Mustaq Ahmed Mohmed Hussain and Mukhtar Hussain Ali Hussain

Vs

The State of Gujarat

Criminal Appeal No. 9 of 1973

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

13.03.1973

JUDGMENT

DUA, J. -

1. In this appeal by special leave the short question requiring determination is whether the High Court of Gujarat was justified in dismissing in limine with one word "dismissed" the appellant's appeal against their conviction by the Sessions Judge, Jamnagar for offences under Section 420, read with Sections 511 and 34, I.P.C. and under Section 474, read with Section 34, Indian Penal Code.

2. Both the appellants were charged on five counts in the court of the Sessions Judge relating to offences, inter alia, of forgoing railway receipts purporting to be valuable security, being in possession of forged receipts knowing them to be forged and of dishonestly or fraudulently using the forged receipts as genuine knowing them to be forged, in furtherance of the common intention of cheating the Indian Railways or attempting to cheat them.

3. The points which arose for determination in the Trial Court as stated in its judgment were :

> "(1) Whether the prosecution has proved that on or about August 7, 1971 at Jamnagar accused No. 1 Mustaq Ahmed Mohamed Hussein and accused No. 2 Mukhtar Hussein Sayed in furtherance of common intention of both to cheat the Indian Railway by using forged railway receipts actually forged three railway receipts marked 6/A, 6/B and 6/C purporting to be valuable security and thereby committed an offence punishable under Section 467, read with Section 34, I.P. Code ?
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> (2) Whether the prosecution has proved that on or before August 7, 1971 said accused Nos. 1 and 2 in furtherance of the common intention of both to cheat Indian Railway forget railway receipts marked 6/A, 6/B and 6/C intending that they shall be used for the purpose of cheating thereby committed the offence punishable under Section 468, read with Section 34 of Indian Penal Code ?
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> (3) Whether the prosecution has proved that said accused Nos. 1 and 2 on or about August 7, 1971, in furtherance of common intention of both to cheat Indian Railway fraudulently or dishonestly used as genuine the three railway receipts marked 6/A, 6/B and 6/C which they know or had reason to believe at the time they used them to be the forged documents and thereby committed the offence under Section 471, read with Section 34, I.P.C. ?

(4) Whether the prosecution has proved that on or about August 7, 1971, both the said accused Nos. 1 and 2 were in possession of the forged railway receipts purporting to be valuable security knowing the same to be forged and intending that the same shall be fraudulently used as genuine documents and thereby committed an offence punishable under Section 474, read with Section 34, I.P.C. ?

(5) Whether the prosecution has proved that on or about August 7, 1971 accused Nos. 1 and 2 were at Jamnagar and in furtherance of common intention of both and them to cheat Indian Railway attempted to cheat Western Railway by dishonestly inducing the railway employees, i.e., the goods clerk at Jamnagar Railway Station to deliver them Coal Wagons in question and thereby committed the offence punishable under Section 420, with Section 34 and Section 511 of the I.P.C. ?

4. On points Nos. 1 to 3 the decision of the Trial Court went in favour of the appellants and against the prosecution but on points Nos. 4 and 5 the appellants were held guilty and convicted. They were sentenced under Section 420, read with Sections 511 and 34, I.P.C. to rigorous imprisonment for three years and a fine of Rs. 1,000/- with further rigorous imprisonment for nine months in case of default in payment of fine. A similar sentence was imposed on each one of them for the offence under Section 474/34, I.P.C. Both the sentences were ordered to run concurrently. It appears from the judgment of the Trial Court which covers about forty pages of exhaustive discussion on the points raised that a large number of witnesses were examined at the trial and the court entertained considerable doubt with respect to the prosecution story on several aspects of the various charges framed against the appellants.

5. On appeal in the High Court the appellants challenged all the adverse findings of the Trial Court, as they were entitled to do under Section 410, read with Section 418, Cr.P.C., and assailed the appraisal and evaluation of the evidence of the prosecution witnesses by that court more than 20 grounds were taken in the memorandum of appeal in which the testimony of the various eye-witnesses was criticised and the approach of the learned Sessions Judge in this respect assailed. As already pointed out, the High Court dismissed the appeal in limine with one word "dismissed" without indicating whether it also endorsed the line of reasoning and approach of the Trial Court in evaluating the testimony of the various witnesses and its manner of dealing with the arguments advanced by the prosecution and the defence.

6. In this Court it was seriously contended on behalf of the appellants that High Court had gravely erred in summarily dismissing the appeal in limine without disclosing even broadly its reasons for rejecting the various grounds of attack against the appraisal of the prosecution evidence by the Trial Court. This according to the appellants learned counsel, is against the consistent and uniform view expressed by this Court that in arguable cases the High Court, while dismissing the appeal, broadly indicate its reasons in support of its conclusions. The judgment of the High Court has, in this case, resulted in failure of justice to the appellant's prejudice, said the counsel.

7. In our view, the appellant's grievance is well founded. The right of appeal conferred by Section 410, read with Section 418, Cr.P.C. entitled the appellants to question the conclusions of the Trial Court both on matters of fact and of law. They had a right to ask for a review of the entire evidence and to challenge the appraisal of the evidence by the Trial Court and its conclusions based on such appraisal. Section 421, Cr.P.C. no doubt empowers the appellate court to dismiss the appeal summarily but before doing so it is bound to peruse with care and attention the petition of appeal and the copy of the judgment or order appealed against. The order of summary dismissal can be

passed only if the court considers that there is no sufficient ground for interference. This conclusion has to be arrived at judicially after a proper scrutiny of the petition of the appeal and the impugned judgment or order. In U. J. B. Chopra v. State of Bombay ((1955) 2 SCR 94 : AIR 1955 SC 633 : 1955 SCJ 603 : 1255 Cri LJ 1410), Bhagwati, J., speaking for the majority expressed the view that the hearing under Section 421 is intended for the purpose of determining whether a prima facie case for the appellate court's interference is made out. The whole purpose of the hearing accorded to the appellant or his counsel even after calling for the record of the case, under this section, is to determine whether there is a prima facie case for the appellate court's interference and it is not within that court's provision at that stage to fully consider the evidence on the record and hear arguments with a view to determine whether the conviction could be sustained or the sentence passed could be reduced. No doubt the question directly arising in that case was somewhat different but the observations with respect to the purpose of the hearing under Section 421, Cr.P.C. would be equally applicable to the consideration of the present controversy. If such be the real purpose of hearing contemplated by Section 421, then, the power of dismissing appeals in limine should, in our view, be exercised sparingly and with judicious caution so that no case raising arguable points, whether of law or of fact requiring reappraisal of evidence, goes without requisite security. The requirement of recording reasons for summary dismissal, however concise, serves to ensure proper functioning of the judicial process. Reasons are, therefore, advisedly required by the decisions of this court to be given for rejecting an appeal summarily under Section 421, Cr.P.C. Similar view was taken by the Allahabad High Court as far back as 1886 in Queen Empress v. Ram Narain and Another. (ILR 8 All 514) Although that was a case in which the appeal had been dismissed by the Sessions Judge, the consideration prevailing in such a case may equally well apply to cases where the High Court dismisses an appeal in limine for the reason, inter alia, that this court may, when approached by the aggrieved party to exercise its power under Article 136 of the Constitution, have the benefit of the views of the High Court. With speaking orders justice is also seen to be done.

8. Turning now to the decisions directly dealing with the point raised by the appellants, this court has consistently and uniformly held that in cases raising arguable points the High Court would be well-advised to make speaking orders indicating their reasons, however concise, inducing them to dismiss the appeals in limine. The learned counsel on behalf of the State, Mrs. Urmila Kapur, without disputing that where arguable and substantial questions of fact or law are raised on appeal the High Court is, according to the decisions of this court, expected to write a speaking order, however brief, dealing with and disposing of the points canvassed before it, submitted that in the present case there were no arguable or substantial points involved and, therefore, the High Court was justified in dismissing the appeal in limine without indicating its reasons therefor. She, however, referred us specifically to an unreported decision of this Court in Mohammed Ayub Abbas Raut v. The State of Maharashtra. (Cri Appeal No. 145 of 1961, decided on March 25, 1963) According to the learned counsel, this decision has not been noticed by this court in its latter decisions disapproving the dismissal in limine by the High Courts of appeals from judgments of learned Sessions Judges. This argument, on first impression appeared to suggest that the learned counsel wanted us to re-examine the numerous decisions of this court uniformly disapproving the practice, with one word "dismissed", appeals from the Sessions Courts even where arguable points of fact or law are apparent on the face of the impugned judgment or order. Mrs. Kapur, however, soon clarified her position by submitting that she only wanted to contend that in the present case this court should not interfere with the High Court's judgment as there were no arguable or substantial points involved in the appeal and Mohd. Ayub case (supra) was only cited as a precedent to support this contention. According to her the judgment of the Trial Court is detailed and well-considered, sound reasons having been given in support of its conclusions : it was accordingly unnecessary for

the High Court to specifically deal with the various points raised in the petition of appeal and to record its reasons for rejecting various grounds of challenge canvassed before it.

9. In our view, Mohd. Ayub Abbas Raut (supra) does not in any way cast a doubt on the soundness of the various reasons which have consistently prevailed with this court firmly disapproving dismissal in limine with one word "dismissed" of appeals before the High Courts from the judgments of Sessions Courts which raised arguable points of fact or law. The view expressed in earlier decisions was not dissented from. Indeed no reference was made to them. On the contrary it was observed that in the findings of the Trial Court not considered erroneous by the High Court the latter was justified in dismissing the appeal in limine as it had full power to do so in exercise of its discretion under Section 421, Cr.P.C. That the High Court has power to dismiss in limine has always been accepted by this Court. What this court has consistently and uniformly laid down is that where arguable points of fact or law are raised then the High Court would be well-advised to indicate its reasons for dismissing the appeal in limine. This view is now firmly established and there has never been any dissent. No doubt, even now we come across stray cases from some High Courts in which, either in ignorance of the legal position firmly settled by this court in a string of authorities, or erroneously thinking that there is no arguable point of fact or law involved in an appeal under Section 410, Cr.P.C., from the judgments of Sessions Court, actually and prima facie raising arguable points on the question of appreciation of evidence, appeals are dismissed in limine with one word "dismissed" without indicating the reasons. It is because of such cases that we consider it necessary once again to refer to some of the decisions of this court in which the legal position has been declared and re-stated.

10. In Mushtak Hussein v. The State of Bombay, (1953 SCR 809 : AIR 1953 SC 282 : 1953 SCJ 339 : 1953 Cri LJ 1127) Mahajan, J., (as he then was) observed :

> "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 though it fit to deal with all of them. In cases which prima facie raise no arguable issue that 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."

11. In Bhagat Singh v. State of Rajasthan, ((1969) 3 SCC 763) Bhargava and Hegde, JJ, sent the case back for re-decision as the appeal had been dismissed summarily. The same Bench in Vishwanath Shankar Beldar v. The State of Maharashtra, ((1969) 3 SCC 883 : 1970 SCC (Cri) 138) adopted a similar course. The view expressed in Mushtak Hussein (supra) was reiterated in K. K. Jain v. State of Maharashtra. ((1973) 3 SCC 299 : 1973 SCC (Cri) 253) In Jiwan Prakash v. State of Maharashtra, ((1972) 3 SCC 266 : 1972 SCC (Cri) 491) this Court had drawn the attention of the High Courts to as many as 13 cases in which this court had consistently sent the matters back for re-hearing. In Shaikh Mohd. Ali v. State of Maharashtra, ((1972) 2 SCC 784 : 1973 SCC (Cri) 111) Shelat, J., speaking for the court again emphasised that a High Court would not be justified in dismissing summarily and without a speaking order an appeal raising arguable either factual or legal. Reference in this decision was made to Mushtak Hussein (supra) and Jiwan Prakash (supra), since then on several occasions again this Court has reaffirmed this view. The most recent decision

in which this Court felt constrained to remand the case to the High Court for a fresh decision is Rajendrapaul Ramasaran Das Sharma v. The State of Maharashtra. (Cri. Appeal No. 264 of 1972, decided on February 23, 1973 : (1973) 1 SCC lxvii) In that decision various aspects have again been considered to impress upon the High Court the inexpediency and impropriety of disposing of with one word "dismissed" the appeals before it which raise arguable points.

12. The contention that, when the trial court records a well reasoned judgment, then, even though arguable points on the question of credibility of witnesses are raised, it is unnecessary for the court of appeal to deal with all these points and record its own reasons for agreeing with the conclusions of the trial court, is unacceptable. The right of appeal conferred on a convicted person gives him a right to challenge the reasoning and finding on the appraisal of evidence both oral and documentary by the trial court and unless the challenge can be held to be prima facie unimpressive and unarguable the High Court would be well-advised to go into the points canvassed and record its reasons. Such a court would be in accord with the statutory intendment, and also of assistance to this Court in more satisfactorily dealing with appeals under Article 136 of the Constitution.

13. The Judgment of the Trial court in the present case clearly shows that in order to arrive at a safe conclusion the entire evidence on the record has to be closely scrutinised. The trial court devoted several pages for the purpose of proper appraisal of the evidence discarding some of the contentions of the prosecuting counsel, as insupportable on the material on the record. That court also noticed some discrepancies in the evidence of some of the witnesses for the prosecution, considered them to be minor and, therefore, immaterial. It further found defects in the working of the Railways as regards the movement of goods wagons and according to the trial court, had there been a proper system of checking and tallying at the relevant railway stations, what has unfortunately happened in the present case would perhaps have been avoided. On appraisal of the evidence, the offences under Sections 467 and 468, I.P.C. were held not proved, there being no reliable evidence on those points. Again, on the actual fraudulent or dishonest use of forged documents also the trial court felt that the prosecution evidence fell short of the main ingredients and only an attempt had been made by the accused persons to use the forged documents with the result that they were acquitted of the charge under Section 471, I.P.C. The trial court also seems to have taken into account the suspicious conduct of the appellants in coming to the conclusion about their guilt under Section 420, I.P.C. read with Sections 415/34, I.P.C. and under Sections 474/34, I.P.C. This discussion clearly shows that the appellants were not unjustified in claiming to have the evidence on the record re-examined by the High Court for coming to its own conclusions, of course, after considering the views of the trial court and giving due weight to that court's reasoning and conclusion. Recording of reasons by the High Court for its conclusion on all the relevant aspects was thus necessary because even the trial court had not completely and unreservedly accepted the evidence led by the prosecution and the charges pressed against the appellant. The points raised as disclosed in the petition of appeal could by no means be said to be unarguable. Without expressing any opinion on the merits of the case, we are constrained to allow this appeal and send the case back to the High Court for a fresh decision in the light of the observations made above. Had the High Court recorded its reasons in support of the order dismissing the appeal perhaps this remand could have been avoided and the appellants saved the further delay in the final disposal of their appeal by the High Court. The appeal is accordingly allowed and the case sent back for a fresh decision.

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