

Dr. R.V. Murthy

Vs

State of Maharashtra

Criminal Appeal No. 575 of 1981 in Special Leave Petition (Criminal) No. 2158 of 1980

(D.A. Desai, R.B. Misra JJ)

24.07.1981

JUDGMENT

1. Special leave to appeal granted.

2. We have heard counsel for the parties. This appeal by special leave is directed against an order passed by the Karnataka High Court which while granting leave to appeal for the State against the order of acquittal passed by the trial court in favour of accused 1 to 5 and 9, also passed an order issuing notice to accused 6 to 8, one of whom is the appellant in this appeal. The High Court directed the appellant to show cause why he should not be sent up for trial. Mr. Nettar, appearing for the State, frankly conceded that he was not in a position to support the order passed against the appellant. The High Court had no jurisdiction at this stage to pass any order against the appellant without hearing the appeal and coming to a clear finding that an offence has been made out against the appellant. If the High Court comes to such a finding after examining the materials then it may have exercised discretion under Section 482, CrPC in directing the trial of the appellant. In the instant case, however, the High Court had no jurisdiction to issue notice to the appellant even before hearing the appeal on merits. The order passed by the High Court at the initial stage amounts to a serious abuse of the process of the court inasmuch as it compels the appellant to rebut a charge never made or an allegation never proved against him. Such a cause of action at this stage results in gross and substantial injustice to the appellant and amounts to a gross misuse of power of the High Court under Section 482, CrPC. For these reasons, therefore, we allow the appeal, set aside that portion of the order of the High Court by which while granting leave to appeal to the State notice has been issued to the appellant to show cause why he should not be sent for trial.

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