Rajendrapaul Ramasaran Dass Sharma

Vs

The State of Maharashtra

Criminal Appeal No. 264 Of 1972

(C.A. Vaidialingam, I.D. Dua, A. Alagiriswami JJ)

23.02.1973

JUDGMENT

DUA, J. -

1. The appellant in this appeal by special leave was tried in the court of Session for Greater Bombay at Bombay for offences under Section 467, and under Section 471 read with Section 467 and under Section 420, I.P.C. According to the prosecution the appellant was running an octroi clearing agency under the name and style of "National Octroi Clearing Agency" at the Mulund check-post. He used to attend to certain transactions relating to the transport companies, one of those companies being the Montgomery Transport Company. On December 16, 1958, a truck belonging to the said transport company bearing No. MPH 2147 arrived at the check-post carrying a Depleix Machine to be delivered to Messrs. Imperial Tobacco Company. There were two drivers and one cleaner in the truck. On being approached by them the appellant telephoned to Manager Bakshi of the Transport Company to arrange for the payment of octroi which amounted to more than Rs. 8,000. The Manager, Bakshi and Director, Inderjit Singh went to the Imperial Tobacco Company the following day and after getting Rs. 8,196 for the octroi reached the Mulund check-post. The amount was handed over to the appellant in the presence of the driver. Actually only Rs. 8,180 were required for the octroi with the result that Rs. 16 were paid back to Messrs. Imperial Tobacco Company by means of cheque. During the investigation of another case arising out of an alleged forged receipt relating to octroi in respect of some imports by Messrs. Pure Drinks Private Ltd., it came to light that proper octroi had not been paid on December 17, 1968, in respect of the transaction in question in the present case. The Assistant Assessor and Collector, Shri Karkhanis, after sending his superintendent Govind Charan to the office of Messrs. Imperial Tobacco Company he himself also visited the Company's office and they both felt that the receipt for the payment of octroi held by the said Company was not genuine. Having failed to trace the necessary relevant documents in the office files Shri Karkhanis lodged the complaint in February, 1969 and a case was registered. After preliminary enquiry under Chapter XVIII, Cr.P.C. the appellant was committed for trial to the court of Sessions. According to the trial court the following points arose for determination :

> "1. Whether it is proved that the receipt, Article A is a forged document ?
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> 2. Whether it is proved that it is the accused who forged that receipt with intent to commit fraud ?
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> 3. Whether it is proved that the accused used this receipt as genuine knowing it to be forged ?

4. Whether it is proved that he cheated the Bombay Municipal Corporation, as alleged ?

5. Whether it is proved that the accused cheated the Imperial Tobacco Co., of India Ltd., as alleged ?"

The conclusions of the trial court on these points were :

"1. In the affirmative.

2. Not proved.

3. In the affirmative.

4. In the affirmative.

5. Not proved."

The evidences in this case is mainly, if not wholly, circumstantial and about 20 witnesses were examined including a handwriting expert. The trial court felt that the case required evaluation of the evidence of Bakshi (P.W. 4), Inderjit Singh (P.W. 18) and Handwriting Expert (P.W. 17). Driver Balwant Singh was not examined in the case. The trial court in a lengthy judgment exhaustively discussed the evidence of these witnesses. It did not place implicit reliance either on Bakshi (P.W. 4) or on Inderjit Singh (P.W. 18) as indeed in the testimony of both of them the trial court found partly reliable and partly unreliable statements. The court did not feel inclined to hold that their evidence was wholly unreliable. On evaluation of the evidence of the Handwriting Expert the trial court felt that the receipt in question could not necessarily be held to have been forged by the appellant. After this observation follows the following passage in the judgment :

"I do not, however, feel that this earns an acquittal for him. The direct charge regarding the forgery could be taken as not proved we will have however to weigh the other evidence for finding out whether he could have used the document, which is necessarily a forged document, as a genuine document. For this purpose we will have to appreciate the evidence of the two witnesses about whom I have spoken quite a long time and we have also to appreciate the interval of time. What exactly the accused did within that half an hour when he took the money and returned, will have to be surmised, particularly in the absence of categorical evidence showing that the disputed receipt is executed by him. The evidence shows, it is a forged receipt. It is not prepared at the counter. We may not be sure in finding out as to who wrote it. The accused may have had his associates if he himself has not written it. Considering the way in which counters are stated to be working, considering the amount involved and the short time-limit when the accused reappeared legitimate payment across the counter will have to be ruled out. That is not even suggested on behalf of the accused. He may have his own collaborators. If we accept the version, which I do, then it was this receipt which was in the hands of the accused that was given over to the driver and from there onwards it reached the firm Messrs. Imperial Tobacco Co. of India Ltd. I feel, the accused ought to be supposed to be aware that the real payment was made and what he carried could not be the real receipt. It is for this reason that I am feeling that the charge of using a forged receipt knowing it to be forged could be brought home to him."

The trial court thereafter dealt with the charges of cheating and ultimately convicted the appellant for an offence under Sections 471 read with 467, I.P.C. and for an offence under Section 420, I.P.C. Under the former he was sentenced to five years' rigorous imprisonment and a fine of Rs. 500 with six months' further rigorous imprisonment in case of default. Under Section 420 he was sentenced to rigorous imprisonment for two years. The substantive sentences were directed to be concurrent.

2. The appeal to the High Court was dismissed in limine with one word "Dismissed".

3. Before us on appeal by special leave the short point but one of vital importance to the appellant requiring our decision is whether the High Court was justified on the facts and circumstances of this case in unceremoniously dismissing the appeal in limine with one word "Dismissed" without making a speaking order indicating the reasons for the dismissal. The facts briefly stated by us and a close study of the lengthy judgment of the trial court quite clearly show that the appeal in the High Court did raise points which were not only arguable but were also substantial requiring critical scrutiny and serious appraisal and evaluation of the prosecution evidence and the circumstances of the case. The importance of the opinion of the High Court on arguable points requiring consideration on appeal in that court when questions of fact or law are open to challenge by the appellant was emphasised more than 20 years ago by this Court in Mushtak Hussein v. The State of Bombay (1953 SCR 809 : AIR 1953 SC 292 : 1953 Cri LJ 1127), when Mahajan, J., (as he then was) observed at p. 820 :

> "With great respect we are however constrained to observe that it was not right for the High Court to have dismissed the appeal preferred by the appellant to that court summarily, as it certainly raised some arguable points which required consideration though we have not thought it fit to deal with all of them. In cases which prima facie raise no arguable issue that course is, of course, justified, but this Court would appreciate it if in arguable cases the summary rejection order gives some indication of the views of the High Court on the points raised. Without the opinion of the High Court on such points in special leave petitions under Article 136 of the Constitution this Court sometimes feels embarrassed if it has to deal with those matters without the benefit of that opinion."

Since then in a series of decisions (quite a number of them reported and several unreported) this Court has consistently drawn the attention of the High Courts to the eminent desirability of giving an indication of their views on the points raised in arguable cases in accordance with the legal position enunciated by this Court. Such a course is normal in cases which raise fairly arguable questions of fact or law. In one of the latest decisions of this Court in K. K. Jain v. State of Maharashtra ((1973) 3 SCC 299 : 1973 SCC (Cri) 253 : AIR 1973 SC 243), some of the earlier decision were again noticed and it was considered necessary to repeat the emphasis laid on the necessity of recording reasons by the High Court for dismissing appeals raising questions which cannot be considered to be unsubstantial or not arguable. In that decision it was reiterated, inter alia, that reasons prevailing with the High Court for dismissing the appeal, if recorded, would have been of valuable assistance to this Court in finally disposing of the appeal on merits. Another advantage of recording such reasons is that the accused-appellant who may not always be present in court would have the satisfaction of knowing from the judgment that the points appropriately arising for consideration in his case were actually argued and duly considered by the High Court while dismissing the appeal. This would, inter alia, tend to promote confidence of the parties concerned in our judicial process. In the present case had the High Court recorded its reasons for dismissing the appeal it would have better enabled the appellant's lawyer to consider the advisibility of appealing

under Article 136 of the Constitution after filing the appeal would have afforded valuable assistance both to the counsel appearing in this Court and to us in the final disposal of the appeal without feeling the necessity of remanding the case to the High Court for re-hearing. The remand no doubt must result in further delay in the final disposal of the appellant's appeal in the High Court and this indeed is regrettable. But in the absence of the opinion of the High Court which that Court was under the law expected to record we are left guessing about the line of reasoning the High Court would have adopted after appropriate scrutiny of the evidence on the record. The appellant is entitled to have a proper decision on the points arising in his appeal by the High Court on due appraisal of the evidence in accordance with law. The legal position on the point in question has been authoritatively settled and declared by this Court and the same has been frequently reiterated in its decisions. The law reports are so full of them that it appears to us to be somewhat surprising that the counsel appearing in the appeal in the High Court should have been unaware of it. It, however, does seem that the attention of the High Court was not drawn to these decisions, for had that Court been apprised of the law as authoritatively declared by this Court, it is inconceivable that the present appeal would still have been dismissed without indicating the reasons in support of it. Had the High Court recorded reasons the delay necessitated by this remand could have been avoided. But in the circumstances we have no option but to allow the appeal and remand the case to the High Court for rehearing and deciding the appeal after considering the points raised and recording its reasons in accordance with law. We have taken care not to express any opinion on the merits of the case either way. It is hoped that this appeal would now the disposed of by the High Court expeditiously and without avoidable delay.

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