

STATE OF ORRISA
v.
NALINIKANTA MUDULI

AUGUST 12, 2004

[ARIJIT PASAYAT AND C.K. THAKKER, JJ.]

Code of Criminal Procedure, 1973—Section 482—Proceedings quashed by High Court relying on overruled judgment—On appeal, matters remitted to High Court for fresh consideration

Professional Conduct—Citing of overruled judgment—Held : Citing a judgment which has been overruled by larger Bench of same High Court or by the Supreme Court without disclosing the fact that it has been overruled is a matter of serious concern—Members of Bar, as officers of Court have a bounden duty to assist the Court and not to mislead it.

Respondent-accused filed petitions u/s. 482 Cr.P.C. for quashing chargesheet; for quashing order taking cognizance of offences under IPC and for quashing the orders rejecting prayers to dispense with personal appearance and recall of non-bailable warrant. Another petition u/s. 482 Cr.P.C. was filed on the ground that concerned Investigating Officer had no jurisdiction to investigate the matter. High Court, relying on judgment passed by High Court, in *J.A.C. Saldanha v. Inspector General of Police, Bihar, Patna and Ors.*, (1979) ILR (Patna) 459 quashed the proceedings.

In appeal, appellant-State contended that reliance on the judgment was of no consequence as the same was set aside by Supreme Court in *State of Bihar and Anr. v. J.A.C. Saldanha and Ors. Etc.*, [1980] 1 SCC 554.

Allowing the appeals, the Court

HELD : It is strange that a decision which has been overruled by this Court nearly quarter of a century back was cited by the Bar and the court did not take note of this position and disposed of the matter placing reliance on the said overruled decision. The decision of this

A Court reversing the judgment of the High Court was not brought to the notice of the Single Judge. Members of the Bar are officers of the Court. They have a bounden duty to assist the Court and not mislead it. Citing judgment of a Court which has been overruled by a larger Bench of the same High Court or this Court without disclosing the fact that it has been overruled is a matter of serious concern. It is one thing that the Court notices the judgment overruling the earlier decision and decides on the applicability of the later judgment to the facts under consideration on it. The matter was dealt with very casually. It was duty of the counsel for the respondent before the High Court to bring to the notice of the Court that the decision relied upon by the petitioner before the High Court has been overruled by this Court. Moreover, it was duty of the counsel appearing for the petitioner before the High Court not to cite an overruled judgment. It is not that the decision is lost in antiquity. It has been referred to in a large number of cases since it was rendered. [506-C-F; 506-G-H]

D 2. The matter is remitted back to the High Court so that it can deal the petitions afresh and decide on merits taking into account the decision and all other relevant aspects. [507-B-C]

E CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 870-872 of 2004.

From the Judgment and Order dated 25.4.2003 of the Orissa High Court in Crl. M. Nos. 306, 141 and 149 of 2003.

F Radha Shyam Jena for the Appellant.

Jana Kalyan Das for the Respondent.

The Judgment of the Court was delivered by

G **ARIJIT PASAYAT, J.** : Leave granted.

The State of Orissa questions legality of the judgment rendered by a learned Single Judge of the Orissa High Court disposing of three petitions filed under Section 482 of the Code of Criminal Procedure, 1973 (in short the 'Code'). The petitions were filed, *inter alia*, — (1) to quash the charge

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sheet filed by the Investigating Officer (Vigilance Cell) Bhubaneswar; (2) A
to quash the order dated 9.12.2002 taking cognizance of offences punishable under Sections 468, 471 and 420 of the Indian Penal Code, 1860 (in short the 'IPC'); and (3) to quash the order passed rejecting the prayer in terms of Section 205 of the Code and rejecting the prayer to recall the order directing issuance of non-bailable warrant of arrest. It is to be noted that B
Vigilance G.R. Case No. 17 of 2001 was at the relevant point of time pending in the Court of Special C.J.M. (Vigilance), Bhubaneswar. The starting point of litigation was drawing up of first information report on 29.5.2001 by the Inspector of Police, Vigilance Cell, Unit Office, Bhubaneswar. Though several government officials were charged for commission of offences under the IPC and the Prevention of Corruption C
Act, 1988 (in short 'the PC Act'), according to the accused the investigating officer did not find sufficient evidence to bring home charge of complicity of the government officials and charge-sheet was filed only so far as the present accused respondent is concerned. As cognizance was taken and the prayer to dispense with personal appearance and recall of D
the non-bailable warrant of arrest issued were rejected petitions were filed under Section 482 of the Code before the High Court. A separate petition under Section 482 of the Code was filed taking the stand that the concerned investigating officer had no jurisdiction to investigate the matter and, therefore, the proceedings before the trial court were vitiated being without E
jurisdiction. The High Court considered the last described petition as the pivotal one and took others to be consequential. By the impugned judgment the High Court held that investigation was unauthorized and, therefore, the proceedings were vitiated. Reliance was placed on a decision of the Patna High Court in *J.A.C. Saladanha v. Inspector General of F
Police, Bihar, Patna and Ors.*, (1979) ILR Patna 459. Accordingly, proceedings were quashed. High Court did not think it necessary to deal with the other petitions separately.

In support of the Appeal learned counsel for the State submitted that the High Court's approach was clearly erroneous. Reliance on the decision G
of the Patna High Court, referred above, was really of no consequence as the judgment in question has been set aside by this Court in *State of Bihar and Another v. J.A.C. Saldanha and Ors. etc.*, [1980] 1 SCC 554.

Learned counsel for the appellant-State further submitted that the H

A decision of the Patna High Court, on which the reliance was placed has been set aside by this Court as noted above and unfortunately effect of the judgment by this Court had not been considered by the High Court.

Per contra, learned counsel appearing for the respondent submitted that the whole case was outcome of political conspiracy and *mala fides*. If the government officials were not proceeded with, it is strange that the respondent alone was picked up and accusations were made against him alleging commission of various offences. Therefore, it was submitted that the High Court's order does not need any interference.

C It is strange that a decision which has been overruled by this Court nearly quarter of a century back was cited by the Bar and the court did not take note of this position and disposed of the matter placing reliance on the said overruled decision. It does not appear that the decision of this Court reversing the judgment of the High Court was brought to the notice of the learned Single Judge who was dealing the matter. It is a very unfortunate situation that learned counsel for the accused who is supposed to know the decision did not bring this aspect to the notice of the learned Single Judge. Members of the Bar are officers of the Court. They have a bounden duty to assist the Court and not mislead it. Citing judgment of a Court which has been overruled by a larger Bench of the same High Court or this Court without disclosing the fact that it has been overruled is a matter of serious concern. It is one thing that the Court notices the judgment overruling the earlier decision and decides on the applicability of the later judgment to the facts under consideration on it. It also does not appear that learned counsel appearing for the respondent before the High Court did not refer to judgment of this Court. All this shows that the matter was dealt with very casually. From the judgment of the High Court it is noticed that the hearing was concluded on 13.3.2003 and the judgment was delivered on 25.4.2003. It was certainly the duty of the counsel for the respondent before the High Court to bring to the notice of the Court that the decision relied upon by the petitioner before the High Court has been overruled by this Court. Moreover, it was duty of the learned counsel appearing for the petitioner before the High Court not to cite an overruled judgment. It is not that the decision is lost in antiquity. It has been referred to in a large number of cases since it was rendered. H It has been referred to recently in many cases e.g. *S.M. Datta v. State of*

Gujarat, [2001] 7 SCC 659, *M.C. Abraham v. State of Maharashtra*, A
[2003] 2 SCC 649, *Union of India v. Prakash P. Hinduja*, [2003] 6 SCC
195 and earlier in many oft cited decisions in *State of Haryana v. Bhajan
Lal*, [1992] Supp. 1 SCC 335, *Janta Dal v. H.S. Chowdhary*, [1992] 4 SCC
305, *Union of India v. W.N. Chadha*, [1993] Supp. 4 SCC 260 and *State
of Bihar v. P.P. Sharma*, [1992] Supp. 1 SCC 222. We can only express B
our anguish at the falling standards of professional conducts. Impugned
judgment of the High Court is set aside. We remit the matter back to the
High Court so that it can deal the petitions afresh and decide on merits
taking into account the decision and all other relevant aspects of this Court.
All the petitions before the High Court which were disposed of by the C
impugned judgment shall stand restored to its original position to be dealt
with in accordance with law.

Appeals are allowed to the extent indicated above.

K.K.T.

Appeals allowed.