

Munir Sayed Ibna Hussain

Vs

The State of Maharashtra and Another

Criminal Appeal No. 191 of 1971

(P. K. Goswami, H. R. Khanna, M. H. Beg JJ)

12.11.1975

JUDGMENT

BEG, J. -

1. The allegations, on questions of fact raised in the appeal now before us, were quite unusual. The judgment of a Division Bench of the High Court of Bombay in Criminal Appeal No. 683 of 1971, in respect of coaccused Syed Ali Naki Bade Hasan, who was acquitted on February 25, 1972, shows the nature of the allegations made by the prosecutor in this case. On those allegations, it became necessary to consider whether the accused, who had been put on trial together with six others, was actually in possession of a hotel. The appellant claimed to be the owner of a hotel of which Jagannath, complainant, was said to be the manager. The case of the manager was that he had been forcefully dispossessed by the accused and that certain properties belonging to him and others, including some money, were misappropriated by the accused. Therefore, the appellant and five others were charged under Section 395, Indian Penal Code as well as under Section 452 read with Section 34, I.P.C. According to the accused, Shri Jagannath and his brother, the complainant, were only licencees. However, these are questions relating to the merits of a case in which the trial Court had acquitted accused numbers 3 to 8 and the High Court acquitted accused No. 2. The appeal of the only remaining accused, accused No. 1, who is the appellant before us by special leave was, however, rejected in limine by the High Court without giving any reasons for the rejection.

2. There is while catena of cases which have come up here from the Bombay High Court in which this Court has consistently disapproved of the practice followed by the Bombay High Court of not giving reasons when exercising its power of summary dismissal of criminal appeals which lie both on questions of fact and law. In other High Courts, such appeals are automatically admitted. In any case, it is not possible for this Court to exercise its powers satisfactorily without giving an appellant, who may have an arguable case, an opportunity of first presenting his case to the High Court and getting a decision from it.

3. The power of a summary rejection of a criminal first appeal, even though it is exercisable under the provisions of Section 421, Criminal Procedure Code, should, in our opinion, be only exercised when the Court is satisfied, from a perusal of the judgment as well as the record, that there is absolutely no reasonable possibility of its success for the reasons mentioned in the order. In a case such as the one now before us, it cannot be said that there are no such arguable points that, after High Court had an opportunity of fully considering both sides of the case, it must necessarily dismiss the appeal. At least, in such cases, where there are arguable points, the High Court should give its grounds and reasons support of its decision to reject summarily on some absolutely clinching ground. This Court has laid down the duty upon the High Court to record reasons. (See

Mushtak Hussein v. State of Bombay (1953 SCR 809 : AIR 1953 SC 282); Krishna Vithu Suroshe v. State of Maharashtra ((1974) 3 SCC 404 : 1973 SCC (Cri) 969); Mustaq Ahmed Mohammed Hussain v. State of Gujarat ((1973) 1 SCC 702 : 1973 SCC (Cri) 590); Kapurchand Kesrimal Jain v. State of Maharashtra ((1973) 3 SCC 299 : 1973 SCC (Cri) 253.)

4. It is difficult to believe that judgments of this Court have neither come to the knowledge of the Bombay High Court nor were cited on behalf of the appellant. In any case, the law having been declared by this Court it is the duty of the Bombay High Court to act in accordance with Article 141 of the Constitution and to apply it by giving proper reasons to justify whatever be its view.

5. Accordingly, we allow the appeal and set aside the order of the High Court rejecting the appeal summarily and order that the case will be treated as admitted for regular hearing of both sides by the Bombay High Court, and disposed in accordance with the law.

6. The appellant will continue on bail already granted, during the pendency of the appeal in the High Court.

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