observed:

> "9. On a careful examination of Article 136 along with the preceding article, it seems clear that the wide discretionary F power with which this Court is invested under it is to be exercised sparingly and in exceptional cases on1y, and as far as possible a more or less uniform standard should be adopted in granting special leave in the wide range of matters which can come up before it under this article. By G virtue of this article, we can grant special leave in civil cases, in criminal cases, in income-tax cases, in cases which come up before different kinds of tribunals and in a variety of other cases. The only uniform standard which in our opinion can be laid down in the circumstances is that Court should grant special leave to appeal only in those H

cases where special circumstances are shown to exist.....It is sufficient for our purpose to say that though we are not bound to follow them too rigidly since the reasons, constitutional and administrative, which sometimes weighed with the Privy Council, need not weigh with us, yet some of those principles are useful as furnishing in many cases a sound basis for invoking the discretion of this Court in granting special leave. Generally speaking, this Court will not grant special leave, unless it is shown that exceptional and special circumstances exist, that substantial and grave injustice has been done and that the case in question presents features of sufficient gravity to warrant a review of the decision appealed against."

8. In *P.S.R. Sadhanantham v. Arunachalm And Another* (1980) 3 SCC 141, this Court was dealing with the locus standi of a private person, in this case a victim's brother, who was neither a complainant nor a first informant in the criminal case but had filed a petition under Article 136 of the Constitution of India. This Court observed that the strictest vigilance was required to be maintained to prevent the abuse of the process of the Court, more particularly, in criminal matters, and ordinarily a private party other than the complainant, should not be permitted to file an appeal under Article 136, though the broad scope of the Article postulated an exception in suitable cases. It was spelt out as under:-

"7. Specificity being essential to legality, let us if the broad spectrum spread out of Article 136 fills the bill from the point of view of "procedure established by law". In express terms, Article 136 does not confer a right of appeal on a party as such but it confers a wide discretionary power on the Supreme Court to interfere in suitable cases. The discretionary dimension is considerable but that relates to the power of the court. The question is whether it spells by implication, a fair procedure as contemplated by Article 21. In our view, it does. Article 136 is a special jurisdiction. It

A is residuary power; it is extraordinary in its amplitude, its limit, when it chases injustice, is the sky itself. This Court functionally fulfils itself by reaching out to injustice wherever it is and this power is largely derived in the common run of cases from Article 136. Is it merely a power in the court B to be exercised in any manner it fancies? Is there no procedural limitation in the manner of exercise and the occasion for exercise? Is there no duty to act fairly while hearing a case under Article 136, either in the matter of grant of leave or, after such grant, in the final disposal of C the appeal? We have hardly any doubt that there is a procedure necessarily implicit in the power vested in the summit court. It must be remembered that Article 136 confers jurisdiction on the highest court. The founding fathers unarguably intended in the very terms of Article 136 that it shall be exercised by the highest judges of th land D with scrupulous adherence to judicial principles well established by precedents in our jurisprudence. Judicial discretion is canalised authority, not arbitrary eccentricity."

The Court then examined the implications of completely shutting E out a private party from filing a petition under Article 136 on the locus standi and observed thus:

"Having said this, we must emphasise that we are living in times when many societal pollutants create new F problems of unredressed grievance when the State becomes the sole repository for initiation o criminal action. Sometimes, pachydermic indifference of bureaucratic officials, at other times politicisation of higher functionaries may result in refusal to take a case to this Court under G Article 136 even though the justice of lis may well justify it. While "the criminal law should not be used as a weapon in personal vendettas between private individuals", as Lord Shawcross once wrote, in the absence of an independent prosecution authority easily accessible to every citizen, a wider connotation of the expression 'standing' is H necessary for Article 136 to further its mission."

9. A reading of the aforesaid excerpts from the two judgments would reveal that while an appeal by a private individual can be entertained but it should be done sparingly and after due vigilance and particularly in a case where the remedy has been shut out for the victims due to malafides on the part of the state functionaries or due to inability of the victims to approach the Court. In the present matter, we find that neither the State which is the complainant nor the heirs of the deceased have chosen to file a petition in the High Court. As this responsibility has been taken up by the Commission at its own volition this is clearly not permissible in the light of the aforesaid judgments.

10. Ms. Priya Hingorani's submission with regard to the reasons which weighed with the Court while reducing the sentence must now be dealt with. Sub-section (1) of 376 of the IPC provides for the imposition of a sentence of upto ten years or life but the proviso says that the Court may for adequate and special reasons, impose a lesser sentence. We are of the opinion that the discretion exercised by a Court, particularly a superior court, should not be lightly interfered with. We have quoted from the judgment of the High Court hereinabove and find that several factors had been taken into account while imposing a lesser sentence and it would be improper for us to interfere in the High Court's discretion on the quantum of sentence except in extraordinary circumstances. We do not see any such circumstance. We, accordingly, dismiss the Special Leave Petition as not maintainable. The permission to file the Special Leave Petition granted vide this Court's order dated 2nd April, 2009, is, accordingly, revoked.

R.P. SLP dismissed.