

BAGGAGE OF SPECIAL LEAVE PETITIONS WITH SPECIAL EMPHASIS TO RAMAN BHAI NARAN BHAI PATEL AND ORS v. STATE OF GUJARAT

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ABSTRACT

The Apex Court recently in presence of Special Leave Petition has constantly experienced an impediment to justice due to exploitation of this privilege in frivolous filings. Litigants have time and again in expectation of altered and favourable verdict approached the Supreme Court with frivolous questions of law and barging the door of miscarriage of justice. In lieu of which this paper relying heavily on the case of Raman Bhai Naran Bhai Patel V. State of Gujarat¹ has tried to analyse the instrument of this special leave and concluded with viable solution models in other countries jurisdictions to assist and aid the SC in creating a barrier to the floodgates of frivolous SLPs. Taking note of the author's proposition might help in being a cog in the wheel to reduce the heavy burden of cases as well as logistical issues catered to by defending litigants and Court administration. The use of Article 136 as a discretionary power of SC to grant special leave to party is being substituted and reverse with the right of the party to approach the court through Article 32. Justice Dalvi has given the best analogy to substantiate this grave issue and has said using Article 136 for frequent common issues is just like approaching a niche super specialist doctor for general medicines and this is unequivocally a true representation of the degree of misuse of SLPs.

UNION JUDICIARY

The Union Judiciary is dealt by Chapter IV under Part V of the constitution. The working rules, guidelines and jurisdiction of Supreme Court is enumerated in elaborative detail from articles 124-147. The uniqueness of Judiciary is that unlike other two branches i.e. legislature and executive, the Judiciary is well-integrated, this means despite the fact there exists different high court in various states, any interpretation of law declared by the Supreme Court shall be binding on all courts within the territory of India (Article 141).

The Supreme Court of India is the top court and the last appellate court in the country, and the Chief Justice of India is its top authority in the hierarchy. Subordinate to Supreme Court are the High Courts which are the top judicial bodies in every state managed by state Chief Justices. Subordinate to the High Courts are District Courts which are managed by the District & Sessions Judges.

The High Courts and the Supreme Court function as the custodians of the fundamental rights and their constitutional rights of the people. It has successfully preserved and protected the fundamental rights of the citizens and vulnerable groups against the innovations of “an excited democracy” and for that purpose, it has drawn substantially upon the Directive Principles. Speaking of the Supreme court, a writer said, “the Court has not been infallible. It has made mistakes. It sometimes has run counter to the deliberate and better judgement of the community. But the final judgement of the people will unquestionably be that their constitutional rights are safe in the hands of the judiciary.

The chapter deals with the various powers and authorities of the Supreme Court, it takes into consideration all kinds of jurisdiction of the Court. It makes it a court of record and makes its interpretation all pervasive across judiciary. It also talks about the appointment procedure of judges and the Chief Justice. The initial parts of the chapter deal with the appointment and constitution of the Supreme Court, salaries, attendance of retired judges at sittings of Supreme Court and the SC being a court of record. The subsequent provisions talk about jurisdiction of the Court which are original, appellate in civil and criminal matter, special and ancillary powers of the Court. The last part also deals with power of the Supreme Court and its binding nature and power of the President to consult Supreme Court along with the civil and judicial authorities to act in aid of the Court.

SPECIAL LEAVE PETITION (ARTICLE 136)

Special leave Petition is the special power of the Supreme Court that gives it the authority to entertain a special leave to appeal against any matter heard by any court or tribunal across the Country. This is done in order to bestow the Apex Court of the country to grant leave against appeal in case of substantial question of law or gross miscarriage of justice.

“SLP” holds a very important significance in the Indian Judicial system and it makes instrumental tool for the aggrieved or victims for the purpose of being heard before the Apex Court in case of any decree or judgment being passed against by any court or tribunal.

Circumstances for the consideration of any SLP:

1. An SLP can be heard against any decree, judgment or order passed by any court or tribunal.
2. An SLP can be heard even in the case of High Court not granting the fitness certificate in case of an appeal to the SC.
3. Nevertheless, any decree or judgement passed by any court or tribunal in regards to the armed forces cannot be brought through an SLP.

Time Frame for filing of any SLP

1. An SLP can be filed within 90 days of the judgement of any High Court.
2. An SLP can be filed within 60 days of the judgement of any High Court, if the court has refused to grant the certificate of fitness for appeal to the Supreme Court.

Who can file SLP?

Any person aggrieved by any order/judgment of any court or tribunal in the country or on refusal of grant of appeal may file an SLP before the Supreme Court.

Contents of SLP

It is required to present all the facts that are required to make the Court determine the potency of the SLP. It ought to be signed by the Advocate on Record. It needs to mention that the

Petitioner has not filed any petition of the same kind before any other court of the country. The certified copy of the judgment needs to be carried with of the Subordinate Court and the relevant documents of the case.

In the case of *Joby v. George*ⁱⁱ, the Supreme Court pointed out the maligms in the will of the appellant and the point of challenging the defendant was construed to be not genuine. The mover of the special leave warranted the court enable him to send the will of the opposing litigant for foresing testing for a consecutive time already rejected and negated by the Trial court and the High court. It amounted to trivialisation of the court's precious time and mandated discretions.

By the virtue of Article 136, an enabling provision is constituted for the preservation of the fundamentals of the rule of law.ⁱⁱⁱ

The Court on several occasions seen the projection of indiscriminate filings of SLPs disrespecting the judicial integrity of the Supreme Court eventually facing summary dismissal and wastage of Court's time.

In the case of *P.N Kumar v. Municipal Corporation of Delhi*^{iv}, the Court said:

“The Court of Law has reached a point where it has weaselled out of the time that it requires for its own exclusively tried cases which cannot be tried by other authorities. Cases have been pending for decades and even if no new were to be filed, it would take more than fifteen years to dispose the current lot of cases with the current strength of judges”.

COMPARATIVE ANALYSIS

The Supreme Court of the US determine the fate of cases almost under its appellate jurisdiction. It can review most decisions of federal courts as well as the decisions of court of appeals involving questions of constitutionality or statutory law.^v Appellate jurisdiction is in reference to the Supreme Court in Article III, Section 2 of the United States Constitution^{vi}. Although the Supreme Court only exercises appellate jurisdiction over decisions of other courts, some U.S. courts may also review the decisions of non-judicial tribunals, such as administrative agencies.

The Federal Supreme Court of US started to receive appeals in criminal cases in the late nineteenth century because of an 1889 statute that granted appeals from the 12 appeal circuit

courts to the Supreme Court. The Evarts Act of 1891, which established the circuit courts of appeals, firmly granted a right of direct Supreme Court review in cases of "capital or infamous crimes," interpreted by the Supreme Court to imply all cases in which a penalty of imprisonment was possible. Congress restricted the power of the Supreme Court in cases of appeals of criminal nature in 1897 when it transferred the appellate jurisdiction for all non-capital crimes to the circuit courts of appeals.

Nevertheless when compared to the powers of Supreme Court of India under Article 136 of the Constitution of India, the powers of US Supreme Court are limited as only final orders of the Court of Appeals can be heard or reviewed unlike India's SC where interlocutory order can also be entertained. Foremost in India SLP can be applied for appeal from district courts as well, in US only Court of Appeal cases can be referred to Supreme Court for appeal.

In my opinion, the system of US is better as it brings in more feasibility and stability to the Supreme Court and makes it more efficient as it listens only to justified lot of cases in case of appeals, unlike India, where in appeal from any case can be filed for the purpose of soliciting an altered verdict in the favour of the aggrieved by quoting 'gross injustice'.

RAMAN BHAI NARAN BHAI PATEL AND ORS V STATE OF GUJARAT

Coram:

S. B Majumdar and U.C. Banerjee, JJ.

Facts

The case factually belongs to an incident of 25.12.1987 at Varacha Road Area of the City of Surat, Gujarat wherein a group of people heavily armed approached a press and ended up grievously hurting a few individuals that included the owner, work staff and brother of the owner. After sometime when the police officer approached the crime scene, he immediately arrested the accused and took the bleeding victim that was the owner of the press to the Hospital. At around 12 pm, the owner on the ventilator died and gave a dying declaration to the PSI about the identification of the Accused. This led to the PSI building up a criminal case

under section 124, 302, 307, 324 and 326 of IPC on the bases of Inquest panchnama and all the PS witnesses and the dying declaration.

The Trial Court convicted a few members of the group and acquitted a few citing varieties of factors. The convicted members appealed to the High Court and their plea rejected by the High court and it appreciated the findings of trial Court and Concurred its finding on the similar court.

After the appeal having been rejected, the convicts reached out to the Supreme Court citing irregularities in the process of investigation and miscarriage of justice under Article 136, the power of Supreme Court to grant special leave in case of appeal from any decree, order or judgement of any court in the country.

Pursuant to the findings of the Trial Court and the High Court, even the Supreme Court disposed of the SLP maintaining the order of the High Court by holding the conviction of the accused citing no irregularity in the process of investigation and no gross injustice.

Contentions

1. There are suspicious features in the case which throw doubt on the bonafides of the police investigation. Therefore, it cannot be concluded that the prosecution has proved the case beyond reasonable doubt.
2. The police did not record the names of the accused at the earliest opportunity but they waited and deliberated as to who should be included in the net of the accused.
3. First Information Report does not reveal the identity / names of all the accused.
4. The case of the Prosecution is not supported by medical evidence
5. The question is as to who are the accused when the eyewitnesses do not know the accused alleged to have participated in the offence.

Findings of the Court

1. For the purpose of the first and second contention , when the Counsel for the Appellant pointed out that there were irregularities in the investigation process and that it was not conducted in bona fide manner, the Counsel highlighted the point of the PSI not asking

the accused to give identification of the accused or statement of witnesses were not taken then and there at the crime scene and why did the PSI wait up till 12 to take the statement from the Owner of the Press. The court responded by concurring with the view of the high Court that considering that a the owner of the press was grievously hurt so the pressing issue was to rush him to the hospital and take the statement later on. Though it could not be regarded as standard investigation process and little more promptness could have been observed , nevertheless, this would not mean that the PSI had any malicious intentions behind the same.

2. The contention of learned Counsel from the side of Appellant regarding non-disclosure of name all accused paled into insignificance by the Court as it was said that the statement made in the dying declaration was with regards to the accused who had assaulted him with heavy weapons and their accomplice , not taking names of everyone would not amount to anything. It also said that the accused 1 & 2 who are the main accused in the case , their names already exist in the charge sheet as well .
3. The court negated the contention regarding medical evidence and said that the injuries suffered by the eyewitnesses as noted by the medical evidence could very well be said to have caused by sharp cutting instruments like axe and gupti. It therefore, cannot be said that the medical evidence does not support the prosecution case.
4. For the purpose of the last contention, the court agreed that Prosecution witnesses identified the accused only in the court and did not know them so that would amount to a weak nature due to low identification parade. Nevertheless as held in the case of *Rajesh Govind V. State of Maharashtra*^{vii}, the evidence of identifying the accused person at the trial for the first time is from its very nature , inherently of a weak character. Identification proceedings are used for corroboration purposes for believing that the person brought before the court was the real person involved in the commission of the offence. Therefore, the court negated this contention as well.

Analysis

The case at hand does not pertain to technicality of special leave petition but the factual matrix of the case that lead to building up of this criminal appeal. Nevertheless, In this case, It was correctly held by the court that in a criminal case soliciting special leave the court should not

merely consider reappreciation of evidence when both the sessions and high court have concluded concurrent findings of fact. It needs to be taken into consideration that this court is not a regular court of appeal which any accused may approach. An extraordinary jurisdiction has been given to the court for the purpose of maintaining assurance of justice and is exercisable only when this court deems it necessary to grant special and interfere with the order of the subordinate court or else, this Court would be converted into a regular Court of appeal where every judgment of the High Court in a criminal case would be liable to be scrutinised for its correctness. That is not the function of this Court. The court agreed with the findings of the Sessions Court and High Court and concluded on the same lines as the subordinate court.

AUTHOR'S PROPOSITION:

In coherence with the leading case of *Sampath Kumar v. Union of India*^{viii} and *L. Chandra Kumar v. Union of India*^{ix}, as a proposal was established that the role of the court may be supplemented by another quasi-judicial body, but cannot be substituted by it; the Board will in no manner 'take-over' the discretion granted to the Supreme Court Article 136, but will assist the court so as to reduce the time spent on the number of infructuous, technically-impaired and frivolous SLPs. Therefore, there should be a set-up of quasi-judicial body to supplement work of the Supreme Court which may work on the pre-trial of these appeals by through a formulated screening process.

In the case of *Bihar Legal Support Authority v. Chief Justice of India*^x, Justice Bhagwati proposed the establishment of a National Court of Appeal which would be specifically dealing with Constitutional and public laws. It would entail the discretionary power of special leave and to some extent would reduce the burden of the Supreme Court. Though the idea in itself would create certain theoretical and practical conflicts, an advisory committee can be established in the Parliament or by the SC itself which would deliberate on it and come up with a concrete plan, until then, the fate of the SC and the sanctity of the doctrine of finality of judgments continues with dismay.

CONCLUSION

The one thing that needs to be opined here is that the Supreme Court is not a regular Court of Appeal to which every judgment of the High Court in criminal case may be brought up for scrutinising its correctness. It is not the practice of the Apex Court to re-appreciate the evidence for the purpose of examining whether the finding of fact concurrently arrived at by the High Court and the subordinate courts is correct or not. It is only in rare and exceptional cases where there is some manifest illegality or grave and serious miscarriage of justice that this Court would interfere with such finding of fact. Special Leave Petitions in contemporary scenario have been acting as an impediment to justice and there is a dire need for structural changes to ensure efficient time allocation of the court.

The problem is with the burden already put on the Supreme Court, every year around 1 lakh cases are filed in the Supreme Court with major chunk being SLPs under article 136 of the Constitution of India.

In contrast, the U.S. Supreme Court entertains only about 100 to 120 cases every year while the Canadian Supreme Court only 60 cases. This level of disparity ensures efficiency of the top-level federal court and it lets it being a mere supervisor and not regularly interfere with appellate courts.

The current standing of the SC merely suggests that the SLP provision should be used sparingly and in exceptional cases, when a substantial question of law remains ambiguous and unresolved or where it appears to the Court that interference by this Court is necessary to remedy serious injustice

ENDNOTES

ⁱ MANU/SC/0744/1999

ⁱⁱ 2010 (4) SCC 358

ⁱⁱⁱ DHAKESHWARI COTTONS MILLS V. CIT AIR 1955 SC 65

^{iv} 1988 (1) SCR 732

^v U.S. Courts: "About the Supreme Court," accessed January 17, 2015

^{vi} Heritage Guide to the Constitution: "Appellate Jurisdiction Clause," written on January 17, 2015(02 October 2020, 08:17 AM)

^{vii} MANU/SC/0714/1999

^{viii} 1987 (3) SCR 233

^{ix} 1995 (1) SCC 400

^x 1986 (4) SCC 767

