The State of Uttar Pradesh

Vs

C. Tobit and Others

Criminal Appeal No. 128 of 1955

(CJI S. R. Dass, A. K. Sarkar, Vivian Bose, T. L. Venkatarama Ayyar, JJ)

14.02.1958

JUDGMENT

DAS C.J. -

The respondents before us were put up for trial for offences under ss. 147, 302, 325 and 326, Indian Penal Code read with s. 149 of the same Code. On July 24, 1953, the temporary Civil Sessions Judge, Gorakhpur, acquitted them. The State of Uttar Pradesh apparently felt aggrieved by this acquittal and intended to appeal to the High Court under s. 417 of the Code of Criminal Procedure. Under art. 157 of the Indian Limitation Act an appeal under the Code of Criminal Procedure from an order of acquittal is required to be filed within six months from the date of the order appealed from. The period of limitation for appealing from the order of acquittal passed by the Sessions Judge on July 24, 1953, therefore, expired on January 24, 1954. That day being a Sunday the Deputy Government Advocate on January 25, 1954, filed a petition of appeal on behalf of that State. A plain copy of the judgment sought to be appealed from was filed with that petition. The High Court office immediately made a note that the copy of the judgment filed along with the petition of appeal did not appear to be a certified copy. After the judicial records of the case had been received by the High Court, an application for a certified copy of the judgment of the trial court was made on behalf of the State on February 12, 1954. The certified copy was received by the Deputy Government Advocate on February 23, 1954 and he presented it before the High Court on February 25, 1954, when Harish Chandra J. made on order that the certified copy be accepted and that three days' further time be granted to the appellant for making an application under s. 5 of the Indian Limitation Act for condoning the delay in the filing of the certified copy. Accordingly an application for the condonation of delay was made by the appellant on the same day and that application was directed to be laid before a Division Bench for necessary orders.

The application came up for hearing before a Division Bench consisting of M.C. Desai and N.U. Beg JJ. At the hearing of that application learned counsel appearing for the appellant urged that as there was, in the circumstances of this case, sufficient cause for not filing the certified copy along with the petition of appeal the delay should be condoned and that, in any event, the filing of the plain copy of the judgment of the trial court along with the petition of appeal constituted a sufficient compliance with the requirements of s. 419 of the code of Criminal Procedure. By their judgment delivered on December 7, 1954, both the learned Judges took the view that no case had been made out for extending the period of limitation under s. 5 of the Indian Limitation Act and dismissed the application and nothing further need be said on that point. The learned judges, however, differed on the question as to whether the filing of a plain copy of the judgment appealed from was a sufficient compliance with the law, M.C. Desai J., holding that it was and N.U. Beg J. taking the contrary view. The two Judges having differed they directed the case to be laid before the Chief Justice for

obtained a third Judge's opinion on that question. Raghubar Dayal J. to whom the matter was referred, by his judgment dated January 31, 1955, expressed the opinion that the word "copy" in s. 419 meant a certified copy, and directed his opinion to be laid before the Division Bench. In view of the opinion of the third Judge, the Division Bench held that the memorandum of appeal had not been accompanied by "a copy" within the meaning of s. 419 and that on February 25, 1954, when a certified copy came to be filed the period of limitation for a appealing against the order of acquittal passed on July 24, 1953, had already expired and that as the application for extension of the period of limitation had been dismissed the appeal was time barred and they accordingly dismissed the appeal. The learned Judges, however, by the same order gave the appellant a certificate that the case was a fit one for appeal to this Court. Hence this appeal.

Section 419 of the Code of Criminal Procedure, under which the appeal was filed, provides as follows :-

> "419. Every appeal shall be made in the form of a petition in writing presented by the appellant or his pleader, and every such petition shall (unless the Court to which it is presented otherwise directs) be accompanied by a copy of the judgment or order appealed against, and, in cases tried by a jury, a copy of the heads of the charge recorded under section 367."

The sole question raised in this appeal is whether this section requires a petition of appeal to be accompanied by a certified copy of the judgment or order appealed from. It will be noticed that the section requires "a copy" of the judgment to be filed along with the petition of appeal. There can be no doubt that the ordinary dictionary meaning of the word "copy" is a reproduction or transcription of an original writing. As the section does not, in terms, require a certified copy, it is urged on behalf of the appellant that the word "copy" with reference to a document has only one ordinary meaning, namely : a transcript or reproduction of the original document and that there being nothing uncertain or ambiguous about the word "copy", no question of construction or interpretation of the section can at all arise. It is contended that it is the duty of the court to apply its aforesaid ordinary and grammatical meaning to the word "copy" appearing in s. 419 and that it should be held that the filing of a plain copy of the judgment along with the petition of appeal was a sufficient compliance with the requirements of that section. The matter, however, does not appear to us to be quite so simple. A "copy" may be a plain copy, i.e., an unofficial copy, or a certified copy i.e., an official copy. If a certified copy of the judgment is annexed to the petition of appeal nobody can say that the requirements of s. 419 have not been complied with, for a certified copy is none the less a "copy". That being the position a question of construction does arise as to whether the word "copy" used in s. 419 refers to a plain copy or to a certified copy or covers both varieties of copy. It is well settled that "the words of a statute, when there is doubt about their meaning, are to be understood in the sense in which they best harmonise with the subject of the enactment and the object which the Legislature has in view. Their meaning is found not so much in a strictly grammatical or etymological propriety of language, nor even in its popular use, as in the subject or in the occasion on which they are used, and the object to be attained." (Maxwell's Interpretation of Statutes, 10th Edition, page 52). In order, therefore, to come to a decision as to the true meaning of a word used in a Statute one has to enquire as to the subject-matter of the enactment and the object which the Legislature had in view. This leads us to a consideration of some of the relevant sections of the Code of Criminal Procedure and other enactments having as material bearing on the question before us.

Section 366 of the Code of Criminal Procedure, which is in Chapter XXVI headed "Of the

Judgment", requires that the judgment in every trial in any criminal court of original jurisdiction shall be pronounced in open court and in the language of the court. Section 367 requires every such judgment to be written by the presiding officer (or from his dictation) in the language of the court or in English, containing the point or points for determinations, the decision thereon and the reasons for the decision. The judgment has to be dated and signed by the presiding officer in open court. Except as otherwise provided by law, s. 369 forbids the court, after it has signed its judgment, from altering or reviewing the same except to correct mere clerical errors. After the judgment is pronounced and signed it has, under s. 372, to be filed with the record of proceedings and becomes a part of the record and remains in the custody of the officer who is in charge of the records. Under s. 371, when an accused is sentenced to death and an appeal lies from such judgment as of right, the court is to inform him of the period within which he may, if he so wishes, prefer his appeal and when he is sentenced to imprisonment a copy of the findings and sentence must as soon as may be after the delivery of the judgment be given to him free of cost without any application. This, however, is without prejudice to his right to obtain free of cost on an application made by him, a "copy" of the judgment or order and in trials by jury a "copy" of the heads of charge to the jury. The copy that is supplied to the accused under sub-s. (4) of s. 371 is not a full copy of the entire judgment, but the copies supplied to him under sub-ss. (1) and (2) of s. 371 on application made by him are full copies of the judgment or the heads of the charge to the jury as the case may be. The copy of the findings and the sentence which is supplied to the accused under sub-s. (4) without his asking for the same is presumably to enable him to decide for himself whether he would appeal against his conviction and the sentence. The copies, which are supplied to the accused under sub-ss. (1) and (2) on his application for such copies, are obviously full copies of the entire judgment or the heads of charges as the case may be and are intended to enable him to prepare his grounds of appeal should he decide to prefer one and to file the same along with his petition of appeal as required by s. 419 of the Code of Criminal Procedure. There are no provisions corresponding to s. 371 for giving any copy of the judgment to the State or the public prosecutor representing the State in case of an acquittal. If, therefore, the State desires to file an appeal against acquittal under s. 417 of the Code of Criminal Procedure the State will have to procedure a copy of the judgment or the heads of charge in order to enable it to file the same along with its petition of appeal and thereby to comply with the requirements of s. 419. According to s. 74 of the Indian Evidence Act a judgment, being the Act or record of the act of a judicial officer, would be included in the category of public documents. Under s. 548 of the Code of Criminal Procedure if a person affected by a judgment desires to have a copy of the judge's charge to the jury or of any order or deposition or other part of the record he has the right, on applying for such copy, to be furnished therewith. A person desirous of such a copy has to apply for it to the public officer having the custody of its and, under s. 76 of the India Evidence Act, such public officer is bound to give that person, on demand, a copy of it on payment of the legal fees thereof together with a certificate written at the foot of such copy that it is a true copy of such document, that is to say, to supply to the applicant what is known as a certified copy. Therefore, whether it is the accused person who applies for a copy under s. 371, sub-ss. (1) and (2) or it is the State which applies for a copy, the copy supplied by the public officer must be a certified copy. Then when s. 419 requires that a copy of the judgment or of the heads of charge be filed along with the petition of appeal, it is not unreasonable to hold that it is the certified copy so obtained that must be filed.

Under arts. 154, 155 and 157 of the Indian Limitation Act the petition of appeal has to be filed within the time specified in those articles. Obviously it may take a little time to apply for and procure a certified copy. In order that the full period of limitation be available to the intending appellant s. 12 of the Limitation Act permits the deduction of the time requisite for obtaining the

copy of the judgment or the heads of charge in ascertaining whether the appeal is filed within time. A certified copy of the judgment will on the face of it show when the copy was applied for, when it was ready for delivery and when it was actually delivered and the court may at a glance ascertain what time was requisite for obtaining the copy so as to deduct the same from the computation of the period of limitation. Taking all relevant facts into consideration, namely, that a "copy" of the judgment has to be filed along with the petition of appeal, that the copies of the judgment which the accused gets free of cost under s. 371(1) and (2) read with s. 76 of the Indian Evidence Act and which the State can obtain on an application made by it under s. 76 of the last mentioned Act can only be certified copies, that the time requisite for obtaining such copies is to be excluded from the computation of the period of limitation all quite clearly indicate that the copy to be filed with the petition of appeal must be a certified copy.

Section 419 requires a copy of the judgment or order appealed against to be filed not without some purpose. That purpose becomes clear when we pass on to s. 421 of the Code of Criminal Procedure. That section enjoins the court, on receiving the petition of appeal and copy of the judgment or order appealed from under s. 419, to peruse the same and after perusing the same to do one of the two things, namely, if it finds that there is no sufficient ground for interfering, to dismiss the appeal summarily or when the court does not dismiss the appeal summarily, then under s. 422 to cause notice to be given to the appellant or his pleader and to such officer as the Provincial Government may appoint in this behalf, of the time and place at which such appeal will be heard and furnish such officer with a copy of the grounds of appeal and in a case of appeal under s. 417, as in the present case, to cause a like notice to be given to the accused. The act of summarily rejecting the appeal or admitting it and issuing notice in necessarily a judicial act and obviously it must be founded on proper materials. The authenticity or correctness of the copy of a judgment is also essential in order to enable the appellate court to make interlocutory orders which may have serious consequences. In the case of an appeal by the accused he may ask for the stay of the execution of the order, e.g., of the realisation of the fine or he may move the court for bail. Likewise in the case of an appeal by the State, the State may ask for the accused to be apprehended and brought before the court under warrant of arrest. Orders made on these applications are all judicial acts and accordingly it is essential that the appellate court in order to take these judicial decisions have proper materials before it. Therefore, it is of the utmost importance that the copy to be filed with the petition of appeal is a full and correct copy of the judgment or order appealed against. Under s. 76 of the Indian Evidence Act the public officer who is to supply a copy is required to append a certificate in writing at the foot of such copy that it is a true copy and then to put the date and to subscribe the same with his name and official title. Therefore, the production of a certified copy ipso facto and without anything more will show ex facie that it is correct copy on which the appellate court may safely act. The fact that the appellate court is by law enjoined to peruse the copy of the judgment and take judicial decision on it indicates that it must have before it a correct copy of the judgment and this further indicates that the copy required to be filed with the petition of appeal under s. 419 should be a certified copy which will ipso facto assure the appellate court of its correctness.

It is said that the appellate court may not summarily reject or admit the appeal or make an interlocutory order until the record is produced or until a certified copy of the judgment or order is presented before it. There is no doubt that the court can under s. 421 of the Code of Criminal Procedure call for the record of the case, but the court is not bound to do so. The calling for the records in every case or keeping the proceedings in abeyance until a certified copy is presented before the court is bound to involve delay and there is no apparent reason why there should be any delay in disposing of criminal matters involving the personal liberty of the convicted accused. All this inconvenience may easily be obviated if s. 419 be read and understood to require a certified

copy to be filed along with the petition of appeal.

Learned counsel for the appellant urges that in case of urgency the court need not wait until the record or the certified copy is received, but may call upon the appellant to adduce evidence to prove the correctness of the judgment in order to induce the court to act upon and take a judicial decision thereon. In the first place there is no such procedure envisaged in the Code of Criminal Procedure. In the next place adoption of such a procedure may cause much delay and in the third place no question ordinarily arises under s. 419 of proving the correctness of the judgment under appeal in the way in which a document is to be proved in order on tender it in evidence in the case. But assuming that the correctness of the judgment under appeal is to be established then as soon as the appellant is out to "prove" by oral evidence of witnesses the contents of the original judgment so as to establish the correctness of the plain copy filed along with his petition of appeal the question will immediately arise whether such evidence is admissible under the law. As already stated s. 367 of the Code of Criminal Procedure requires the judgment to be reduced to writing. Section 91 of the Indian Evidence Act provides, inter alia, that in all cases in which any matter is required by law to be reduced to the form of a document - and a judgment is so required - no evidence shall be given for the proof of the terms of such matter except the document itself or secondary evidence of its contents in cases in which secondary evidence is admissible under the earlier provisions of that Act. In the absence of the production of the original judgment if a witness is put into a witness box and is asked to say whether the copy produced before the appellate court is a correct copy of the original judgment filed of record in the trial court he will necessarily have to say that he read the original judgment and from his memory he can say that the copy correctly reproduces the text of the original judgment. This means that he will give secondary evidence as to the contents of the original judgment which under the law is required to be reduced to the form of a document. A further question will, therefore, arise if such evidence, which at best is secondary evidence, is admissible under the Indian Evidence Act. As already stated the judgment, which under s. 367 of the Code of Criminal Procedure has to be in writing and under s. 372 has to be filed with the record of the proceedings, becomes, under s. 74 of the Indian Evidence Act, a public document. As the original judgment is a public document within the meaning of s. 74, only a certified copy of such document and no other kind of secondary evidence is admissible under s. 65. This circumstance also indicates that the word "copy" in s. 419 means, in the context, a certified copy and so it was held in Ram Lal v. Ghanasham Das [A.I.R. (1923) Lah. 150]. The decision in Firm Chhota Lal Amba Parshad v. Firm Basdeo Mal-Hira Lal [A.I.R. (1926) Lah. 404], proceeded on its peculiar facts, namely, that no certified copy could be obtained as the original judgment could not be traced in the record and the decision can be supported on the ground that the court had, in the circumstances, dispensed with the production of a certified copy.

Learned counsel for the appellant next urges that the fact that the appellate court to which the petition of a appeal is presented is given power to dispense with the filing of a copy of the judgment appealed against indicates that the Legislature did not consider the filing of the copy to be essential and that if the filing of the copy is not essential and copy can be wholly dispensed with, a plain copy should be sufficient for the purpose of s. 419. This power of dispensation had to be given to the court for very good reasons. In certain cases an order staying the operation of the order sought to be appealed from may be immediately necessary and the matter may be so urgent that it cannot brook the delay which will inevitably occur if a certified copy of the judgment or order has to be obtained. In some cases it may be that a certified copy of the same judgment is already before the same court in an analogous or connected appeal and the filing of another certified copy of that very judgment may be an unnecessary formality. The circumstance that the court may, in urgent cases, dispense with the filing of a copy does not imply that in a case where the court does not think fit to do so it

should be content with a plain copy of the document which ex facie contains no guarantee as to its correctness.

Reference has been made to a number of sections of the Code of Criminal Procedure where the word "copy" has been used and to ss. 425, 428, 442 and 511 which, it is said, talk about certified copy and on this circumstance is founded the argument that where the Legislature insists on the production of a certified copy it says so expressly and that as the word "copy" used in s. 419 is not qualified by the word "certified" the inference is irresistible that the filing of a plain copy was intended to be sufficient for the purpose of that section. Turning to the four last mentioned sections, it will be noticed that the first three sections 425, 428 and 442 do not really refer to any certified copy of any document at all. Section 425 requires that whenever a case is decided on appeal by the High Court under Chapter XXXI it shall certify its judgment or order to the court by which the finding, sentence or order appealed against was recorded or passed. It really means that the High Court is to formally communicate its decision on the appeal to the court against whose decision the appeal had been taken. Likewise s. 428 requires the court taking additional evidence to certify such evidence to the appellate court. Section 442 requires the High Court to certify its decision on revision to the court by which the finding, sentence or order revised was recorded or passed. Lastly, s. 511 lays down the mode of proof of a previous conviction or acquittal, namely, by the production of an extract certified under the hand of the officer having the custody of the records of the court to be a copy of the sentence order. Therefore, the four sections relied on do not in reality refer to certified copy of a judgment or order supplied to a party on his application for such copy and consequently no argument such as has been sought to be raised is maintainable. The question whether a copy in a particular section means a plain copy or a certified copy must depend on the subject or context in which the word "copy" is used in such section. In many sections relied on, he "copy" is intended to serve only as a notice to the person concerned or the public and is no intended to be acted upon by a court for the purpose of making a judicial order thereon. We think that N.U. Beg J. rightly pointed out that the object and purpose of such sections are distinguishable from those of s. 419 where the copy is intended to be acted upon by the appellate court for the purpose of founding its judicial decision on it. We do no consider it desirable on the present occasion to express any opinion as of whether any of those sections relied on requires a plain copy or a certified copy. It will suffice for us to hold that so far as s. 419 is concerned, having regard to the context and the purpose of that section, the copy to be filed along with the petition of appeal must be a certified copy.

We have also been referred to several sections of the Code of Civil Procedure where the word "copy" is used. We do not consider it right to enter upon a discussion as to the true interpretation of the word "copy" occurring in any of those sections for we think that each section in each Act must, for its true meaning and effect, depend on its own language, context and setting.

In the result, for reasons stated above, we agree that the order passed by the Allahabad High Court on February 8, 1955 was correct and this appeal should be dismissed.

Appeal dismissed.

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