

Khaili and Others

Vs

State of Uttar Pradesh

Criminal Appeal No. 137 of 1980

(P. N. Bhagwati, E. S. Venkataramiah JJ)

18.02.1980

JUDGMENT

BHAGWATI, J. -

1. It appears that at the time when Criminal Appeal No. 980 of 1975 came up for hearing before a Single Judge of the Allahabad High Court, the learned Advocate appearing on behalf of the appellant stated that he had no instructions in the case and he would not, therefore, argue it. The reason why he stated that he had no instructions in the case was that he had addressed a communication to the appellants intimating to them that their appeal would be taken up for hearing on August 20, 1979 and requiring them to reach immediately with his fees and expenses for the paperbook so that the appeal could be argued. This communication, though correctly addressed to the appellants, did not reach them and an endorsement was made by the postal department on the envelope to the effect that "no person of this name lives in this area - returned". Now obviously this endorsement was incorrect because the appellants did live at the address at which the communication was sent by the Advocate. But since the communication was not received by them, they could not come to Allahabad and pay the necessary fees and expenses of the Advocate. But even though the fees and expenses were not paid, the Advocate should not, in our opinion, have refused to argue the case. It must be remembered by every advocate that he owes a duty to the court, particularly in a criminal case involving the liberty of the citizen, and even if he has not been paid his fees of expenses, he must argue the case and assist the court in reaching the correct decision. We can appreciate a situation where an advocate may be unable to argue the case in the absence of instructions from the client, but non-receipt of fees and expenses can never be a ground for refusing to argue the case. The learned Advocate in the present case, however, refused to argue the case and consequently the learned Judge went through the record of the case and decided the appeal. Now one thing is clear that howsoever diligent the learned Judge might have been and howsoever careful and anxious to protect the interests of the appellants, his effort could not take the place of an argument by an advocate appearing on behalf of the appellants. We think that in a case such as this, what the learned Judge should have done was to appoint an advocate amicus curiae and then proceed to dispose of the appeal on merits.

2. We are, therefore, of the view that the Order passed by the learned Judge dismissing the appeal must be set aside and the appeal must be remanded to the High Court for being disposed of in accordance with law after hearing the appellants.

3. We accordingly allow the appeal, set aside the judgment of the High Court and send the appeal back to the High Court so that the High Court may dispose of it in accordance with law.

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