

Shivaji Narayan Bachhav

Vs

State of Maharashtra

Criminal Appeal No. 386 of 1983

(O. Chinnappa Reddy, E. S. Venkataramiah JJ)

18.08.1983

ORDER

CHINNAPPA REDDY, J. –

1. Special Leave granted.

2. The appeal of the accused to the High Court was dismissed summarily with the one word 'dismissed', placing this Court in a most embarrassing position in dealing with the special leave petition under Article 136 of the Constitution. Such summary rejection of appeals by the High Court has been disapproved by this Court more than thirty years ago in *Mushtak Hussein v. State of Bombay* [1953 SCR 809 : AIR 1953 SC 282 : 1953 Cri LJ 1127] and thereafter, over the years, in a series of cases from the same High Court : *Shreekantiah Ramayya Munipalli v. State of Bombay* [AIR 1955 SC 287 : (1955) 1 SCR 1177 : 1955 Cri LJ 857], *Vishwanath Shankar Beldar v. State of Maharashtra* [(1969) 3 SCC 883 : 1970 SCC (Cri) 138], *Siddanna Apparao Patil v. State of Maharashtra* [AIR 1970 SC 977 : (1970) 1 SCC 547 : 1970 SCC (Cri) 224], *Narayan Nathu Naik v. State of Maharashtra* [AIR 1971 SC 1656 : (1970) 2 SCC 101 : 1970 SCC (Cri) 316], *Govinda Kadtuji Kadam v. State of Maharashtra* [AIR 1970 SC 1033 : (1970) 1 SCC 469 : 1970 SCC (Cri) 204], *Shaikh Mohd. Ali v. State of Maharashtra* [AIR 1973 SC 43 : (1972) 2 SCC 784 : 1973 SCC (Cri) 111], *Kapurchand Kesrimal Jain v. State of Maharashtra* [AIR 1973 SC 243 : (1973) 3 SCC 299 : 1973 SCC (Cri) 491], *Jeewan Prakash v. State of Maharashtra* [AIR 1973 SC 278 : (1972) 3 SCC 266 : 1972 SCC (Cri) 491], *Mushtaq Ahmed v. State of Gujarat* [AIR 1973 SC 1222 : (1973) 1 SCC 702 : 1973 SCC (Cri) 590], *Krishna Vithu Suroshe v. State of Maharashtra* [AIR 1974 SC 274 : (1974) 3 SCC 404 : 1973 SCC (Cri) 969], *Sampata Tatyada Shinde v. State of Maharashtra* [AIR 1974 SC 791 : (1974) 4 SCC 213 : 1974 SCC (Cri) 382], *Dagadu v. State of Maharashtra* [1981 Cri LJ 724 : (1981) 2 SCC 575 : 1981 SCC (Cri) 564 : (1981) 3 SCR 288 : AIR 1981 SC 1218]. We are pained, and not a little perturbed, that despite the long series of judgments all arising from cases from the same High Court, the High Court has not chosen to correct itself and continues in the error of its ways. Except in certain cases when an accused person has pleaded guilty and in petty cases, every person convicted of an offence has a right of appeal under the Criminal Procedure Code. An appeal may be both against conviction and sentence and on facts and law. A convicted person is entitled to ask an appellate court to reappraise the evidence and come to its own conclusion. An appellate court has the undoubted power to dismiss an appeal in limine. Section 384 of the Criminal Procedure Code provides for it. But, it is a power which must be exercised sparingly and with great circumspection. One would think a conviction for murder and a sentence of imprisonment for life, as in the case before us, were serious enough matters for the High Court to warrant 'admission' of the appeal and fair and independent consideration of the evidence by the High Court. Summary rejection of the appeal with the laconic expression 'dismissed' seems to be a drastic step in such

cases. To so reject an appeal is to practically deny the right of appeal. We cannot also overemphasise the importance of the High Court making a speaking order when dismissing a criminal appeal in limine. "The requirement of recording reasons for summary dismissal, however concise, serves to ensure proper functioning of the judicial process". There must be some indication that the High Court addressed itself to the questions at issue and had the record before it. In the present case there is not even an indication whether the record had been called for and whether it was before the Court. We have little option but to set aside the order of the High Court. The High Court may now 'admit' the appeal and deal with it according to law.

</html