

The High Court Of Madhya Pradesh

WA No. 990 of 2021

(THE STATE OF MADHYA PRADESH Vs JAIPAL SINGH)

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Gwalior, Dated : 16-11-2021

Shri Ankur Mody, Additional Advocate General with Shri Siddharth Sijoria, counsel for the appellant/State.

This writ appeal under Section 2 (1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 (hereinafter referred to as the '(Ace of 2005)' by the State is directed against the order dated 14.9.2021 passed in M.Cr.C.No.42352 of 2021 by learned Single Judge.

Shri Ankur Mody, learned Additional Advocate General though fairly submitted that, in strict sense the order under challenge is not an order passed under Article 226 of the Constitution of India. Nevertheless, regard being had to the nature and scope of the order, the same is much beyond the scope of jurisdiction under Section 439 of Cr.P.C. True it is that, this court while exercising jurisdiction under Section 439 of Cr.P.C while considering the bail application, may incorporate the conditions as provided for under Section 437 (3) of the Cr.P.C, but such conditions are in the matter of order granting bail or refused the bail. In the instant case, learned Single Judge has neither granted bail nor refused the bail, but has passed an order taking exception to the manner in which, the prosecution has been going on and the conduct of the prosecution witnesses. Besides the learned Single Judge has also ordered to institute a departmental inquiry against an official named in the order with further direction to Inspector General of Police Chambal Range, Gwalior to submit compliance report before the Registrar on the given dates with an affidavit of having paid Rs.50,000/- compensation to the petitioner with further direction to recover the amount so paid from the salary of Superintendent of Police Bhind and also directed to place a copy of the charge sheet issued to the Police Officer and other guilty persons who did

not appear before the trial court or did not serve summons and bailable warrants on the police witnesses.

It is submitted that the aforesaid mandatory orders passed by learned Single Judge is much beyond the scope of the jurisdiction under Section 439 of Cr.P.C and that too without hearing the persons against whom adverse order has been passed. The jurisdiction was exercised in effect is, as if the court was sitting in exercise of inherent jurisdiction under Section 482 of Cr.P.C akin to that of Article 226 of the Constitution of India.

Therefore, in view of the aforesaid facts and circumstances and nature of the order passed, this court may consider to invoke jurisdiction under Section 2 of the Act of 2005. This court has carefully perused the provisions contained under section 2 of the Act of 2005. The legislature in unequivocal terms has provided the scope of jurisdiction of Division Bench in exercise of intra-Court appellate jurisdiction and has provided that an order passed under Article 226 of the Constitution of India by Single Judge but not the interlocutory order, an intra-Court appeal shall be maintainable.

Though, prima facie, the order under challenge appears to have been passed as if the court exercised inherent jurisdiction under Section 482 of Cr.P.C which may be said to be akin to Article 226 of the Constitution of India but factually, the order is passed by learned Single Judge while exercising jurisdiction under Section 439 of Cr.P.C arising out of the court below refusing bail in a case registered at Crime No.7 of 2018 under section 8/20 of the NDPS Act. We are afraid of countenancing submissions of learned Additional Advocate General while he prays for admission of the appeal in exercise of jurisdiction under section 2 of the Act of 2005 in the obtaining facts and circumstances, as acceding to the prayer so made, may tantamount to stretching the bounds of law in-excess to the jurisdiction conferred under section 2 of the Act of 2005. In a way, it may tantamount to judicial indiscipline.

At this stage, Shri Mody, learned Additional Advocate General seeks

audience of this court to bring on record an order dated 31st December, 2020 passed by coordinate Bench in W.A.No.1053 of 2020 (Shailendra Singh Kushwah Vs. State of M.P.), to contend that even if the order has been passed in exercise of jurisdiction under Section 439 of Cr.P.C, if the body of the order contained an order which otherwise is not within the scope of jurisdiction under Section 439 of Cr.P.C and such an order may be passed in exercise of inherent jurisdiction akin to Article 226 of the Constitution of India, the Division Bench may entertain the writ appeal arising from such an order under Section 2 of the Act of 2005. He prays that the case may be taken up post lunch **at 2.30 PM.**

(ROHIT ARYA)
JUDGE

(DEEPAK KUMAR AGARWAL)
JUDGE

2.30 PM.

Shri Mody has passed on Board, taken on record the aforesaid order passed by coordinate Bench. The Bench appears to have taken a contrary view as rightly submitted by Shri Mody. This Court, therefore, does not intend to dispose of the instant appeal and formulate following question under Rule 12 of Chapter IV of the High Court of Madhya Pradesh Rules, 2008 and recommend to Hon'ble The Chief Justice for formation of larger Bench to answer the following question :

"Whether, the Division Bench in exercise of powers under Section 2 of the Act of 2005 may entertain the appeal arising from an order other than the order passed under Article 226 of the Constitution of India?"

Shri Mody at this stage submits that pending decision, this court may stay effect of the impugned order in the context of initiation of departmental inquiry against employees, compensation of Rs.50,000/- to the petitioner, recoverable from S.P. Bhand and periodical submission of report to Pr. Registrar, Bench at Gwalior may be stayed to avoid unwarranted complications.

In the obtaining facts and circumstances, the prayer is acceded to and ordered accordingly.

However, the interim order passed today, shall not be treated as precedence.

(ROHIT ARYA)
JUDGE

(DEEPAK KUMAR AGARWAL)
JUDGE

Rks

