Kapurchand Kesrimal Jain

Vs

The State of Maharashtra

Criminal Appeal No. 185 of 1972

(J. M. Shelat, I. D. Dua, A. Alagiriswami JJ)

06.11.1972

JUDGMENT

DUA, J. -

1. This is an appeal by special leave from the judgment of the High Court of Judicature at Bombay dismissing in limine with one word "dismissed", the appeal preferred by the appellant against the judgment of the Additional Chief Presidency Magistrate, 19th Court, Esplanade, Bombay, convicting him under Section 135(a) and (b) read with Section 135(i) of the Customs Act, 1962 and under Rule 126-H(A) of Part XII-A of the Defence of India Rules, 1962 (as amended) read with Rule 126-P(ii) and (iv). The appellant was sentenced to various terms of imprisonment and to a substantial amount of fine to which it is unnecessary to refer for the purposes of the present appeal.

2. The only argument addressed by Shri Porus Mehta, the learned counsel appearing before us in support of the appeal is that the High Court was wrong in dismissing the appellant's appeal in limine because the appeal involved arguable points requiring appreciation and reappraisal of the evidence on questions of fact and it also raised important questions of law. The prosecution case, broadly stated, may be narrated here for the purpose of appreciating the appellant's submission.

3. On October 2, 1970, Shri D. V. Sohini, Assistant Collector of Customs, Preventive Department, Bombay, filed a complaint against the appellant Kapur Chand Kesrimal Jain, under Section 135(i) of the said Act and under Rule 126-H(A) of Part XII-A of the Defence of India Rules. 1962 (as amended) punishable under Rule 120-P(ii) and (iv) read with Section 116 of the Gold (Control) Act, 1968 in the Court of the Chief Presidency Magistrate, Esplanade, Bombay, in respect of 2015 tolas of gold valued at Rs. 3,60,000 at market rate and import duty amounting to Rs. 2,11,588.36 Ps. leviable thereon. According to the prosecution version on November 15, 1967 at about 5 p.m. Rameshchandra, Assistant Collector of Customs, Bombay, had raided flat No. 3 on the First Floor of Basant Building, Poddar Road, Bombay on the basis of information received. He was accompanied by three or four officers and also secured a search warrant. On entering the flat they found a lady present there claiming to be the wife of the person living in that flat. On search in the outer room of that flat two cloth jackets containing 100 pieces of gold each having foreign markings thereon and each gold bar weighing 10 tolas were found concealed underneath a sofa-cum-bed and between the wall and the back thereof. On search of the owner's room in the flat was found a cupboard which was locked. As the lady did not possess the key thereof a locksmith was called who opened the lock of the cupboard. In that cupboard 15 bars of gold of 10 tolas each with foreign markings thereon and 5 empty cloth jackets similar to the two jackets found in the outer room were found. Soon thereafter the husband of the lady also arrived. He gave his name as Kapurchand Kesrimal Jain, the appellant. The principal question which arose for determination in the case related to the possession

of the contraband gold recovered from the outer room and the cupboard as contemplated by the law under which the appellant has been convicted. According to the prosecution version the appellant was asked by Rameshchandra (who appeared as P.W. 1) about the key of the cupboard to which he replied that the same had been concealed by him underneath the cupboard itself. The key was produced by the appellant from under the cupboard. When the locksmith had come, on enquiry from the adjoining flats it was learnt that one Shri Gulati living in the adjoining flat No. 4 was the landlord of this flat. An agreement relating to the lease and licence of the flat in question was also found on the premises but this was in the name of one S. K. Jain. The appellant's defence was that Shri Gulati, the landlord, had access to the flat in question and the goods recovered from the cupboard belonged to the lessee, Shri S. K. Jain. The Trial Court in a lengthy judgment disbelieved the defence version and relying on the prosecution case, convicted the appellant, as stated earlier.

4. The appellant's grievance is that he was entitled to raise both questions of fact and law in the High Court on appeal from the judgment and order of his conviction by the Additional Chief Presidency Magistrate and that the High Court was in serious error in dismissing the appeal in limine without recording a speaking order indicating its reasons for repelling the appellants contentions and for dismissing the appeal. Reliance in this connection was placed on Section 410, Cr.P.C. which gives to a convicted person a general right of appeal to the High Court and on Section 418, Cr.P.C. under which the appeal lies on a matter of fact as well as a matter of law except where the trial is by jury where an appeal lies only on a matter of law. Our attention was drawn to a recent decision of this Court in Govinda Kadtuji Kadam v. The State of Maharashtra, ([1970] 3 SCR 525 : (1970) 1 SCC 469) and to a still more recent unreported decision of this Court in Shaikh Mohd. Ali v. State of Maharashtra. ([1972] 2 SCC 784 : 1973 SCC (Cri) 111). In both these judgments reference was made to a number of earlier decisions of this Court laying down that when an appeal in the High Court raises a substantial point which is prima facie arguable it is improper for that Court to dismiss it summarily without giving an indication of its view on the points raised. In Govinda Kadtuji Kadam (supra), emphasis was again laid on what had been clearly suggested by this Court as far back as 1953 in Mustak Hussein v. State of Bombay, (1953 SCR 809 : AIR 1953 SC 282 : 1953 SCJ 355) that without the opinion of the High Court on arguable points this Court in special leave appeals under Article 136 of the Constitution sometimes feels embarrassed if it has to deal with those matters without the benefit of the opinion of the High Court. This Court added in Govinda Kadtuji Kadam (supra), that it would be in the interest of justice if the High Court were to indicate its view on the points argued. In that case it was also specifically pointed out that in Sakharam v. The State of Maharashtra, ([1969] 3 SCR 730 : (1969) 1 SCC 733) this court had reiterated that it is desirable for the High Courts when dismissing the appeals in limine to deal with each point argued before them for hiding that it was not necessary to send for the records and to give notice to the State for the final hearing and disposal of the appeals in question. Soon after the decision in Govinda Kadtuji Kadam (supra) this Court allowed two more appeals from the Bombay High Court where appeals had been dismissed in limine without indicating its reasons and remitted the cases back for fresh decision : See Siddanna Apparao Patil v. The State of Maharashtra, ([1970] 1 SCC 547 : 1970 SCC (Cri.) 224) and Dayanu Hariba Mali v. The State of Maharashtra, ([1970] 3 SCC 7 : 1970 SCC (Cri.) 357). In Shaikh Mohd. Ali (supra), this Court again took pains to point out that "ever since the decision in Mushtak Hussain v. State of Bombay (supra), it is settled law repeatedly laid down in successive decisions of this Court that a High Court would not be justified in dismissing summarily and without a speaking order an appeal which raises arguable questions either factual or legal". It was not considered necessary to cite all the earlier decisions of this Court on this point but reference was made to the recent decision in Jeewan Prakash v. The State of Maharashtra. ([1972] 3 SCC 266 : 1972 SCC (Cri.) 491). In Jeewan Prakash (supra), the appellant's

counsel had produced a list of 13 cases in which owing to summary dismissal by the High Court this Court had to send the matters back for re-hearing.

5. On behalf of the respondent State an attempt was made before us to show that the case in hand does not raise any substantial question either of fact or of law. It was also argued that it is open to the High Court to dismiss the appeal in limine if that court is satisfied that it would not be necessary to issue notice to the State to meet the points raised by the appellant. Our attention in this connection was drawn to Sakharam's case (supra), in which this Court after going through the record of that case did not find any error in the order of the High Court dismissing the appeal before it summarily though it was observed that it would have been better if the High Court had dealt with the points raised before it. This decision does not depart from the view taken in the cases referred to above, as would be obvious from Govinda Kadtuji Kadam (supra). Indeed, had the High Court in Sakharam's case (supra), given reasons for dismissing the appeal in limine after dealing with the points urged before it, this Court would perhaps not have considered it necessary to admit the appeal and go into the merits after hearing both sides. This case in fact highlights the importance of the desirability of the High Court indicating its reasons for dismissing the appeal in limine without issuing notice to the State and without sending for the record. Such a course, as is obvious, would help this Court in better appreciating the grievance of the appellant seeking special leave to appeal from the decisions of the High Court. Another aspect which is also conducive to this practice is that it serves to eliminate avoidable delay which must necessarily result in the final disposal of criminal cases, if after hearing by this Court, the cases have to be sent back to the High Court for fresh decisions because of the failure of that Court to indicate the reasons for summary dismissal of the appeals in limine. Avoidable delay is good neither from the point of view of the accused nor from that of administration of justice. The legal position has been consistently and uniformly reiterated by this Court in the clearest terms.

6. In the present case it seems indisputable that the appeal in the High Court did raise questions of fact and law which cannot be said to be unsubstantial or not arguable. This is clear from the lengthy judgment of the Trial Court and from the points raised by the appellant in the courts below and in the special leave appeal in this Court. The learned counsel for the State has not succeeded in persuading us to hold otherwise. The appellant has, therefore, a legitimate grievance that the High Court should not have dismissed his appeal summarily by the solitary word "dismissed" but should have made a speaking order indicating its reasons for repelling the contentions raised by the appellant in support of the appeal in that Court. It is indeed not easy for us to appreciate the summary dismissal with one word in this case which is contrary to the settled view of this Court. The reasons for dismissal would have been of valuable assistance to this Court in finally disposing of this appeal on the merits. We have, therefore, no option except to allow this appeal and reverse the order of summary dismissal made by the High Court and send the case back to it for fresh decision as early as possible in accordance with law in the light of the observations made above. We have purposely avoided referring to the arguments on the merits so that our judgment may not contain any observations which may be interpreted to be an expression of opinion either way on the points raised. The appellant's counsel prayed for bail in the meanwhile. We think it would be now, appropriate for the appellant to move the High Court for bail and that court would deal with it on the merits.

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