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Victim Has The Right To Be Heard At Every Stage From Investigation To Culmination Of Trial In Appeal/Revision : Supreme Court

Sohini Chowdhury

(/sohini-chowdhury)

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The Supreme Court, on Monday, held that a 'victim' as defined under Section 2(wa) of the Code of the Criminal Procedure, 1973 has a right to be heard at every step post the occurrence of the offence, including the stage of adjudication of bail application of the accused.

"A 'victim' within the meaning of Cr.P.C. cannot be asked to await the commencement of trial for asserting his/her right to participate in the proceedings. He/She has a legally vested right to be heard at every step post the occurrence of an offence. Such a 'victim' has unbridled participatory rights from the stage of investigation till the culmination of the proceedings in an appeal or revision", the Court observed.

The Court added that "where the victims themselves have come forward to participate in a criminal proceeding, they must be accorded with an opportunity of a fair and effective hearing".

"If the right to file an appeal against acquittal, is not accompanied with the right to be heard at the time of deciding a bail application, the same may result in grave miscarriage of justice. Victims certainly cannot be expected to be sitting on the fence and watching the proceedings from afar, especially when they may have legitimate grievances. It is the solemn duty of a court to deliver justice before the memory of an injustice eclipses", the Supreme Court observed.

A Bench comprising the **Chief Justice of India, N.V. Ramana and Justices Surya Kant and Hima Kohli** canceled the bail granted to Ashish Mishra by the Allahabad High Court. Remitting the matter back to the High Court for the fresh consideration of the bail application, it directed Mishra to surrender within a week's time

The Bench, while hearing the plea seeking cancellation of bail, identified one of the issues as under-

"Whether a 'victim' as defined under Section 2(wa) of the Code of Criminal Procedure, 1973 (hereinafter, "Cr.P.C.") is entitled to be heard at the stage of adjudication of bail application of an accused?"

It noted that traditionally, criminal law had been regarded as adjudication between the accused and the State. The victim, who is the sufferer of the crime, was viewed as a mute spectator. However, the Bench observed that jurisprudence of rights of the victims to be heard has evolved and their scope for participation in criminal

proceedings has expanded over time. The pro-victim movement, the Bench notes, was augmented by the adoption of the UN Declaration of Basic Principles of Justice for the Victims of Crime and Abuse of Power, 1985 by the United Nations General Assembly Resolution 40/34. The movement was furthered by other international bodies like the European Union, that included the victims within the framework of the criminal law procedure. Victims Crime Act, 1984, Victims' Rights and Restitution Act, 1990 were enacted by the United States of America to grant legal assistance to the crime-victims. With similar purposes, Australia enacted South Australian Victims of Crime Act, 2001 and Canada enacted the Canadian Victims Bill of Rights. These pieces of legislation have enlarged scope of participation as well as expanded the ambit of rights of the victims.

The 154th Report of the Law Commission of India, elucidated on the aspect of compensatory justice to a victim under a compensation scheme. In a report of the Committee on Reforms of Criminal Justice System, 2003 suggestions were made to develop a cohesive criminal justice system framework which would restore the confidence of the people in the system. It, *inter alia*, recommended -

"...the rights of the victim or his/her legal representative "to be impleaded as a party in every criminal proceeding where the charges punishable with seven years' imprisonment or more"."

Subsequently, the Code of Criminal Procedure (Amendment) Act, 2008 was brought into force, which defines 'victim' under Section 2 (wa) as -

"..."means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "victim" includes his or her guardian or legal heir"."

In ***Mallikarjun Kodagali (Dead) v. State of Karnataka And Ors.*** (2019) 2 SCC 752, the Supreme Court had upheld the victim's right to file an appeal against an order of acquittal. It had also encouraged adequate representation to victims in criminal proceedings. It had observed -

"8. The rights of victims, and indeed victimology, is an evolving jurisprudence and it is more than appropriate to move forward in a positive direction, rather than stand still or worse, take a step backward. A voice has been given to victims of crime by Parliament and the judiciary and that voice needs to be heard, and if not already heard, it needs to be raised to a higher decibel so that it is clearly heard."

The Bench noted that the right of the victim is independent of that of the State under the Cr.P.C. and the presence of the State in the proceedings cannot substitute the right of the victim to be heard. It noted -

"A 'victim' within the meaning of Cr.P.C. cannot be asked to await the commencement of trial for asserting his/her right to participate in the proceedings. He/She has a legally vested right to be heard at every step post the occurrence of an offence. Such a 'victim' has unbridled participatory rights from the stage of investigation till the culmination of the proceedings in an appeal or revision. We may hasten to clarify that 'victim' and 'complainant/informant' are two distinct connotations in criminal jurisprudence. It is not always necessary that the complainant/informant is also a 'victim', for even a stranger to the act of crime can be an 'informant', and similarly, a 'victim' need not be the complainant or informant of a felony."

The Bench set out the considerations that needs to be taken into account -

1. The evolving criminal law jurisprudence in India acknowledges the right of victims to be heard, especially in cases involving heinous crimes'
2. When the victims themselves come forward to participate in a criminal proceeding, they must be granted opportunity of a fair and effective hearing.

In the present matter, the Bench was perturbed to note that the High Court had not acknowledged the right of the victim to be heard. As submitted by Senior Advocate, Mr. Dushyant Dave appealing for the petitioner, the victims had been disconnected from the online proceedings and therefore, fair and effective hearing could not be accorded to them.

[Case Title: Jagjeet Singh And Ors. v. Ashish Mishra @ Monu And Anr. Criminal Appeal No. 632 of 2022]

Citation : 2022 LiveLaw (SC) 376

Headnotes

Code of Criminal Procedure, 1973 - Section 2(wa)- Victim's right to be heard at all stages - A 'victim' within the meaning of Cr.P.C. cannot be asked to await the commencement of trial for asserting his/her right to participate in the proceedings- He/She has a legally vested right to be heard at every step post the occurrence of an offence- Such a 'victim' has unbridled participatory rights from the stage of investigation till the culmination of the proceedings in an appeal or revision.

Code of Criminal Procedure, 1973- 'victim' and 'complainant/informant' are two distinct connotations in criminal jurisprudence. It is not always necessary that the complainant/informant is also a 'victim', for even a stranger to the act of crime can be an 'informant', and similarly, a 'victim' need not be the complainant or informant of a felony. - Paragraph 24

Code of Criminal Procedure, 1973 - Where the victims themselves have come forward to participate in a criminal proceeding, they must be accorded with an opportunity of a fair and effective hearing -If the right to file an appeal against acquittal, is not accompanied with the right to be heard at the time of deciding a bail application, the same may result in grave miscarriage of justice-Victims certainly cannot be expected to be sitting on the fence and watching the proceedings from afar, especially when they may have legitimate grievances- It is the solemn duty of a court to deliver justice before the memory of an injustice eclipses - Paragraph 25

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**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
N.V. RAMANA; CJI., SURYA KANT; J., HIMA KOHLI; J.
18.04.2022**

**CRIMINAL APPEAL NO.632 of 2022 [Arising out of Special Leave Petition (Crl.) No. 2
Jagjeet Singh & Ors *VERSUS* Ashish Mishra @ Monu & Anr.**

Code of Criminal Procedure, 1973; Section 2 (wa) - Victim's right to be 'victim' within the meaning of Cr.P.C. cannot be asked to await the commencement of trial for asserting his/her right to participate in the proceedings. He / she has a legally vested right to be heard at every step post the occurrence of a crime. Such a 'victim' has unbridled participatory rights from the stage of investigation till the culmination of the proceedings in an appeal or revision - Where the parties themselves have come forward to participate in a criminal proceeding, they should be accorded with an opportunity of a fair and effective hearing. (Para 24)

Code of Criminal Procedure, 1973; Section 2 (wa) - 'Victim' and 'complainant' - It is not always necessary that the complainant / informant be a 'victim', for even a stranger to the act of crime can be an 'informant', and a 'victim' need not be the complainant or informant of a felony. (Para 24)

Code of Criminal Procedure, 1973; Section 439 - Bail - A High Court or District Court, as the case may be, are bestowed with considerable discretion in deciding an application for bail - This discretion is not unfettered - bail should be granted after the application of a judicial mind, following well established principles, and not in a cryptic or mechanical manner. (Para 28)

Code of Criminal Procedure, 1973; Section 439 - Bail - Principles that a court should bear in mind while deciding an application for grant of bail discussed in the judgment should refrain from evaluating the merits of the case at the assessment of prima facie stage. When bail is granted, the court may examine prima facie issues, including any reasonable grounds w

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