Govinda Kadtuji Kadam & Ors vs The State Of Maharashtra on 9 February, 1970

Equivalent citations: 1970 AIR 1033, 1970 SCR (3) 525, AIR 1970 SUPREME COURT 1033, 1970 2 SCJ 613, 1970 (1) ANDHLT 304, 1970 MAH LJ 478, 1970 MPLJ 685, 1970 SCD 481, 1970 MADLJ(CRI) 881

Author: I.D. Dua

Bench: I.D. Dua, A.N. Ray

PETITIONER:
GOVINDA KADTUJI KADAM & ORS.

Vs.

RESPONDENT:
THE STATE OF MAHARASHTRA

DATE OF JUDGMENT:
09/02/1970

BENCH:
DUA, I.D.
BENCH:
DUA, I.D.
RAY, A.N.

CITATION:
1970 AIR 1033 1970 SCR (3) 525
1970 SCC (1) 469
CITATOR INFO :
F 1971 SC 64 (2)
R 1971 SC1606 (19)
R 1973 SC 243 (4,5)
RF 1974 SC 745 (75)
D 1974 SC1150 (2)
R 1981 SC1218 (1)
RF 1983 SC1014 (2)
R 1986 SC1070 (2)

ACT:
Code of Criminal Procedure, (5 of 1898) & 417-High Court-Appeal-Summary dismissal-Duty to indicate views on points raised.

HEADNOTE:

The four appellants along with K, were jointly tried and convicted for offences under s. 147 IPC. They all jointly appealed to the High Court by one memorandum of appeal. The High Court admitted the appeal on behalf of K, and dismissed in limine the appeal on behalf of the appellants.

In appeal to this Court, the appellants challenged the order dismissing in limine the appeal on their behalf, when the appeal of K, co-accused, was admitted for hearing on merits after notice to the State.

HELD : When an appeal in the High Court raises a serious and substantial point which is prima facie arguable it is improper for that court to dismiss it summarily without giving some indication of its view on the points raised. The interest of justice and fairplay require the High Court in such cases to give an indication of its views on the points argued so that this Court, in the event of an appeal from that order being presented here, has the benefit of the High Court's opinion on those points. [527F]

This was an eminently fit case in which, while admitting K's appeal, the appeal on behalf of the appellants was also admitted so that the appeals of all the five accused could be considered together. If K's defence was upheld, then the case against the appellants would also require serious consideration. The evidence on the record would have to be scrutinised at least for determining how far the case of the appellants is distinguishable from that of K. The charge of rioting under s. 147 IPC could only be sustained if an unlawful assembly was held to have been formed. It was, therefore, more appropriate to consider the case of all the accused together on appeal. On this ground also the order of the High Court. is open to objection. [528 G]

Mushtak Hussein v. The State of Bombay, [1953] S.C.R. 809; Shreekantiah Ramayya Munipalli v. The State of Bombay, [1955] 2 S.C.R. 1177; Chittaranjan Das v. State of West Bengal, [1964] 3 S.C.R. 237; Ncrayan Swami v. State of Maharashtra, AIR 1968 SC 609; Jeewan v. State of Rajasthan, Crl. A. No. 274 of 1968 decided on 18-12-1968; Sakha Ram v. State of Maharashtra, Crl. A. No. 258 of 1968 decided on 22-4-69, referred to.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 188 of 1969.

Appeal by special leave from the order dated June 9, 1969 of the Bombay High Court, Nagpur Bench in Criminal Appeal No. 109 of 1969.

W. S. Barlingay, N. K. Kherdekar and A. G. Ratnaparkhi, for the appellants.

G. L. Sanghi, Badri Das Sharma and S. P. Nayar, for the respondent.

The Judgment of the Court was delivered by Dua, J. The four appellants, along with Kondu son of Anibu, were jointly tried in the court of Additional Sessions Judge, Akola on the following charges :

> "That you all accused nos. 1 to 5 on or about 12th day of November, 1967 at about 5-45 a.m. near Farshi on Risod Nazampur Road, formed an unlawful assembly and in prosecution of the common object of such assembly viz. : to commit murder of complainant Vithalrao Khanderao Deshmukh or in order to cause murder of Vithalrao or grievous hurts to him committed the offence of rioting and thereby committed an offence punishable under Section 147 of the Indian Penal Code and within the cognizance of this Court.
>
> That you all on the same date, time and place, were members of unlawful assembly, in prosecution of common object of which viz. : to commit murder of Vithalrao or to cause grievous hurt to him, one or all you caused grievous hurts to him which offence you knew to be likely to be committed in prosecution of the common object of the said assembly you are thereby under section 149 of the Indian Penal Code guilty of causing of the said offence punishable under Section 307 of the Indian Penal Code and within the cognizance of this Court.
>
> That you all on the same date, time and place attempted to cause murder of Vithalrao Deshmukh, in furtherance of common intention and thereby committed an offence punishable under Section 307 read with Section 34 of the Indian Penal Code and within the cognizance of this Court."

The order of the trial court convicting them all concludes thus:

> "All the five accused are convicted for the offence of rioting punishable under Section 147, Indian Penal Code and each is sentenced to rigorous imprisonment for the period of six months and to a fine of Rs. 501-, in default, rigorous imprisonment for two weeks for that offence. accused shall surrender to their bail."

They all jointly appealed to the High Court of Bombay by one memorandum of appeal. Chandurkar, J., admitted the appeal only on behalf of Kondu and dismissed in limine the appeal on behalf of the four -appellants before us. The only point which concerns this Court in the present appeal by special leave relates to the correctness of the order dismissing in limine the appeal on behalf of the four appellants, when the appeal on behalf of Kondu, co-accused was admitted for hearing on the merits after notice to, the State. We may at the outset point out that though on appeal under 410, Cr.P.C. by a person convicted at a trial held by a Sessions judge or an Additional Sessions Judge the appellant is entitled under s. 418 of the Code to challenge the conclusions both on facts and of law and to ask for a reappraisal of the evidence, the appellate court has nevertheless full power under s. 421, Cr.P.C. to dismiss the appeal in limine even without sending for the records, of on perusal of the impugned order and the petition of appeal it is satisfied with the correctness of the order appealed

against. This power, it may be emphasised, has to be exercised after perusing the petition of appeal and the copy of the order appealed against and after affording to the appellant or his pleader a reasonable, opportunity of being heard in support of the appeal. The summary decision is accordingly a judicial decision which vitally affects the, convicted appellant and in a fit case it is also open to challenge on appeal in this Court. An order summarily dismissing an appeal by the word "rejected", as is the case before us, though not violative of -any statutory provision removes nearly every opportunity for detection of errors in the order. Such an order does not speak and is inscrutable giving no indication of the reasoning underlying it. It may at times embarrass this Court when the order appealed against prima facie gives rise to arguable points which this Court is required to consider without having the benefit of the views of the High Court on those points. In our opinion, therefore, when an appeal in the High Court raises a serious and substantial point which is prima facie arguable it is improper for that Court to, dismiss it summarily without giving some indication of its view on the points raised. The interest of justice and fairplay require the, High Court in such cases to give an indication of its views on the points argued so that this Court, in the event of an appeal from that order being presented here, has the benefit of the High Court's opinion on those points. The question of summary dismissal of criminal appeals has come up for consideration before this Court on several occasions and broad principles have been stated more than once. In Mushtak Hussein v. The State of Bombay(1), Mahajan, J., (as he then was) speaking for the Court said at p. 820 :

> "With great respect we are, however, constrained to observe that it was not right for the High Court to have (1) [1953] S.C.R. 809.

dismissed the appeal preferred by the appellant to that court summarily, -as it certainly raised some arguable points which required consideration though we have not thought it fit to deal with all of them. In cases which prima facie raise no arguable issue that course is, of course, justified, but this court would appreciate it if in arguable cases the summary rejection order gives some indication of the views of the High Court on the points raised. Without the opinion of the High Court on such points in special leave petitions under Art. 136 of the Constitution this Court sometimes feels embarrassed if it has to deal with those matters without the benefit of that opinion."

In Shreekantiah Ramayya Munipalli v. The State of Bombay(1) and in Chittaranjan Das v. State of West Bengal (2) this Court, approved the remarks made in Mushtak Hussein's case (3) . Again. in Narayan Swami v. State of Maharashtra (4) this Court, after referring to the earlier three decisions of this Court, emphasised that the High Court should not summarily reject criminal appeals if-they raise arguable and substantial points. Still more recently in Jeewan v. State of Rajasthan (5) this Court disapproved summary -rejection of the appeal by the High Court and in Sakha Ram v. State of Maharashtra(6) this Court reiterated the view that it is desirable for the High Courts when dismissing the appeals in limine to deal with each point urged before them for holding that it is not -necessary to send for the records and to give notice to the State for finally hearing and disposing of the appeal.

In the present case the defence of Kondu accused is that Vithalrao, the injured person, has sustained the injury by falling on a stone while chasing him (Kondu) and his other companions. If that defence

is upheld then the case against the four appellants in this Court would, in our opinion, also require serious consideration. The evidence on the record would have to be scrutinised at least for determining how far the case of the present appellants is distinguish- able from that of Kondu, accused. It was, therefore, an eminently fit case in which, while admitting Kondu's appeal, the appeal on behalf of the present appellants was also admitted so that the appeals of all the five accused could be considered together. It may be recalled that the charge of rioting under s. 147, I.P.C. could only be sustained if an unlawful assembly is held to have been formed. It was, therefore, more appropriate to consider the case of all the accused together on appeal. On this ground also the

(1)[1955] 2 S.C.R. 1177.

(2) [1964] 3 S. C. R. 237.

(3) [1953] S.C.R. 809.

(4) A. 1. R. 1968 S.C. 609.

(5) Cr. A. No. 274 of 1968 decided on 18.12.68. (6) Cr. A. No- 258 of 1968 decided on 22.4.69.

order of the High Court is open to objection. Even the counsel for the State before us after making a faint attempt to justify the impugned order had, it may be said in fairness to him, to concede that the order of dismissal in limine of the appeal on behalf of the four appellants is, in the circumstances, insupportable.

The appeal is allowed and the order dismissing in limine the appeal of the four appellants before us is set aside and the case is sent back to the High Court for hearing their appeal with the record after giving notice to the State, along with the appeal of Kondu, accused. We would perhaps have persuaded ourselves to go into the merits of the case as this Court has sometimes done, but since Kondu's appeal is pending in the High Court it seems to us to be more appropriate and just that the entire appeal is heard by that Court on the merits. As the sentences imposed -are short the High Court, we have no doubt, would try to dispose of the appeal as speedily as possible. It may be observed that the counsel for the appellants in this Court made an oral prayer for their release on bail. But as the case is being remitted to the High Court for considering the appeal of all the five accused persons on merits it would be open to the appellants-if so advised-to apply to the High Court for bail which prayer would be considered according to law.

Y.P. Sup.Cl/70--4 Appeal allowed..