Raghunath Laxman Makadwada

Vs

State of Maharashtra

Criminal Appeal No. 134 of 1986

(O. Chinnappa Reddy, V. Khalid JJ)

12.02.1986

ORDER

CHINNAPPA REDDY, J. -

1. Special leave granted.

2. The Bombay High Court has done it again. A Division Bench of the Bombay High Court consisting of Desai and Kotwal, JJ. has once again dismissed in limine a criminal appeal against a conviction for murder and sentence of imprisonment for life with a single word order : "dismissed". Not once but a dozen times and every time in an appeal from the Bombay High Court, this Court had occasion to point out the impropriety of such summary rejection of an appeal without a speaking order. Again and again the Bombay High Court persists in dismissing criminal appeals in limine without speaking orders. In Shivaji Narayan Bachhav v. State of Maharashtra ((1983) 4 SCC 129 : 1983 SCC (Cri) 786) we had referred to several of the earlier cases and stated : (SCC pp. 130-131, para 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 Hussain 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 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 ((1970) 1 SCC 547: 1970 SCC (Cri) 224), Narayan Nathu Naik v. State of Maharashtra ((1970) 2 SCC 101 : 1970 SCC (Cri) 316), Govinda Kadtuji Kadam v. State of Maharashtra ((1970) 1 SCC 469 : 1970 SCC (Cri) 204), Shaikh Mohd. Ali v. State of Maharashtra ((1972) 2 SCC 784 : 1973 SCC (Cri) 111), Kapurchand Kesrimal Jain v. State of Maharashtra ((1973) 3 SCC 299 : 1973 SCC (Cri) 253), Jeewan Prakash v. State of Maharashtra (1972) 3 SCC 266 : 1972 SCC (Cri) 491), Mushtaq Ahmed v. State of Gujarat ((1973) 1 SCC 702 : 1973 SCC (Cri) 590), Krishna Vithu Suroshe v. State of Maharashtra ((1974) 3 SCC 404 : 1973 SCC (Cri) 969), Sampata Tatyada Shinde v. State of Maharashtra ((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). 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.

3. More than any other authority in the land, we expect the High Court to regard the pronouncements of his Court with respect and to abide by them. We have said enough to reiterate what we have always said before and we sincerely hope that it won't be necessary for us to say so again.

4. We wish to add that whenever a further right to question the judgment of a court or tribunal is provided by the Constitution or statute, the court or tribunal should make a speaking order when finally adjudicating the case. We notice that writ petitions under Article 226 of the Constitution are often dismissed by the High Courts without a speaking order thus virtually compelling the Supreme Court to re-hear the matter in a petition under Article 136 of the Constitution. If a speaking order, however brief, is made, it will be most helpful to this Court in dealing with applications under Article 136 of the Constitution.

5. The order of the High Court is set aside and the appeal is remanded to the High Court for fresh disposal. The High Court may now admit the appeal and deal with it according to law.

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