

Jeewan Prakash

Vs

The State of Maharashtra

Criminal Appeal No. 162 Of 1969

(A. N. Grover, M. H. Beg JJ)

09.03.1972.

JUDGMENT

GROVER, J. -

1. This is an appeal by Special Leave from an Order of the Bombay High Court dismissing the appeal in limine.
2. The appellant, who was working as a Clerk in the State Bank at Wardha, was committed to the Court of the Sessions to stand trial for the theft of a blank form of a draft, forging it and fraudulently receiving an amount of Rs. 5,450/- from the State Bank of India. He stood charged under Sections 380, 381, 467 and 465 read with Sections 471 and 420 of the Indian Penal Code. The judgment of the learned Sessions Judge covers nearly 76 typed pages and a perusal of it shows that the case of the prosecution depended on oral, documentary and circumstantial evidence including the evidence as to identification and the testimony of hand writing experts. The appellant was sentenced to suffer rigorous imprisonment for four years and pay a fine of Rs. 6,000/- on the charge under Section 467 of the Indian Penal Code; in default of payment of fine he was to undergo rigorous imprisonment for one year. He was further sentenced to rigorous imprisonment for one year under Sections 381 and 420 of the Indian Penal Code. The sentences were to run concurrently.
3. The High Court chose to dismiss the appeal of this nature in limine by an order of one word "Dismissed." The position obtaining in such cases was fully examined by this Court in 1968 (2) SCR 88 in which reference was made to earlier decisions dating from *Mushtak Hussein v. State of Bombay*, (1953) SCR 809. The following passage may be produced with advantage :

"There is no controversy, that the appellant, who has been convicted, on trial by the Sessions Judge, had a right of appeal, to the High Court, under Section 410, Cr. P.C. The appellant was also entitled, under Section 418, Cr. P.C., to agitate, in his appeal, before the High Court, findings of fact, recorded against him, as also questions of law available to him. No doubt, under Section 421, Cr. P.C., the Appellate Court may dismiss an appeal, summarily, if, on a perusal of the petition of appeal, and a copy of the judgment appealed from, it considers that there is no sufficient ground for interference. This section, has come up for consideration, before this Court, in *Mushtak Hussein v. The State of Bombay*. (1953 SCR 809 : AIR 1953 SC 282 : 1953 Cri LJ 1127). This Court has held, therein, that in a case, which, prima facie, raises no arguable issue, a summary dismissal of the appeal, may be justified, but, in arguable cases, a summary rejection order must give some indication of the views of the High Court on the points raised. Again, in a case, where the High Court

summarily dismissed an appeal, in one word 'dismissed' this Court, in *Shreekantiah Ramayya Munipalli v. The State of Bombay*, ((1955) 1 SCR 1177 : AIR 1955 SC 287 : 1955 Cri LJ 857) again reiterated the views expressed in the earlier decision, referred to above, and stated that summary rejection of appeals, which raise issues of substance and importance, was not justified. After advertng to the two decisions, noted above, this Court, against the *Chittaranjan Das v. State of West Bengal*, ((1964) 3 SCR 237 : AIR 1963 SC 1696 : (1963) 2 Cri LJ 534) laid down that there can be no doubt, whatever, that in dealing with criminal appeals, brought before them, the High Courts should not summarily reject them, if they raise arguable and substantial points. Bearing these principles in view, the question naturally arises as to whether the appeal filed, by the appellant, before the High Court of Bombay, raised any arguable point, or whether the questions raised were substantial and important."

4. After this judgment numerous decisions have been given by this Court and the Counsel for the appellant has produced before us a list of as many as 13 cases in which owing to summary dismissal by the High Court this Court had to send the matters back for re-hearing. It is unfortunate and regrettable that these pronouncements of this Court were either not brought to the notice of the learned Judges of the High Courts or were not present to their mind, otherwise an appeal of this nature would not have been dismissed summarily. The appellant had raised arguable issues which ought not to have been disposed of in a summary manner when the case depended largely on the identification made at an identification parade and the testimony of hand writing experts. We have no other option but to follow the same course which was adopted in the other cases, namely, to set aside the order of dismissal of the High Court and remand the appeal to it for fresh disposal in accordance with law. We order accordingly.

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