

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

S.L.P. (CRL.) NOS. 1646-1647 OF 2009

KESHAV PRASAD SHARMA

Petitioner(s)

VERSUS

INDIAN OIL CORP.& ORS.

Respondent(s)

O R D E R

Heard leave counsel for the appearing parties.

These special leave petitions have been filed against the impugned judgment of the Punjab & Haryana High Court dated 19.12.2008.

It appears that in the trial of the petitioner an application was filed by the public prosecutor to implead respondents No. 3 to 9 herein as co-accused under Article 319 of the Code of Criminal Procedure. That application was allowed by the trial court, but the High Court has set aside the said order.

We have carefully perused the impugned order of the High Court. We find that there is no observation made by the High Court on the merits of the case which in any manner prejudice the trial of the petitioner. The learned counsel for the petitioner has relied on the decisions of this Court in Lok Ram Vs. Nihal Singh & Anr., (2006) 10 SCC 192, Bholu Ram Vs. State of Punjab & Anr., (2008) 9 SCC 140 and Suman Vs. State of Rajasthan & Anr., 2009 (13) SCALE

716.

On the basis of these judgments the learned counsel for the petitioner has submitted that the question of prejudice is not relevant in proceedings under Section 319 Cr.P.C. We are of the opinion that it may not be relevant at the stage of proceedings before the trial court under Section 319 Cr.P.C. but it is certainly relevant to proceedings under Article 136 of the Constitution of India, which is discretionary jurisdiction.

Article 136 of the Constitution of India is not a regular form of appeal at all. It is a residual provision which enables the Supreme Court to interfere with any order of any court or tribunal in its discretion and in exceptional circumstances. It is not a regular forum of appeal like Section 100 or Section 96 of the Code of Civil Procedure. Hence, the question of prejudice is certainly relevant to proceedings in Article 136 of the Constitution of India.

In the present case, the impugned judgment of the High Court does not cause any prejudice to the petitioner since no observation on the merits of the case has been made by the High Court against the petitioner. Merely because the petitioner alleged that the aforementioned respondent Nos. 3 to 9 were also guilty of the same crime is not relevant for us to interfere with the impugned judgment of the High Court under Article 136 of the Constitution of India, when no prejudice has been caused to the petitioner.

The State has not filed any special leave petition before us and the position may have been different if a special leave petition had been filed by the State.

We direct the trial court to complete the trial uninfluenced by any observations made by the High Court in the impugned judgment expeditiously, preferably within six months from the date of production of a copy of this Order.

With these observations, the special leave petitions are dismissed.

NEW DELHI;
JANUARY 25, 2011.

.....J.
(MARKANDEY KATJU)

.....J.
(GYAN SUDHA MISRA)



JUDGMENT