

State of Uttar Pradesh

Vs

R. B. Agarwal

Criminal Appeal No. 178 of 1965

(CJI P. B. Gajendragadkar, K.N. Wanchoo, J. C. Shah, S. M. Sikri, V. Ramaswami-I JJ)

04.02.1966

JUDGMENT

GAJENDRAGADKAR, C.J. -

If an accused persons is convicted by the trial Court, but on the appeal to the High Court is acquitted, can the State move the High Court under Art. 134(1)(c) of the Constitutions for a certificate that the case in question is a fit one of for appeal to the Supreme Court ? That is the short question which arises __ in this appeal by special leave.

The respondent R. B. Agarwal was committed to the sessions for trial by the Judicial Officer, Lucknow under sections 467 and 471 of the Indian Penal Code. The learned Assistance Sessions Judge who tried his case, dropped the charge under section 471, but the convicted the respondent under s. 467, I.P.C. and sentenced him to suffer rigorous imprisonment for five years and to the pay a fine of Rs. 10,000/- and the default to undergo further rigorous imprisonment for a period of two years.

The respondent challenged the said order of conviction and the sentence by preferring an appeal before the High Court of Judicature at Allahabad, Lucknow Bench. The High Court allowed the respondent's appeal, set aside the order of conviction and the sentence imposed on him by the trial court, and directed that he should be acquitted. The appellant, the State of Uttar Pradesh, then applied to the High Court for certificate under Art. 134(1)(c) of the Constitutions. The High Court has rejected the said application on the ground "that" in view of the latest pronouncement of the Supreme Court in S. Majumdar v. A. Brahmachari and the Others (Criminal Appeal No. 21 of 1960 decided on September 14, 1964.), Article 134 does not provide for an appeal to the Supreme Court from the an order of acquittal by the High Court". It is this order refusing to entertain the appellant's application for certificate on the ground that it is incompetent under Article 134(1)(c), which is challenged before us by the appellant in the present appeal.

Mr. Rana for the appellant contends that the words used in Art. 134(1)(c) are plain and unambiguous, and the they do not justify the view taken by the High Court that it is not open to the State to move the High Court for a certificate in a case where the High Court has set aside the order of conviction and sentence passed by the trial court against an accused person. Article 134(1)(c) provides that an appeal shall lie to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of High Court in the territory of India if the High Court certifies that the case is a fit one for appeal to the Supreme Court. It will be noticed that in the present appeal, we are not concerned with the question as to whether the application made by the appellant for a certificate should be granted or not; that is a part of the merits of the enquiry which the High Court will have

to hold in case we come to the conclusion that the High Court was in error in taking the view that the application made by the appellant was incompetent. The stage to consider the merits of the said application can arise only if and after the application is held to be competent.

Now the relevant words in Art. 134(1)(c) are wide their sweep. They authorise an application for a certificate from the any judgment, final order, or sentence in a criminal proceeding of a High Court. It is difficult to see how an order of acquittal passed by the High Court in an appeal preferred before it by convicted accused person cannot be said to be a judgment, or final order in a criminal proceeding of the High Court. Therefore, on the plain a words of Art. 134(1)(c), we see no escape from the conclusion that if the an accused person is convicted by the trial court and on the appeal, the High Court sets sides the said order of conviction, it would be competent to the State to apply to High Court for certificate under Art. 134(1)(c) of the Constitution.

Art. 134(1)(a) and (b) confer a right of an appeal to this Court, whereas Art. 134(1)(c) confers a right on the aggrieved party to make an application for certificate; and the it is for the High Court to consider whether the certificate of fitness should be issued or not. Art. 134(1)(c) does not, therefore, give the State a right to move this Court by way of the an appeal against the order of acquittal passed by the High Court in appeal. Nevertheless, it has a right to move the High Court for a certificate in that behalf. In our opinion, this position is plain and unambiguous.

It, however, appears that in *The State Government, Madhya Pradesh v. Ramakrishna Ganpatrao Limsey and Others* (A.I.R. 1954 S.C. 20.), this Court has made certain observations which are likely to create an impression that an application for a certificate would be incompetent in regard to cases where an order of conviction passed by on the trial Court has been set aside by the High Court on appeal. The said case had come to this Court under Art. 136 by special leave, and the on the merits this Court came to the conclusion that no case had been made out for the interference by this Court with the order passed by the High Court which was under appeal. That shows that the question as to whether an application for a certificate can be made by the State against an order of acquittal by the High Court on appeal, did not fall to the considered at all. Even so, incidentally, this Court has referred to Article 134 and has observed that Art. 134 does not provide for an appeal from a judgment, final order, or sentence in a criminal proceeding of a High Court is the High Court has on appeal reversed an order of conviction of an accused person and has ordered his acquittal. In this connection, it has also been observed that there is no provision in the Constitution corresponding to s. 417 of the Code of Criminal Procedure and such an order is final, subject however to the over-riding powers vested in this Court by Art. 136 of the Constitution. With the respect, the fact that no provision has been made in the Constitution which may be said to correspond to the s. 417, Cr. P.C., is of no significance in view of the fact that the words used in Art. 134(1)(c) are wide enough to take in appellate orders acquittal passed by this High Courts while dealing with the appeals brought before them by accused persons who are convicted by the trial courts. As we have already indicated, the sweep of the relevant words used in Art. 134 (1)(c) being very wide, it is hardly necessary to look for any separate provision in the Constitution which would correspond to S. 417, Cr. P.C. Therefore, we do not think that the observations by this Court in *Limsey's case* (A.I.R. 1954 S.C. 20.) can be said to the represent correctly the true legal position as to the scope and effect of Art. 134(1)(c) of the Constitution.

In *Shantiranjan Majumdar's case* (Cr. App. No. 21 of 1460 dt. Sept. 14,1964) this Court was again dealing with an application brought before it under Art. 136 by special leave, and the in considering the merits of the appeal, incidentally, reference has been made to the earlier decision of the Court in *Limsey's case* (A.I.R. 1954 S.C. 20.) and it has been observed that according to the said decision

there is no provision in the Constitution corresponding to S. 417, Cr. P.C. and, therefore, the order of acquittal made by the High Court is final, subject however to the over-riding powers of this Court under Act. 136 of the Constitution. What we have said about the relevant observations made in Limsey's case (A.I.R. 1954 S.C. 20.) applies equally to the observations made in the Shantiranjana Majumdar's case (Cr. App. No. 21 of 1964 dt. Sept. 14, 1964).

In our opinion, therefore, the true legal position is that if the an accused person is convicted by the trial court and on appeal to the High Court, his conviction is set aside, the State is entitled to apply to the High Court for a certificate under Art. 134(1)(c). Such an application cannot be rejected in limine on the ground that it is incompetent; it has to be entertained and considered and decided on the merits.

The result is the appeal is allowed, the order of the High Court refusing to grant a certificate on the ground that the application made by the appellant in that behalf is incompetent, is set aside and it is remitted to the High Court for disposal in accordance with law.

After we granted special leave to the appellant to file an appeal against the impugned order refusing to entertain the appellant's application for a certificate, as a matter of precaution, to save limitation, the appellant has also filed an application for the special leave to appeal to this Court against the appellate decision of the High Court on the merits. We cannot and do not propose to deal with the said application, because O.21 r. 2 of the Supreme Court Rules provides, inter alia, that where an appeal lies to the Supreme Court on a certificate issued by the High Court, no application to the Supreme Court for special leave to appeal shall be entertained unless the High Court has first been moved and it has refused to grant a certificate. We would, therefore, direct that the application for a special leave filed by the appellant should stand over until the final decision by the High Court on the merits of the appellant's application for certificate which we are remitting to the High Court for decision in accordance with law.

Appeal allowed.

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