

State of Rajasthan

Vs

Gurcharandas Chadha

Criminal Appeal No. 212 of 1972

(Syed M. Fazal Ali, A. D. Koshal JJ)

06.04.1979

JUDGMENT

FAZAL ALI, J. –

1. This appeal by special leave has been filed by the State against the judgment of the High Court of Rajasthan dated April 11, 1972 by which an application for revision filed by the respondent against an order of the Special Judge framing charges against the respondent under various sections of the Prevention of Corruption Act and IPC was quashed and the case was sent back to the Special Judge for consideration the matter afresh after excluding the materials which according to the High Court were inadmissible in evidence. In support of the appeal, Mr. Hardy, learned Counsel for the appellant, has submitted a short point before us. It appears that the case of the respondent was being tried by a Special Judge who after hearing the parties passed a well reasoned order by which he framed charges against the respondent. Against this order a revision was taken to the High Court which was dismissed and the order of the Special Judge was upheld. Meanwhile, this Court decided in the case of P. Sirajuddin v. State of Madras ((1970) 3 SCR 931 : (1970) 1 SCC 595 : AIR 1971 SC 520) that where the evidence relied on by the prosecution consisted of statements which are signed by the makers of the statements and are obtained under inducement, threat or promise, even if such statements were obtained even before the FIR was lodged, they are inadmissible and cannot form the subject-matter of a charge against the accused. In this connection, this Court observed as follows : (SCC p. 602, paras 18 and 19)

Section 161(1) gives him the right to examine orally any person supposed to be acquainted with the facts and circumstances of the case. Although bound to answer question put to him sub-section (2) of the section exempts a person from answering any question which would have a tendency to expose him to a penal charge or to a penalty for forfeiture. Under sub-section (3) the police officer is empowered to reduce into writing any statement made to him in the course of such examination. Section 162(1) expressly lays down that such a statement made in the course of an investigation if reduced into writing is not to be signed by the maker thereof and no part of such statement except as expressly provided is to be used for any purpose at any enquiry or trial in respect of any such offence under investigation at the time when the statement was made . . . . All the above provisions of the Code are aimed at securing a fair investigation into the facts and circumstances of the criminal case; however serious the crime and howsoever incriminating the circumstances may be against a person supposed to be guilty of a crime the Code of Criminal Procedure aims at securing a conviction if it can be had by the use of utmost fairness on the part of the officers investigating into the crime before the lodging of a charge-sheet. Clearly the idea is that no one should be put to the harassment of a criminal trial unless there are good and substantial reasons for holding it.

After some time the original Special Judge was succeeded by another Special Judge who framed charges and at that time the respondent raised the question of law that as the charges were mainly based on the statement of witnesses who had given signed statements earlier under duress or inducement, the charges should be quashed. The second Special Judge rejected the contention of the respondent and framed the charges. Against this order, the respondent filed a second revision petition before the High Court which was allowed by the impugned order of the High Court. The High Court while allowing the petition observed as follows :

In the result, I partially accept this revision petition and quash the charge-sheet dated January 14, 1972. The Special Judge will exclude from consideration all the statements which have been recorded in violation of the provisions of Sections 162 and 163, CrPc and which are found vitiated in the light of the observations made above. The Special Judge will also exclude portions of the statements recorded by the police which are self-exculpatory and confessional in character and then decide the matter afresh.

Mr. Hardy submitted that the second revision filed by the respondent was clearly not maintainable as it amounted to a review of the order of the High Court which was wholly incompetent, hence, the High Court had no jurisdiction to interfere with the order of the Special Judge in the second revision. In support of his statement, reliance was placed on a judgment of this Court in *State of Orissa v. Ram Chander Agrawala* ((1979) 2 SCC 305 : 1979 SCC (Cri) 462) where it has been clearly held by this Court that neither Section 369 nor Section 424 confer any power on the High Court to review its previous judgment by altering it once it has been signed. It is not disputed that the previous judgment in the first revision had already been delivered and signed by the Court. The second judgment in revision was clearly not maintainable as it amounted to a review of the previous judgment. In these circumstances, therefore, there can be no doubt that the contention raised by the Counsel for the appellant is well-founded. The serious question, however, is, whether in the peculiar facts and circumstances of this case, should we exercise our discretionary powers under Article 136 when the High Court by virtue of the impugned order has merely given effect to a recent decision of this Court as to the admissibility of certain statements. The order of the High Court may be wrong or even without jurisdiction, but there can be no doubt that it has passed a correct and just order which is in consonance with the decision of this Court and is calculated to promote the ends of justice. This Court, therefore, even if the order is wrong, would in exercise of its discretionary special leave jurisdiction refrain from interfering with the order of the High Court. We are of the view that is not a fit case in which we would be justified in interfering particularly when the High Court has itself sent back the case to the Special Judge for excluding the portions of the statements recorded and signed by the maker thereof and then decide the matter afresh. In these circumstances, therefore, we uphold the judgment of the High Court and decline to set aside the order of the High Court. The appeal is accordingly disposed of.

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