SUPREME COURT OF INDIA

K. Pandurangan

Vs.

S. S. R. Velusamy

Crl.A.No.1682 with 1684, 1683 and 1685 of 1996

(N. Santosh Hegde and B. P. Singh JJ.)

18.09.2003

JUDGEMENT

Santosh Hegde, J.

1. In these appeals, the appellants were charged for offences punishable under S. 420, 477(a), 468, 420 read with S. 109, 409 read with 109 and 468 read with 109, IPC. The trial Court, namely, the VIth Additional Assistant Sssions Judge, Thiruchirapalli, convicted the appellants under various sections, among them, for offences punishable under S. 420 and S. 420 read with 109, I.P.C. It awarded a maximum sentence of 5 years' R.I.

2. On an appeal filed by the convicted accused, the appellate Court confirmed the conviction recorded by the trial Court but reduced the sentence to 2½ years each and further acting purportedly under various GOs. of the Government, it granted remission of the said sentence of 2½ years also.

3. In a revision filed by the complainant, the High Court of Judicature at Madras considering the question of jurisdiction of the Court to remit the sentence under the various G. Os. came to the conclusion that such a remission could not have been granted by the Court, hence, allowed the revision. It also came to the conclusion that there is no need to remit the matter back to the lower appellate Court, accordingly, set aside the impugned judgment of the lower appellate Court and restored the judgment of the trial Court both in regard to conviction and sentence. The effect of the said judgment was that the appellants have to undergo the sentence of 5 years awarded by the trial Court.

4. In these appeals, Shri M. N. Krishnamani, learned Senior Counsel appearing for the appellants contended that the High Court was in error in entertaining the revision at the instance of the complainant. He also submitted that the High Court was in error in setting aside the judgment of the lower appellate Court which granted the appellants benefit of remission. Alternatively he contended that neither the lower appellate Court nor the High Court have gone into the merits of the case on facts, hence, they have been denied the benefit of appeal which is otherwise provided under the Criminal Procedure Code.

5. While Shri A. T. M. Ranga Ramanujam, learned Senior Counsel appearing for the State strongly supported the judgment of the High Court and contended that from the purport of the order of the lower appellate Court, it is clear that the Court had applied its mind in regard to the facts of the case before confirming the conviction. He also submitted that it is possible that the counsel appearing for the appellants before the lower appellate Court did not address any argument on merits, therefore, the complaint of the learned counsel for the appellants that the appellants did not get benefit of the appeal on facts is not correct. He supported the finding of the High Court on the question of grant of remission which he submitted, was without jurisdiction.

6. So far as the first question as to the maintainability of the revision at the instance of the complainant is concerned, we think the said argument has only to be noted to be rejected. Under the provisions of *Code of Criminal Procedure, 1973*, the Court has suo motu power of revision, if that be so, the question of the same being invoked at the instance of an outsider would not make any difference because ultimately it is the power of revision which is already vested with the High Court statutorily that is being exercised by the High Court. Therefore, whether the same is done by itself or at the instance of a third party will not affect such power of the High Court. In this regard, we may note the following judgment of this Court in the case of *Nadir Khan v. The State (Delhi Administration)*[1].

7. The second question that has come up for our consideration in this case pertains to the right of the lower appellate Court to grant various remissions under various notifications issued by the State, reference to which has been made by the lower appellate Court in its judgment. The right to grant remission is governed by the provisions of S. 432 of the Code of Criminal Procedure which vests the said power with appropriate Government and not in any Court. Even that power is subject to conditions enumerated in that Section and one such condition is that an accused person who is being granted remission of sentence will have to be in custody, when the decision to grant remission is made by the Government concerned. See proviso to S. 432(5) of the Code which was not the factual position in this case apart from the fact the Court has no jurisdiction of remission of sentence under S. 432 of the Code. Therefore, in our opinion, the first appellate Court was not justified in granting the remission.

8. This leaves us to consider the last question argued before us by the learned counsel for the appellant that the appellants had a right of appeal on facts conferred statutorily by the Code of Criminal Procedure wherein they could have convinced the appellate Court that the findings of the Court below are erroneous and not based on facts. He pointed out from the judgment of the lower appellate Court that there has been no such consideration by the said Court. He submitted that if we are not inclined to accept his argument in regard to the right of the appellate Court to grant remission, then he is entitled to the benefit of hearing before the appellate Court on merits of the case. On facts, he submitted that the contention of the learned counsel for the State that there was no argument addressed by his counterpart on merits of the case before the lower appellate Court is not correct and the same is also not so reflected in the judgment of the said Court. We have also perused the said judgment and we do not think there is any application of mind in regard to the factual aspect of the case by the

lower appellate Court which has merely proceeded to consider the quantum of sentence and grant of remission. Apart from the fact that right of appeal is statutorily provided by the Code, a Constitution Bench of this Court in the case of *A. R. Antulay v. R. S. Nayak and Anr.*[2] has held that deprivation of one statutory right of appeal would amount to denial of procedure established by law under Article 21, and further such denial violates the guarantee of equal protection of law under Article 14 of the Constitution. Placing reliance on the said judgment of this Court, we are of the opinion that since the lower appellate Court, which was the first Court of appeal, has not considered the factual aspect of the case while considering the appeal, we think the appellants have been denied an opportunity of agitating their case on facts against the judgment of the trial Court. In such circumstances, we think the prayer of the learned counsel is justified. Therefore, we allow these appeals, set aside the impugned judgment of the High Court and remand the matter back to the Court of the Sessions Judge at Thiruchirapalli who will hear all appeals which were filed against the judgment and conviction made by the VIth Additional Assistant Sessions Judge, Thiruchira-palli in Calender Case No. 2 of 1988 and other connected matters. Since the matter is very old, we think it appropriate to direct the said appellate Court to dispose of the same on merits within three months from the receipt of the records.

Ordered accordingly.

[1]*AIR 1976 SC 2205*
[2]*(1988(2) SCC 602)*