

Pandurang and Others

Vs

State of Maharashtra

Criminal Appeal No. 516 of 1986

(K. N. Singh, M. P. Thakkar JJ)

30.09.1986

JUDGMENT

THAKKAR, J. -

1. 'Right', or 'wrong', 'guilty' or 'not guilty', is not the question. Whether the learned Single Judge had the 'right' to hear and decide the appeal and hold that the appellants were guilty whilst setting aside their acquittal by the judgment under appeal [Criminal Appeal No. 90 of 1983, decided by the High Court of Bombay (Aurangabad Bench) on June 13, 1986 resulting in the present appeal by special leave] is the question which has surfaced in the context of a judgment rendered by a learned Single Judge which according to the relevant rules of the High Court was required to be heard and decided by a Division Bench.

2. The State of Maharashtra (respondent herein) preferred an appeal to the High Court of Bombay in order to challenge the order of acquittal rendered by the lower court in favour of the present appellants. The acquittal was in respect of an offence under Section 7(1) read with Sections 16 and 17 of the Prevention of Food Adulteration Act, 1954. The offence was punishable with a sentence of imprisonment exceeding two years [Section 16 of the Prevention of Food Adulteration Act, 1954 :

16. Penalties. - Subject to the provisions . . . he shall, in addition to the penalty to which he may be liable under the provisions of Section 6, be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years, and with fine which shall not be less than one thousand rupees : . . .]. The appeal was, therefore, required to be heard by a Division Bench of the High Court and not by a learned Single Judge.

3. Such is the problem that has arisen in the context of Rule 1 read with Rule 2-II(e) of the Bombay High Court Appellate Side Rules, 1960 [Rule 1 : The civil and criminal jurisdiction of the court, on the appellate side, shall, except in cases where it is otherwise provided for by these rules, be exercised by Division Bench consisting of two or more judges.

Rule 2-II(e) : Save as otherwise expressly provided by these rules, a Single Judge may dispose of the following matters :

II Appeals against convictions in which only a sentence of fine has been awarded or in which the sentence of imprisonment awarded does not exceed five years with or without fine, appeals against acquittals wherein the offence with which the accused was charged is one punishable on conviction with a sentence of fine only or with a

sentence of imprisonment not exceeding two years or with such imprisonment and fine, and appeals under Section 377 of the Code of Criminal Procedure, revision applications and court notices for enhancement of sentence for offences punishable on conviction with sentence of imprisonment not exceeding two years or with such imprisonment and fine.

(e) Applications for leave to appeal under Section 378(4) of the Code of Criminal Procedure against acquittals wherein the offence with which the accused was charged is one punishable on conviction with a sentence of fine only or with a sentence of imprisonment not exceeding two years or with such imprisonment and fine.]. What then is the consequence ? Is the order of conviction and sentence recorded by the learned Single Judge who allowed the appeal merely irregular or void ?

4. When a matter required to be decided by a Division Bench of the High Court is decided by a learned Single Judge, the judgment would be a nullity, the matter having been heard by a court which had no competence to hear the matter, it being a matter of total lack of jurisdiction. The accused was entitled to be heard by at least two learned Judges constituting a Division Bench and had a right to claim a verdict as regards his guilt or innocence at the hands of the two learned Judges. This right cannot be taken away except by amending the rules. So long as the rules are in operation it would be arbitrary and discriminatory to deny him this right regardless of whether it is done by reason of negligence or otherwise. Deliberately, it cannot be done. Negligence can neither be invoked as an alibi, nor can cure the infirmity or illegality, so as to rob the accused of his right under the rules. What can be done only by at least two learned Judges cannot be done by one learned Judge. Even if the decision is right on merits, it is by a forum which is lacking in competence with regard to the subject matter. Even a 'right' decision by a 'wrong' forum is no decision. It is non-existent in the eye of law. And hence a nullity. The judgment under appeal is therefore no judgment in the eye of law. This Court in *State of M.P. v. Dewadas* [(1982) 3 SCR 81 : (1982) 1 SCC 552 : 1982 SCC (Cri) 275 : AIR 1982 SC 800] has taken a view which reinforces our view. We, therefore, allow the appeal, set aside the order passed by the learned Single Judge, and send the matter back to the High Court for being placed before a Division Bench of the High Court, which will afford reasonable opportunity of hearing to both the sides and dispose it of in accordance with law, expeditiously.

We wish to add that the Registry of the High Court was expected to have realized the true position and ought not to have created a situation which resulted in waste of court time, once for hearing the appeal, and next time, to consider the effect of the rules. No court can afford this luxury with the mountain of arrears which every court is carrying these days.

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