

Shri Thepfulo Nakhro Angani

Vs

Smt. Ravaluei Alias Rano M. Shaiza

Civil Appeal No. 1125 of 1970

(S. K. Hegde, A. N. Grover, G. K. Mitter JJ)

21.01.1971

JUDGMENT

HEGDE, J. -

1. The decision on the question of law considered by this Bench was announced on the 14th of this month. We are now proceeding to give our reasons in support of that decision. On September 14, 1970, two of us (Shah, C.J. and Grover J.), passed the following order :

"This appeal raises an important question of procedure. We have heard learned Counsel appearing on behalf of the parties. Mr. Gupte appearing for the appellant contended that the charge under Section 123(6), read with Section 77 of the Representation of the People Act was not made out. Mr. Chari appearing on behalf of the respondent contended that he was entitled to submit without preferring a substantive appeal to this Court that the charges in respect of which the appellant has been absolved by order of the High Court are proved and he should be permitted to raise those questions in this appeal. Our attention has not been invited to any case which interprets the provisions of Section 116(a) of the Representation of the People Act as it stands after the amendment made in the year 1967.

In view of the importance of the question, we direct that the case be referred to a larger Bench of five Judges. Hearing expedited."

2. Though the entire appeal was referred to a larger Bench for decision, at the hearing it was considered advisable to decide only the question of law set out in the order and not the whole case. We accordingly heard arguments only on that question. In our opinion that question is concluded by the decision of this Court in Ramanbhai Ashabhai Patel v. Debhi Ajitkumar Fulsinji and Others. ((1965) 1 SCR 712.)

3. Mr. S. V. Gupte learned counsel for the appellant tried to distinguish that decision on two grounds, viz. (1) that the decision in question was rendered in an appeal to this Court by special leave and as such the jurisdiction of this Court was much wider than that conferred on this Court by Section 116-A of the Representation of the People Act, 1951 and (2) that the scope of an appeal under Section 116-A before its amendment in 1966 was different than from its scope at present. We are unable to accept either of these two contentions. In the above decision, it was ruled that this Court has power to decide all the points arising from the judgment appealed against and even in the absence of an express provision like Order XLI, Rule 22 of the Code of Civil Procedure, this Court can devise appropriate procedure to be adopted at the hearing and there could be no better way of

supplying the deficiency than by drawing upon the provisions of a general law like the Code of Civil Procedure and adopting such of those provisions as are suitable. The decision of the Court did not rest either on the ground that the appeal before it was brought by special leave of this Court or on the interpretation of Section 116-A as it then stood. The reasons behind the rule laid down by this Court are found at p. 725 of the report. Therein it is observed :

"It is true that the rules framed by this Court in exercise of its rule-making powers do not contain any provision analogous to Order XLI, Rule 22 of the Code of Civil Procedure which permits a party to support the judgment appealed against upon a ground which has been found against him in that judgment. The provision nearest to it is the one contained in Order XVIII, Rule 3 of the Rules of this Court which requires parties to file statement of cases. Sub-rule (1) of that rule provides that Part I of the statement of the case shall also set out the contentions of the parties and the points of law and fact arising in the appeal. It further provides that in Part II a party shall set out the propositions of law to be urged in support of the contentions of the party lodging the case and the authorities in support thereof. There is no reason to limit the provision of this rule only to those contentions which deal with the points found in favour of that party in the judgment appealed from. Apart from that we think that while dealing with the appeal before it this Court has the power to decide all the points arising from the judgment appealed against and even in the absence of an express provision like Order XLI, Rule 22 of the Code of Civil Procedure it can devise the appropriate procedure to be adopted at the hearing. There could be no better way of supplying the deficiency than by drawing upon the provisions of a general law like the Code of Civil Procedure and adopting such of those provisions as are suitable. We cannot lose sight of the fact that normally a party in whose favour the judgment appealed from has been given will not be granted special leave to appeal from it. Considerations of justice, therefore, require that this Court should in appropriate cases permit a party placed in such a position to support the judgment in his favour even upon grounds which were negatived in that judgment."

4. The decision referred to above will govern the question of law with which we are concerned in this case. The appeal was already directed by the Chief Justice to be posted before the Bench presided over by Mitter, J., for further hearing.

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