

REPORTABLE

IN THE SUPREME COURT OF INDIA
 CRIMINAL APPELLATE JURISDICTION
 CRIMINAL APPEAL NO. 387 OF 2007

Engineering Export Promotion Council ...Appellant

Versus

Usha Anand and another ...Respondents

J U D G M E N T

Dipak Misra, J.

In this appeal challenge is to the orders dated 1.6.2006 and 4.7.2006 passed by the High Court of Delhi in Criminal M.C. No. 540 of 2004 in Crl. M. (M) No. 3009 of 2003 and Crl. M. No. 6349 of 2006 in Crl. M. (M) No. 3009 of 2003 respectively.

2. The facts which are essential to be exposted are that the husband of the Ist respondent, late Yash Pal Anand, was a merchant exporter of automotive components and was carrying on business in the name and style of M/s. Anand Craft Centre. The Central Bureau of Investigation (CBI) registered six cases against him for offences punishable under Sections 420, 468/471 of the Indian Penal Code (for short "IPC") in the year 1994. Identical cases of equal numbers were registered against his brothers, namely, Ashok, Satish and Subhash. The allegations against the four accused persons are not required to be stated because the controversy pertains to a different realm altogether. As the factual matrix would demonstrate, late Yash Pal Anand had deposited a sum of Rs.22 lakhs with Engineering Export Promotion Council (EEPC), a channelising industry under the Ministry of Commerce. Other three brothers had also deposited the sum with the said agency. The trial continued in different cases against all the four brothers and, eventually, Ashok, Satish and Subhash were acquitted in all the cases by the trial court which extended them the benefit of doubt. As far as the husband of the Ist respondent is concerned, he expired before the conclusion of the trial and, therefore, the trial stood abated against him. Against the judgment of acquittal of the three brothers CBI preferred appeals which were dismissed on 27.5.2002 and no appeal was preferred assailing the judgment of affirmation of acquittal. Thereafter, they claimed refund of the amount by filing requisite applications before the learned trial Judge who, by order dated 13.8.2001, directed refund of the amount. The reason ascribed by the trial court for refund was that the said sum was deposited by the accused persons in compliance of the conditions of the bail order and it was clearly stated that the accused persons had deposited the money without prejudice to their rights and as they had been acquitted, they were entitled to refund of the money deposited with the EEPC.
3. As the amount was not refunded despite the order passed by the trial court, one of the brothers preferred Cri.M. (M) No. 3541 of 2001 before the High Court which passed an order directing the present appellant to refund the amount. The relevant part of the order dated 5.10.2001 passed in Crl. M. (M) No. 3541 of 2001 is as follows: -

"The question that is being raised before me, is whether the

amount deposited by the accused persons pursuant to orders dated 12.10.1994 requiring the petitioner to deposit a sum of Rs.15,24,079/- with the second respondent by way of terms and condition of the bail and the petitioner during trial having been acquitted of all charges on 22.6.2001 is entitled to receive back the money that is deposited pursuant to the orders of this Court with the second respondent as a condition of bail.

Learned counsel for the CBI submits that the CBI does not have the money and that the same was deposited with the second respondent and, therefore it is only the second respondent that can be directed to return the money deposited.

I have heard learned counsel present for the parties the second respondent choosing not to be present, I direct that the amount deposited by the petitioner with the second respondent pursuant to orders of this Court and which was directed to be returned vide order dated 13.8.2001 shall be returned within a period of two weeks from date of service of the order."

4. Thereafter, the 1st respondent filed Crl. M. (M) No. 3009 of 2003 with a prayer to command the respondent No. 2, the appellant herein, to refund the amount of Rs.22 lakhs on the ground that she was the sole legal heir; that the allegations in all the cases were identical without any exception; that the trial court had allowed the applications for refund vide order dated 13.8.2001 in respect of other brothers; that as the order passed by the trial court was not complied with, one of the brothers had filed Crl. M. (M) No. 3541 of 2001 before the High Court which was disposed of by order dated 5.10.2001 directing the respondent to refund the deposited amount within two weeks; that as the trial against the husband had abated, she had not been able to move the application earlier; that after the termination of the trial she had approached the officers of the respondent but despite the earlier direction by this Court and they being under legal obligation to refund the amount, tremendous apathy was shown and money was not refunded; and that no response was given to the legal notice and, therefore, she was entitled to refund of the deposited sum.

5. The High Court entertained the application preferred by the 1st respondent and passed the following order on 3.12.2003: -

"In identical petition namely Crl. M. (M) No. 3541/2001 an order dated 15.10.2001 was passed directing refund of the money deposited by the petitioner of that petition within a period of two weeks from the date of service of the respondent.

Since in this case also respondent No. 2 has been served the same order needs to be passed. The amount deposited by the petitioner shall now be returned to the petitioner within a period of two weeks from today."

6. Being grieved by the aforesaid order special leave petition (Crl.) No. 41 of 2004 was filed before this Court, which was eventually converted to Criminal Appeal No.1085 of 2004. This Court, on 27.9.2004, passed the following order in the said criminal appeal: -

"Let the present appellant, if they are advised, file their objections, if any, to the petition in Criminal Miscellaneous (Main) No. 3009 of 2003 in the High Court within three weeks from today. If any objection is filed, the same shall be considered on its own merits by the High Court about which we express no opinion. The Criminal Miscellaneous (Main) No. 3009 of 2003 shall be restored to its original position as stood before disposal on 3.12.2003. If no objection is filed, the order passed on 3.12.2003 shall remain operative. The liberty given to the appellant to file a counter shall be also applicable to the CBI.

This order has been passed notwithstanding the stand of the respondents that full liberty was granted to the appellant to

file any objection which they failed to avail. Since a specific stand has been taken that the appellant intended to file objections for which it was not granted any opportunity, we have passed the present order."

7. After the aforesaid order an objection was filed and the High Court, while dealing with the controversy referred to the order passed by the trial court on 13.8.2001 directing refund of amount in respect of other accused persons, and further referred to the order passed on 5.10.2001, which we have reproduced hereinabove, and thereafter, as is manifest from the order impugned, it reproduced a part of the letter dated 30.8.1994 by late Yash Pal Anand written to the respondent No. 2 therein and observed thus: -

"Admittedly, the other three brothers also deposited the amount under the same circumstances. After their acquittal when they applied to the trial court for refund of the amount deposited by them the trial court directed the refund of the amount. While passing the order of refund the learned trial court has categorically observed that money was deposited in compliance of the condition of bail order and without prejudice to the rights of the accused to be entitled to refund of the money. I fail to understand as to why same treatment be not meted out to the petitioner."

8. Being of this view, the High Court further opined that once the proceeding stood abated against him, it cannot be argued that the case would have resulted in conviction when cases against other brothers on identical allegations had resulted in acquittal and the appeals had been dismissed. Resultantly, the petition was allowed and the respondent No. 2 therein was directed to refund the amount within a period of four weeks.
9. Mr. Amit Singh Chadha, learned senior counsel appearing for the appellant, has seriously criticized the order on the ground that the respondent's husband had deposited the money with the appellant on his own and it is not in pursuance of the order or command of any court and it has nothing to do with the grant of bail. It is strenuously urged that the High Court has fallen into grave error by applying the doctrine of parity which is remotely not applicable. It is canvassed by him that when as a condition of bail a sum is deposited, the same is liable to be released after acquittal but when an amount is deposited on one's volition it cannot be directed to be refunded under Section 482 of the Code of Criminal Procedure (for short "the Code").
10. The learned counsel for the respondent No. 2, per contra, would contend that the order passed by the High Court is absolutely defensible inasmuch as when the trial stood abated against late Yash Pal Anand, husband of the 1st respondent, it had the effect of acquittal and, therefore, the fall out is refund of the amount which had been deposited with the appellant. It is his further submission that when the charges were identical against all and the three accused persons were acquitted, there was no justification to treat the legal heir of other accused in a different manner. It is put forth that the amount was deposited by late Yash Pal Anand to avoid arrest and without prejudice which is perceptible from letter dated 30.8.1994 written by him to the appellant which has been appositely referred to by the High Court and hence, interference with the order impugned would amount to non-refund of the amount to the respondent which would result in miscarriage of justice.
11. To appreciate the rivalised submissions raised at the Bar, we have with great anxiety scrutinized the order passed by the High Court. Indubitably, the High Court was exercising its inherent powers under Section 482 of the Code. The fulcrum of the order passed by the High Court is that late husband of the 1st respondent had deposited the money to avoid arrest and similarly placed accused persons had been

acquitted and they had been granted relief of refund by the trial court and again reiterated by the High Court under Section 482 of the Code, similar treatment should be meted out to her.

12. To appreciate the ratiocination of the order passed by the High Court it is necessary to understand the jurisdiction of the High Court while exercising the power under Section 482 of the Code. In *R.P. Kapur v. State of Punjab*[1], a three-Judge Bench was dealing with the scope of inherent power the High Court under Section 561A of the old Code. In that context, it has been observed that the High Court has said inherent power as may be necessary is meant to give effect to any order under the Code or to prevent abuse of the process of any court or otherwise to secure the ends of justice.
13. In *State of Punjab v. Kasturi Lal and others*[2], the Court, dealing with the scope of exercise of power under Section 482 of the Code, has observed that the Section does not confer any new power on the High Court. It only saves the inherent power which the Court possesses before the enactment of the Code.
14. After so stating it has been laid down that it envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of the Court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts.
15. In this context, we may fruitfully refer to *State of U.P. and others v. Surender Kumar*[3] wherein the appellant-State had assailed the order passed by the a learned Judge of the Allahabad High Court who, in exercise of power under Section 482 of the Code, had modified its earlier order directing the respondent-State and its functionaries not to carry out search and seizure of the goods lying at the railway station or in the custody of the City Booking Agency belonging to the applicant therein prior to their delivery to the consignee and also not to interfere in the functioning of the City Booking Agency. The two learned Judges opined that the High Court could not have modified the order as it amounted to review. Repelling the contention that the High Court had only acted in accordance with the judgment of the Division Bench of the said High Court, the two-Judge Bench proceeded to state as follows: -

"In the garb of an application for modification of that order, the respondent could not file an application which was in effect a review application praying for other reliefs. Yet the High Court passed an order directing the appellants not to search and seize the goods lying at the railway station or in the custody of the City Booking Agency of the applicant prior to the delivery to the consignees. It has further directed that the appellants shall not interfere in the functioning of the City Booking Agency. These are matters which were entirely beyond the scope of the application under Section 482 CrPC and if, we may say so, beyond the jurisdiction of the High Court exercising jurisdiction under Section 482 CrPC. It does not arise out of any order passed by a court, nor was there any allegation of abuse of the process of the court, nor was it a case of manifest injustice caused to a party. A direction like the one which the High Court has given in its impugned order could be given by the High Court in exercise of its writ jurisdiction in an appropriate case and not under Section 482 CrPC."

16. In *Divine Retreat Centre v. State of Kerala*[4] the central controversy that arose before this Court pertained to the scope, content and ambit of the inherent power conferred on the High Court under Section 482 of the Code. A submission was canvassed that the jurisdiction of the High Court under Section 482 of the Code was not available to order investigation into any case by the police. After referring to number of decisions it has been opined thus: -

"22. In our view, there is nothing like unlimited arbitrary jurisdiction conferred on the High Court under Section 482 of the Code. The power has to be exercised sparingly, carefully and with caution only where such exercise is justified by the tests laid down in the Section itself. It is well settled that Section 482 does not confer any new power on the High Court but only saves the inherent power which the court possessed before the enactment of the Code. There are three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of Court, and (iii) to otherwise secure the ends of justice."

17. In the said case, the two-Judge Bench made a distinction between the exercise of power under Article 226 of the Constitution of India and the power under the Code.

18. In the case at hand, the High Court has given, as has been stated hereinbefore, emphasis on judgment of acquittal and the deposit of money with the appellant to avoid arrest. As far as the judgment of acquittal because of abatement is concerned, it is not necessary to dwell upon what would be the effect of an acquittal in a case of this nature. The second issue being important requires to be delved into. Late Yash Pal Anand, had written two letters to the appellant on 25.8.1994 and on 30.8.1994 respectively. We may reproduce the relevant part of the letter dated 30.8.1994 : -

"Without prejudice to our claim and contention that benefit of I.P.R.S. has been legally claimed by us, we are happy tendering approximately a sum of Rs.7,40,000.00 which constitute about 27% of the total sum of Rs.27,50,000.00 as payable by us to E.E.P.C. as alleged to be payable. The detail of the tendering amount is as under.

1. Banker's Cheque No. 198929 dt. 27.8.94 of Rs. 2,80,000.00 issued by Canara Bank, New Delhi.
2. Banker's Cheque No. 198928 dt. 27.8.94 of Rs. 4,60,000.00 issued by Canara Bank, New Delhi.

Kindly accept this sum of Rs. 7,40,000.00 under protest and acknowledge.

We are already made 13% amount vide Banker's Cheque No. 198878 dt. 25.8.94 of Rs. 3,60,000.00 issued by Canara Bank, New Delhi and now total amount paid 40% (Rs. 11,00,000.00)

We are at present in serious financial constraint, therefore, the balance left over amount may not be deposited by us immediately. But however the remaining sum should be deposited in the course of the time as intimated to you from time to time.

In view of the above you are requested to also kindly inform immediately to the special investigation branch (CBI) not to take measure against us.

We assure you that we will fully co-operate with you from time to time and further assure you that the entire sum as become payable by us shall be paid with."

[Emphasis added]

19. Again on 5.10.1994 late Yash Pal Anand wrote another letter the relevant part of which is as follows: -

"We are already made 13% amount vide Banker's Cheque No. 198878 dt. 25.8.94 of Rs. 3,60,000.00 issued by Canara Bank, New Delhi and 27% of Rs. 7,40,000.00 (Banker's Cheque No. 198929 dt. 27.8.94) and now total amount paid 80% (Rs. 22,00,000.00)

We are at present in serious financial constraint, therefore the balance left over amount may not be deposited by us immediately.

But however the remaining sum should be deposited as early as possible.

In view of the above you are requested to also kindly inform immediately to the special investigation branch (CBI) not to take measure against us."

[Emphasis supplied]

20. From the aforesaid communications, it is clear that the money was deposited by the husband of the Ist respondent on his own volition with the appellant. The High Court has observed that the other three brothers had deposited the amount under same circumstances and, therefore, after their acquittal the amount was directed to be refunded. The High Court has referred to its earlier order wherein it had been categorically stated that the money was deposited as a condition of bail. Deposition of any sum as a condition of bail and a deposit with the Agency on one's own even if to avoid arrest would stand on a different footing. The later action has nothing to do with the proceedings in the court. Thus understood, Section 482 of the Code could not have been exercised as the action taken by the appellant, a channelising industry under the Ministry of Commerce is absolutely an administrative action and, therefore, we are of the considered opinion that the same can only be challenged by way of a writ petition and not by seeking relief invoking the inherent power under Section 482 of the Code.

21. Consequently, the appeal is allowed, the order passed by the High Court is set aside and liberty is granted to appellant to approach the High Court by way of writ petition. If a writ petition is filed, the same shall be dealt with on merits. Needless to emphasise, all contentions relating to liability, entitlement for refund and all other aspects are kept open as we have not expressed any opinion on any count except the jurisdictional facet. There shall be no order as to costs.

.....J.
[Dr. B. S. Chauhan]

.....J.
[Dipak Misra]

New Delhi;
May 29, 2013

ITEM NO.102

Court No.2

SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CRIMINAL APPEAL NO(s). 387 OF 2007

ENGINEERING EXPORT PROMOTION COUNCIL

Appellant (s)

VERSUS

USHA ANAND & ANR.

Respondent(s)

(With office report)

Date: 29/05/2013 This Appeal was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE B.S. CHAUHAN
HON'BLE MR. JUSTICE DIPAK MISRA
(VACATION BENCH)

For Appellant(s) Mr. Amit Singh Chadha, Sr. Adv.
Ms. Sangeeta Mandal, Adv.
Mr. Kunal Sinha, Adv.
M/S Fox Mandal & Co., Adv.

For Respondent(s) Mr. R. Nedumaran, Adv.
Mr. Chandar Kumar, Adv.
Mr. B.K. Prasad, Adv.

Mr. Sonal Jain, AOR

for Mr. Tanmay Agarwal, Adv.
Mr. Vinay Garg, Adv.

Mr. P. Parmeswaran, Adv.

UPON hearing counsel the Court made the following
O R D E R

At the oral request of Mr. Tanmay Agarwal, Adv., the name of Mr. Vinay Garg, Advocate-on-record is discharged from the cause list.

The appeal is allowed in terms of the signed reportable judgment.

| (DEEPAK MANSUKHANI) | (M.S. NEGI) |
| Court Master | Court Master |

(Signed reportable judgment is placed on the file)

[1] AIR 1960 SC 866
[2] AIR 2005 SC 4135
[3] (2005) 9 SCC 161
[4] AIR 2008 SC 1614