Dhondiba Gundu Pomaje and Others

Vs

The State of Maharashtra

Criminal Appeal No. 325 of 1974

(P. Jagmohan Reddy, P. K. Goswami JJ)

17.09.1974

JUDGMENT

JAGANMOHAN REDDY, J. -

1. We have just now admitted the special leave petition and after the appeal was registered heard the learned Advocates for the parties. This is yet another case in which a criminal first appeal against a conviction has been dismissed summarily under Section 421 of the Criminal Procedure code. We have heard both sides. Mr. Wad for the State has strenuously contended that the High Court has power to dismiss summarily and has cited several decisions, but in all these cases there is nothing to the contrary to justify a view different from the one we are taking in this case. It is submitted that the dismissal was so summary that even the record was not called for. No doubt, Section 421, Criminal Procedure Code does vest a power in the High Court to dismiss an appeal summarily but it can do so only on a perusal of the petition and the copy of the judgment. Inasmuch as under our Constitution any person aggrieved by an order of the High Court can petition to this Court under Article 136 for special leave, it is not only necessary but having regard to the long series of decisions beginning as far back as 1953 (see 1953 SCR 809 (Mushtak Hussein v. State of Bombay, AIR 1953 SC 282 : 1953 Cri LJ 1127)) onwards which discourages this practice of dismissal by one word 'dismissed', the High Court should at least have given some reasons why no arguable case is made out on a perusal of those documents. Since we are not in a position to ascertain and it is contended before us that arguable points do arise in this case in support of which the statement made in special leave petition has been read to us, we are not in a position to say that an arguable case does not arise. We would have been able to do so even if we had the slightest inkling in the order of the High Court. In the absence of any reasons what has been happening in many cases is that special leave is admitted, and after hearing the appeal if this Court has come to the conclusion that the conviction is valid, it has held that the dismissal by the High Court is justified. But this method, in our view, reverses the process and imposes unnecessary burden on this Court. What should have been done by the High Court, is now being done by this Court. It is only after sending for the records, getting the paper books prepared, hearing both parties in the appeal and after appreciation of the evidence that it may be held that in some cases the dismissal, in fact, was ultimately justified. In many cases the appeals were even allowed.

2. Long avoidable delay thus ensues during which the person convicted entertains a doubt about his conviction and has to suffer the anxiety cause thereby.

3. We do hope and trust that the series of decisions over this long period disapproving of the practice of summarily dismissing by one word will be taken note of and this Court will not be ultimately burdened with such appeals arising out of summary dismissals which is really the

function of the High Court at the first instance.

4. The appeal is accordingly allowed. The order of the High Court is set aside. The appeal is remanded to the High Court for hearing for admission and disposal in accordance with law and in the light of the directions made hereinabove.

</html