[2011] 6 S.C.R. 384

A C.B.I. AND ORS.

v.

KESHUB MAHINDRA ETC. ETC.

Curative Petition (Crl.) Nos.39-42 of 2010

IN

B (Criminal Appeal Nos.1672-75 of 1996)

MAY 11, 2011

[S.H. KAPADIA, CJI, ALTAMAS KABIR, R.V. RAVEENDRAN, B. SUDERSHAN REDDY AND AFTAB C **ALAM, JJ.]**

Code of Criminal Procedure, 1973: ss.323 216, 386, 397, 399, 401 – Jurisdiction of court to exercise power conferred under the Code – Scope of – The Supreme Court passed D *judgment on 13.9.1996 quashing the charges framed by the Sessions Court and directing that on the material led by prosecution the charge u/s.304A, IPC be made out against accused – Curative petitions filed after 14 years of 1996 judgment on the ground that the said judgment barred the* E *Magistrate from exercising his judicial power u/s.323 – Held: No decision by any court can be read in a manner as to nullify the express provisions of an Act or the Code – In the 1996 judgment, the Supreme Court clearly held that its findings were based on materials gathered in investigation and brought* F *before the court till that stage – At every place in the judgment, the Court recorded the finding in regard to the appropriate charges against the accused, it qualified the finding or observation by saying "on the materials produced by the prosecution for framing charge" – The 1996 judgment* G *was rendered at the stage of ss.209/228/240 and the judgment cannot be read to say that it denuded a competent court of the powers under ss.323, 216, 386, 397, 399, 401 etc. – The 1996 judgment cannot be said to be a fetter against the proper exercise of powers by a court of competent jurisdiction under*

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*the relevant provisions of the Code – No grounds falling within the parameters of *Rupa Ashok Hurra case made out in the instant curative petitions – Moreover, no satisfactory explanation is given to file such curative petitions after about 14 years from 1996 judgment of the Supreme Court – Curative petitions dismissed – Curative Petition.*

Rupa Ashok Hurra v. Ashok Hurra* **(2002) 4 SCC 388 – relied on.

Keshub Mahindra v. State of M.P. **(1996) 6 SCC 129 – referred to.**

Case Law Reference:

(1996) 6 SCC 129	**referred to**	**Paras 1, 3**
(2002) 4 SCC 388	**relied on**	**Para 4**

CRIMINAL APPELLATE JURISDICTION : Curative Petition (Criminal) Nos. 39-42 of 2010.

In

Criminal Appeal Nos. 1672-1675 of 1996.

Goolam E. Vahanvati, AG, Indira Jaising, H.P. Rayal and Vivek K. Tankha, ASG, H.N. Salve, Amit Desai, Sidharth Luthra, C.U. Singh and Ram Jethmalani, Devadatt Kamat, Anoopam N. Prasad, Naila Jung, Nishanth Patil, Rohit Sharma, Sreekant N. Terdal, T.A. Khan, Arvind Kumar Sharma, Pianka Telang, Nitin Lonkar Parmeshwar, Samridhi Sinha, Chinmoy Sharma, Anriudh Sharma, Ananda Mukherjee, Harsh N. Parekh, Avi Singh, Karuna Nandy, Aparna Bhat, Gopal Krishna Shenoy, Mahesh Agarwal, Neeha Nagpal, E.C. Agrawala, Radhika Gautam, Rishi Agrawala, O.P. Khaitan, Ramesh Singh, A.T. Patra, Ajay Gupta, Aradhana Patra (for O.P. Khaiatan & Co.), Ramesh Singh, A.T. Patra, S.U.K. Sagar, Bina Madhavan, Vaibhav Gaggar, Anurag Ahluwalia, Krishna Kumar Singh, Karan Kanwal, Mohinder Charak, Vinita Sasidharan, Praseena

A E. Joseph (for Lawyers' Knit & Co.), Pratul Shandilya, Rishabh Sancheti, Sameer Sodhi Vaibhav Shrivastav, Kumanan D., Varun Chopra, C.D. Singh, Sanjay Parikh, Aagney Sail, Mamta Saxena, Anitha Shenoy, Prashanto Chandra Sen, Yug Mohit Choudhary, Lata Krishnamurty, Nitin Dahiya, Pallav Kumar,
B Rishi Maheshwari and P.S. Sudheer for the appearing parties.

The Order of the Court was delivered by

ORDER

C **S.H. KAPADIA, CJI.** 1. These curative petitions are filed by Central Bureau of Investigation for recalling the judgment and order dated 13.9.1996 of this Court in *Keshub Mahindra vs. State of M.P.* (Criminal Appeal Nos. 1672-1675 of 1996 decided on 13.9.1996 reported in 1996 (6) SCC 129), on the
D following premises :

(i) When this Court, by the said judgment dated 13.9.1996 quashed the charges framed against accused Nos. 2 to 5, 7 to 9 and 12 under Sections 304 (Part II), 324, 326 and 429 IPC and directed
E the trial court to frame charges under Section 304A IPC, this Court had before it adequate material to make out prima facie, an offence chargeable under Section 304 (Part II) IPC. Therefore, this Court committed a serious error in ignoring such material
F and quashing the charge under Section 304 (Part II) IPC.

(ii) The evidence placed in support of the charge under Section 304A IPC during the trial of the said
G accused before the learned Chief Judicial Magistrate, Bhopal showed prima facie that the said accused had committed offences punishable under Section 304 (Part II) IPC. But for the said judgment of this Court dated 13.9.1996, the learned
H Magistrate would have, by taking note of the said

material, committed the case to the Court of Sessions under Section 323 of the Code of Criminal Procedure (for short 'the Code'). However, in view of categorical finding recorded by this Court, in its binding judgment dated 13.9.1996 that there was no material for a charge under Section 304 (Part II) IPC and consequential quashing of the said charge, with a direction to frame the charge under Section 304A IPC, the learned Magistrate was barred from exercising his judicial power under Section 323 of the Code, even though the Code vested the jurisdiction in him to alter the charge or commit the case to the Court of Sessions as the case may be, on the basis of evidence that came on record during the trial.

(iii) The judgment dated 13.9.1996 therefore resulted in perpetuation of irremediable injustice necessitating filing of the curative petitions seeking recall of the judgment dated 13.9.1996.

2. On the night of December 02, 1984 there was a massive escape of lethal gas from the MIC storage tank at Bhopal plant of the Union Carbide (I) Ltd. (UCIL) into the atmosphere causing the death of 5,295 people leaving 5,68,292 people suffering from different kinds of injuries ranging from permanent total disablement to less serious injuries. On the day following the incident, the SHO, Hanuman Ganj Police Station, suo moto, registered a Crime Case No. 1104 of 1984 under Section 304A IPC. On December 06, 1984 investigation was handed over to the CBI, which investigation stood completed, resulting in filing of charge sheets by the CBI in the Court of C.J.M., Bhopal on December 01, 1987. Since the charge sheets inter alia alleged commission of offence under Sections 304, 324, 326, 429 read with Section 35 of IPC, the case was committed by the C.J.M. to the Sessions Court as Sessions Case No. 237 of 1992 (See : Order dated 30th April, 1992). On 8th April,

A 1993, the 9th Additional Sessions Judge, Bhopal passed an order framing charges against the accused Nos. 5 to 9 under Sections 304 (Part II), 324, 326 and 429 of IPC and against accused Nos. 2, 3, 4 and 12 under the very same Sections but with the aid of Section 35 of IPC. It may be mentioned that at
B the time of framing of charge, the Court had before it, accused Nos. 2 to 9 and accused No. 12 (UCIL) whereas accused No. 1 (Warren Anderson) was absconding and the Court was also unable to bring before it the other two companies, UCC and Union Carbide Eastern Inc., accused Nos. 10 and 11.

C 3. The accused after having unsuccessfully challenged the order framing charge by the Court of Sessions before the Madhya Pradesh High Court, brought the matter to this Court in four separate appeals in which the leading case was Appeal (Cri.) No. 1672 of 1996 filed at the instance of accused No. 2
D which stood ultimately disposed of by the judgment of the Division Bench of this Court dated September 13, 1996 in the case of *Keshub Mahindra* (supra). This Court held that on the material produced by the prosecution before the Trial Court *at the stage of framing of charges,* no charges could have been
E framed against the accused under Section 304 (Part II) or under Sections 324, 326, 429 with or without the aid of Section 35 IPC and it accordingly quashed the charges framed by the Sessions Court and directed that on the material led by the prosecution the charge under Section 304A IPC could be made
F out against accused Nos. 5, 6, 7, 8 and 9 and under the same sections with the aid of Section 35 against accused Nos. 2, 3, 4 and 12. Applications seeking leave to file a review petition being Criminal Misc. Petition Nos. 1713-16 of 1997 in a proposed review petition stood dismissed on March 10, 1997.
G These applications were filed jointly by Bhopal Gas Peedith Sangharsh Sahyog Samiti (BGPSSS), Bhopal Gas Peedith Mahila Udyog Sangathan (BGPMUS) and Bhopal Group for Information and Action (BGIA). The CBI/State of M.P. did not question the said 1996 judgment or filed any review petition
H under Article 137 of the Constitution and instead proceeded

for the next 14 years to prosecute the accused under Sections 304A, 336, 337, 338 read with Section 35 IPC. It is only on 26th April, 2010, after the defence evidence stood concluded and after conclusion of the oral arguments by the Senior Public Prosecutor, that, a petition was filed jointly by BGPSSS and BGPMUS under Section 216 Cr.P.C. for enhancement of the charge to Section 304 (Part II) IPC. This application was not supported by CBI. The said application was rejected by the C.J.M. on the same day. However, this order of the C.J.M. was also never challenged under Section 397/399 or under Section 482 Cr.P.C. Ultimately on June 7, 2010 Criminal Case No. 1104 of 1984 stood disposed of by the C.J.M. vide his judgment convicting accused Nos. 2 to 5, 7 to 9 and 12 under Sections 304A, 336, 337, 338 read with Section 35 IPC and sentencing them to two years' imprisonment. On June 29, 2010 Criminal Appeal No. 369 of 2010 was filed by State of M.P. before the Court of Sessions with a prayer for enhancement of sentences under the existing charges. On the same day the State of M.P. also filed Criminal Revision Application No. 330 of 2010 before the Court of Sessions under Section 397 Cr.P.C., challenging the alleged failure of the C.J.M. to enhance the charges to Section 304 (Part II) in exercise of his jurisdiction under Section 216 Cr.P.C., and to commit the trial of the case to Sessions under Section 323 Cr.P.C. and inter alia praying for a direction to enhance charges and commit. On July 29, 2010 Criminal Appeal No. 487 of 2010 was filed by the CBI before the Court of Sessions for enhancement of sentences under the existing charges. On 23rd August, 2010, CBI fil d the criminal revision only after the present curative petitions were filed before this Court on August 2, 2010. All the appeals and revisions remain pending before the Court of Sessions.

4. It is clear to us that in the criminal revisions filed by the CBI and the State of M.P. *the legal position is correctly stated.* But the curative petitions are based on a plea that is wrong and fallacious. As noted above, one of the main planks of the curative petitions is that even though in course of trial before

A the Magistrate, additional evidences have come on record that fully warrant the framing of the higher charge (s) and the trial of the accused on those higher charges, as long as the 1996 judgment stands the Sessions Court would feel helpless in framing any higher charges against the accused in the same
B way as the trial court observed that in view of the judgment of the Supreme Court no court had the power to try the accused for an offence higher than the one under Section 304A of IPC. *The assumption is wrong and without any basis.* It stems from a complete misapprehension in regard to the binding nature
C of the 1996 judgment. *No decision by any court, this Court not excluded, can be read in a manner as to nullify the express provisions of an Act or the Code* and the 1996 judgment never intended to do so. In the 1996 judgment, this Court was at pains to make it absolutely clear that its findings were based on
D materials gathered in investigation and brought before the Court *till that stage*. At every place in the judgment where the Court records the finding or makes an observation in regard to the appropriate charge against the accused, it qualifies the finding or the observation by saying "on the materials produced by the
E prosecution *for framing charge*". "At this stage", is a kind of a constant refrain in that judgment. The 1996 judgment was rendered at the stage of sections 209/228/240 of the Code and we are completely unable to see how the judgment can be read to say that it removed from the Code sections 323, 216, 386, 397, 399, 401 etc. or denuded a competent court of the powers
F under those provisions. In our view, on the basis of the material on record, it is wrong to assume that the 1996 judgment is a fetter against the proper exercise of powers by a court of competent jurisdiction under the relevant provisions of the Code. If according to the curative petitioner, the learned
G Magistrate failed to appreciate the correct legal position and misread the decision dated 13.9.1996 as tying his hands from exercising the power under Section 323 or under Section 216 of the Code, it can certainly be corrected by the appellate/ revisional court. In fact, the revision petitions though belatedly
H filed by the State of M.P. and the CBI (which are still pending)

have asserted this position in the grounds of revision. Moreover, no ground falling within the parameters of *Rupa Ashok Hurra vs. Ashok Hurra* 2002 (4) SCC 388 is made out in the curative petitions. Also, no satisfactory explanation is given to file such curative petitions after about 14 years from 1996 judgment of the Supreme Court. The curative petitions are therefore dismissed. A B

5. Nothing stated above shall be construed as expression of any view or opinion on the merits of the matters pending before the learned Sessions Judge, Bhopal. C

D.G. Curative Petitions dismissed.