Haripada Dey vs The State Of West Bengaland Another on 5 September, 1956

Equivalent citations: 1956 AIR 757, 1956 SCR 639, AIR 1956 SUPREME COURT 757, 1957 SCC 28, 1957 ALL. L. J. 70, 1957 BLJR 23, 1956 SCJ 701

Author: Natwarlal H. Bhagwati

Bench: Natwarlal H. Bhagwati, Syed Jaffer Imam, P. Govinda Menon

PETITIONER:
HARIPADA DEY

Vs.

RESPONDENT:
THE STATE OF WEST BENGALAND ANOTHER.

DATE OF JUDGMENT:
05/09/1956

BENCH:
BHAGWATI, NATWARLAL H.
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IMAM, SYED JAFFER
MENON, P. GOVINDA

CITATION:
1956 AIR 757 1956 SCR 639

ACT:
Constitution of India, Art. 134(1)(c)-Jurisdiction of High Court-Certificate on mere question of fact no certificate at all--Constitution of India, Art. 136(1)-Special Jurisdiction of the Supreme Court to intervene on mere question of facts to be invoked -High Court not to arrogate that function to itself-Evidence-Prosecution not to be blamed for the lacuna to adduce evidence by defence.

HEADNOTE:
The High Court has no jurisdiction to grant certificate under Art. 134(1)(c) of the Constitution on mere question of fact, and is not justified in passing on such question to the Supreme Court for further consideration, thus converting the , Supreme Court into a Court of Appeal on facts.

No doubt the Supreme Court, in case of gross miscarriage of justice or departure from legal procedure such as vitiates the whole trial, possesses the power and has special jurisdiction to intervene under Art. 136(1) of this Constitution and also if the findings of fact were such as were shocking to judicial conscience; but no High Court can arrogate that function to itself because it finds itself helpless to redress the grievance. Certificate granted on mere question of fact would be no certificate at all; High-Court should refuse such certificates under Art. 134(1)(c) and should ask the parties to approach the Supreme Court to invoke its special jurisdiction under Art. 136(1) of the Constitution.

The accused and not the prosecution is to be blamed for the lacuna in the defence in not adducing evidence in support of his contentious, which if forthcoming would have demolished the case of the prosecution.

Narsingh and another v. The State of Uttar Pradesh, ([1955] 1 S.C.R. 238), Baladin & Others v. The State of Uttar Pradesh, (A.I.R. 1956 S.C. 181) and Sunder Singh v. The State of Uttar Pradesh, (A.I.R. 1956 S.C. 411), referred to.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 86 of 1954.

Appeal under Article 134(1)(C) of the Constitution of India from the judgment and order dated the 27th-May 1954 of the Calcutta High Court in Criminal Appeal No. 158 of 1953.

Sukumar Ghose for the appellant D. N. Mukerjee for P. K. Bose for respondent No. 1. K. L. Arora for respondent No. 2.

1956. September 5. The Judgment of the Court was delivered by BHAGWATI J.-The Appellant was charged under Section 411, Indian Penal Code with Dishonestly receiving or retaining in his possession one Hillman Car number WBD 4514 bearing Engine and Chassis No. A1178482 WSO knowing, or having reason to believe the same to be stolen property. The learned Presidency Magistrate, Calcutta, convicted him of this offence and sentenced him to rigorous imprisonment for 2 years. The Appellant took an appeal to the High Court at Calcutta and a Division Bench of the High Court constituted by Mr. Justice Jyoti Prokash Mitter and Mr. Justice Sisir Kumar Sen dismissed the appeal confirming the conviction and sentence passed upon him. The Appellant filed a peti- tion for leave to appeal to this Court and that petition according to what we are told is the practice obtaining in the Calcutta High Court came before a Division Bench differently constituted-a Bench constituted by the learned Chief Justice and Mr. Justice S. C. Lahiri. This Bench allowed the petition and ordered that a certificate for leave to appeal under article 134(1)(c) of the Constitution may be drawn up. In an elaborate judgment the learned Chief Justice observed:

> "In my view a certificate-of fitness ought to issue in this case, although the question involved is one of fact".

After discussing in detail the various circumstances in the case which did not meet with his approval, he wound up by saying:

> "In my view it is impossible not to feel in this case that there has not been as full and fair a trial as I ought to have been held. In the circumstances, it appears to me that the petitioner is entitled to have his case further considered and since such further consideration can only be given by the Supreme Court, I would grant the certificate prayed for".

Contrary to what we had in the previous case before us, viz., Criminal Appeal No. 146 of 1956 (Om Prakash v. The State of Uttar Pradesh), where no reasons were given as to why the Court exercised its discretion in granting the certificate, in this judgment we have an elaborate discussion as to why such discretion was being exercised. by the Court. The reasoning, however, does not, appeal to us. Whatever may have been the misgivings of the learned Chief Justice in the matter of a full and fair trial not having 'been held we are of the opinion that he bad no jurisdiction to grant a certificate under article 134 (1) (c) in a case where admittedly in his opinion the question involved was one of fact-where in spite of a full and fair trial not having been vouchsafed to the appellant, the question was merely one of a further consideration of the case of the Appellant on facts. The mere disability of the High Court to remedy this circumstance and vouchsafe a full and fair trial could not be any justification for granting a certificate under article 134(1) (c) and converting this Court into a Court of Appeal on facts. No High Court has the jurisdiction to pass on mere questions of fact for further consideration by this Court under the relevant articles of the Constitution. We no doubt possess that power and in proper cases have exercised it under article 136(1). If there has been a gross miscarriage of justice or a departure from legal procedure such as vitiates the whole trial we would certainly intervene and we would also intervene if even the findings of fact were such as were shocking to our judicial conscience and grant in such cases special leave to appeal under article 136(1). That is, how- ' ever, a special jurisdiction which we can exercise under article 136(1), but no High Court can arrogate that function to itself and pass on to us a matter which in its view is purely one involving questions of fact, because it finds itself helpless to redress the grievance. In such a case, the High Court should refuse to give a certificate under article 134(1)(c) and ask the parties to approach us invoking our special jurisdiction under article 136(1) of the Constitution. We are, therefore, of the opinion that the discretion that was so elaborately exercised by the Calcutta High Court in this case was wrongly exercised. The certificate purporting to have been granted under article 134(1)(c) was no certificate at all and it does not avail the appellant before us. Following our decisions in Narsingh and another v. The State of Uttar Pradesh(1), Baladin & Others v. The State of Uttar Pradesh(2) and Sunder Singh v. The State of Uttar Pradesh(3), Mr. Sukumar Ghose for the appellant urged that this was a fit case where we should exercise our discretion and grant the appellant special leave to appeal under article 136(1) of the Constitution. He pointed out that even though the appellant had led no evidence in defence there were on the record of the case certain documents which if taken as proved would have been sufficient to demolish the prosecution case. These were commented upon by the learned Chief Justice in the judgment which he delivered when

certificate for leave to appeal under article 134(1)

(c) was grunted by him. These documents, it was urged, went to show that sometime before the car in question was stolen, an application had been made by the appellant to the police authorities in Chandarnagore for registration of Hillman Minx 1951 Model car which bore the same number on the engine, chassis and tin-plate as the car in question and on that application, investigation had been made by the A.S.I. police, who made his report, the contents of which would go to establish the case which was put forward by the appellant in his defence. It is no doubt true that the prosecution has got to prove its case beyond reasonable doubt and the accused need not open his mouth nor lead any evidence. If the prosecution succeeds in establishing its case, the conviction would follow, but if the prosecution fails to discharge the burden which lies upon it to prove the charge which (1) [1955] 1 S.C.R. 238. (2) A.I. R. 1956 B.C. 181.

(3) A.I.R. 1956 S.C. 411.

has been framed against the accused he is entitled to an acquittal. In this case both the Courts below held that the prosecution bad proved its case by the evidence of the witnesses who were called including the motor expert, who on applying chemicals discovered on the engine the very number which was the number on the stolen car. On this state of the evidence, it was the bounden duty of the appellant if he wanted to prove his defence to adduce evidence in support of his contentions and if he did not do so, he had only to thank himself for it. The prosecution could not be blamed for that lacuna and if both the Courts below went on the record as it stood and came, to the conclusion, finding it as a fact, that the prosecution had established its case, it could not be urged, as was sought to be done in the judgment delivered by the learned Chief Justice in the petition for leave to appeal to this Court, that evidence, if forthcoming, would have demolished the case of the prosecution. If those who represented the appellant did not take counsel within themselves and put forward the defence as they should have done, there was no blame on the prosecution nor on the learned Presidency Magistrate who tried the case and came to the conclusion adverse to the appellant. Whatever sentiment appears to have been imported in the Matter has been simply out of place and even if one may have a lurking suspicion at the back of his mind and might feel that there has not been a full and fair trial as ought to have been held, that is no justification for going behind the concurrent findings of fact reached by both the Courts below to the effect that the prosecution had succeeded in establishing the guilt of the appellant. We see nothing in this case to warrant an interference under article 136(1) of the Constitution. This application will, therefore, be rejected and the appeal will stand dismissed. Bail bond cancelled and the appellant to surrender his bail.