

CALCUTTA HIGH COURT

Supdt. and Remembrancer of Legal Affairs to the Govt

Vs.

Anwar Ali Sarkar

Criminal Appeal No. 250 of 1953

(Chakravartti, C.J. and Lahiri, J.)

08.07.1955

JUDGMENT

Chakravartti, C.J.

1. This is an application by the State Government under Article 134 (1)(c) of the Constitution of India for leave to appeal to the Supreme Court against certain orders of acquittal passed by this Court in an appeal. The acquittals complained of fall into two classes. In certain cases, the accused concerned has been acquitted of certain of the charges of which he had been convicted by the trial court, while his conviction under certain other charges has been maintained. In the case of one accused, however, he has been acquitted altogether. The State Government desires to appeal not only from the order of the complete acquittal, but also from the orders of what I may call, partial acquittals. They have asked For the re-arrest of three persons, of whom one is the accused who has been acquitted altogether. The two others are persons in whose case the convictions of a more serious offence and the higher sentence passed for them have been set aside, while convictions under a less serious offence and the sentence passed therefore have been maintained, but the shorter sentence having already been served, they also have been set at liberty.

2. In disposing of the application, it is only necessary to say that it is entirely misconceived. The application has been made in disregard of the decision of the Supreme Court in the case of the - '*State Government Madhya Pradesh v. Ramkrishna Ganpatrao*¹',

3. Dealing with the question as to whether Article 134 of the Constitution permitted an appeal by the State Government against an order of acquittal, Mahajan, J. as he then was, observed as follows with the complete concurrence of the remaining members of the Bench :

"Article 134 of the Constitution permits an appeal to this Court from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India if the High Court has on appeal reversed an order of acquittal of an accused person and sentenced him to death.

¹ AIR 1954 SC 20

It does not provide for an appeal from a judgment, final order or sentence in a criminal proceeding of a High Court if the High Court has on appeal reversed an order of conviction of an accused person and has ordered his acquittal. In other words, there is no provision in the Constitution corresponding to Section 417, Criminal Procedure Code and such an order is final, subject, however, to the overriding powers vested in this Court by Article 136 of the Constitution". Explanation is needless. On the construction put by the Supreme Court on Article 134 of the Constitution of India, this application must be held to be not maintainable.

4. It may be said that the terms of sub-clause (c) of Article 134 are perfectly general, not less general than those of Article 136, and that therefore there is no apparent reason why appeals against acquittals should be regarded as excluded from, its purview. It is not open to us to entertain an argument of that kind. We have no right to assume that their Lordships of the Supreme Court overlooked sub-clause (c) of Article 134 or that having noticed it, they did not intend to pronounce on its effect. They had before them a case in which the High Court had set aside a conviction in an appeal and passed an order of acquittal and they say in the clearest terms that subject to any order that might be made under Article 136, the acquittal was final. They say further that an appeal against such an order of acquittal does not come under Article 134. When the Supreme Court to which the present appeal is proposed to be taken has itself said that no appeal would lie in such a case under Article 134 we have no jurisdiction to hold to the contrary.

5. The application is accordingly rejected.

Lahiri, J.

6. I agree.

Application dismissed.