Shambhu And Ors. vs The State on 3 November, 1955

Equivalent citations: AIR1956ALL633, 1956CRILJ1179, AIR 1956 ALLAHABAD 633, 1956 ALL. L. J. 521 ILR (1956) 2 ALL 202, ILR (1956) 2 ALL 202

ORDER

James, J.

1. This revision raises questions of considerable importance in the day to day working of Sessions Courts in Uttar Pradesh on the Criminal appellate side. (I confine my remarks to Sessions Courts, since District Magistrates in Uttar Pradesh can no longer hear appeals from judgments and orders of Magistrates of the Second and Third classes, and all such appeals now lie to the Court of Session.).

2. The facts are these. Certain persons, all residents of the Allahabad district, were tried before a Magistrate at Allahabad for offences under Sections 325 and 323 I. P. C., and on 28-12-1951 the learned Magistrate pronounced judgment finding them guilty and sentencing them to imprisonment and fine. In view of the sentence of imprisonment they were taken into custody.

Against their conviction and sentences they on 5-1-1952 filed an appeal before the Sessions Judge of Allahabad. The petition of appeal was not accompanied by a copy of the Magistrate's judgment, but along with it was filed a copy of the Magistrate's order-sheet or fard-ahkam of 28-12-1951. There was also made an application for bail and stay of realisation of fine for the pendency of the appeal.

The learned Sessions Judge admitted the appeal, but evidently realising that the appeal was incompetent directed a copy of the Magistrate's judgment to be filed by 15-2-1952. He also passed order granting bail to the convicted persons and staying the realisation of their fine, though it may be mentioned that this bail and stay order was not supported by any reasons in writing.

On the strength of the bail order the applicants were enlarged on bail. Nevertheless, they failed to file a copy of the Magistrate's judgment by the appointed date. Thereafter the learned Sessions Judge extended the time f Jr filing it, first to the 7th March, next to the 22nd March and lastly to the 10th April. Yet the required copy was not filed. Thereupon on 10-4-1952 the learned Judge passed this order:

> "A copy of the judgment has not been filed as yet. The appeal is rejected".

3. This revision on behalf of the convicted persons seeks the setting aside of the Sessions Judge's order dismissing their appeal on the ground that that order was contrary to law. Section 419, Criminal P. C. prescribes that every petition of appeal "shall (unless the Court to which it is presented otherwise directs) be accompanied by a copy of the judgment or order appealed against."

Relying on this clause the learned counsel for the applicants contends that along with their petition of appeal to the Sessions Judge his clients were entitled to file a copy either of the judgment or the order of the trial Court, and since that Court's order was contained in the order-sheet or fard-ahkam, the filing of a copy of the order-sheet was sufficient compliance with the provisions of Section 419, and consequently the learned Sessions Judge was in error both in demanding a copy of the Magistrate's judgment and in dismissing the appeal for want of it.

4. The argument sounds plausible; nevertheless I have no hesitation in holding it to be untenable. A study of the provisions of the Code of Criminal Procedure discloses that the expression of the opinion of the criminal Court on any matter at issue arrived at after due consideration of the evidence and of the arguments (if any) falls into two categories : judgments and orders. None-theless neither of these terms has been defined either in the Code of Criminal Procedure or the Indian Penal Code.

There is, however, no controversy as to what a "judgment" is. As held by the Federal Court in Hori Ram Singh v. Emperor, 1939 PC 43 (AIR V 26) (A) and Kuppuswami Rao v. The King, 1949 FC 1 (AIR V 36) (B), it is used "to indicate the termination of the case by an order of conviction or acquittal of the accused", and to this, by virtue of Section 367(6), Criminal P. C. must be added orders under Sections 118 or 123 (3), orders which bear the character of a conviction. Chapter 26 of the Code deals exclusively with judgments and on the basis of its exhaustive provisions there can be no difficulty in recognising a criminal Court's "judgment".

5. All other expressions of the opinion of the criminal Court on any matter at issue arrived at after due consideration fall in the category of "orders". Orders too, as the provisions of the Code reveal, fall into two classes, those against which the Code expressly allows an appeal, and those against which no appeal is permitted.

It is therefore clear that in mentioning the "judgment" Section 419 refers to those which are dealt with in Chapter 26 of the Code, i.e., where there is a conviction or acquittal of the accused or an order under Section 118 or Section 123(3) has been passed while the term "order" in the section refers to those orders against which an appeal is permitted.

6. On the other hand, the order-sheet or fard-ahkam is nowhere noticed in the Code. It is merely the creation of the General Rules (Criminal) framed by the High Court for the guidance of subordinate Courts. Rule 3 of Chapter 4 of the General Rules framed by our High Court requires an order-sheet to be maintained in the prescribed form, and further provides that upon it shall be recorded (1) every routine order passed by the Court in the case; (2) a note of every other order passed, including every order regarding a document produced before the Court; and (3) a note of the date of such hearing and the proceedings on that date.

In addition the Rule lays down that an order the reasons for which require to be recorded at length, shall not be written on the order-sheet, but a note of the order, and of the date on which it was made, shall be entered on it. It is clear therefore that the contents of an order-sheet of fardahkam refer neither to a judgment nor to an order as recognised by the Code.

It follows that it is a mere piece of waste-paper for the purposes of Section 419, so that the appeal which the present applicants filed before the Sessions Judge on 5-1-1952 was an incompetent one in-as-much as it was not accompanied by a copy of the Magistrate's judgment convicting them, since it was in violation of the provisions of Section 419, Criminal P. C.

7. Section 419 no doubt 'empowers the appellate Court entertaining a criminal appeal to dispense with the copy of the judgment or order appealed against. But in the instant case the Sessions Judge did not dispense with the copy of the judgment; on the contrary he fixed a definite period within which it was to be filed. I might add that the learned Judge was unnecessarily indulgent to the applicants by granting them extensions of time on no less than four separatei occasions. In spite of that indulgence the required copy of the judgment was never filed.

Considering that the applicants belong to the Allahabad district there was not the slightest excuse on their part for failing to comply with the Sessions Judge's direction. The learned Judge not having a competent or valid appeal before him was fully within his rights in rejecting the petition of appeal on 10-4-1952.

8. Two further matters require to be noticed, since they constantly come up before Courts of Session in Uttar Pradesh. The first relates to the practice of filing petitions of appeal accompanied merely by a copy of the order-sheet or fard-ahkam, a practice which appears to be widely prevalent in the district Courts of this State. Its sole ob ject appears to be to secure bail straightway, and is attempted to be justified on the ground that several days elapse before a copy of the judgment can be obtained from the Magistrate's office, so that for at least those days the convicted person has to remain in Jail.

However equitable it may seem to be, no practice which is not permitted by the law can be approved. Nor should the Courts be a party to such pratice. Besides, recently the Legislature have offered a partial solution of the problem by adding Sub-section (2A) to Section 426 and have thereby made specific provision for the grant of bail in certain cases by the convicting Court itself, though I should like to emphasise that no modification has been made in the existing powers of the appellate Court in the matter of interim bail.

The Court of Appeal by Section 426(1) is vested with the power to allow bail to a convicted person for the pendency of his appeal, but this power can be utilised only when there is a valid appeal before it, and the appeal cannot be valid if it contravenes the provisions of Section 419. For making the appeal valid these provisions demand a copy of the judgment or order of the convicting Court.

Consequently, so long as the convicted person does not file a copy of the judgment he cannot be deemed to have filed a valid appeal and his bail or stay application cannot be entertained, and if he feels that he has suffered injustice by having to remain in jail until such time that he can obtain a copy of the judgment from the Court's office, the remedy lies with the Legislature and not with the Court of Appeal. A copy of the order-sheet or fardahkam is totally insufficient for the purpose of making the appeal valid.

9. The second point arises out of the provisions of Section 426(1) by which the Court of Appeal is authorised to allow bail to a convicted person for the pendency of his appeal. But -- and this is the condition of vital importance--it can do so only for reasons to be recorded by it in writing. That is, if the appellate Court feels that the interests of justice required the convicted person to be enlarged on bail for the pendency of his appeal, it cannot allow him bail until it records its reasons in writing.

Experience shows that this provision is obeyed more in its breach than in its observance, and time and again we find Sessions Judges granting bail to convicted persons without noting a word of reason for doing so. It would be well for these learned Judges to bear in mind that bail to a convicted person is not a matter of right, irrespective of whether the offence he has been found guilty of is a bailable or non-bailable one, and that bail should be allowed only when after a perusal of the convicting Court's judgment and the arguments of learned counsel the Sessions Judge considers the grant of bail justified.

It will be noticed that under Section 426(1) an order rejecting an appellant's bail application does not require to be supported with reasons. It is no doubt because the Legislature wanted the Court of Appeal to apply its mind to the question of granting bail to a convicted appellant that they have made the filing of the trial Court's judgment & the recording of reasons mandatory under Sections 419 and 426(1) of the Code.

10. Incidentally I would point out that in the High Court no learned advocate would dream of filing a criminal appeal on a mere copy of the order-sheet or fard-ahkam nor would he argue the appellant's bail application without a copy of the convicting Court's judgment. This is precisely what is enjoined by the law, and should be acted upon in the district Courts also.

11. Reverting to the case before me, I have no doubt that the Sessions Judge acted rightly in dismissing the applicants' appeal. Indeed he was unduly lenient to them by giving them several opportunities for filing the Magistrate's judgment. They have themselves to blame for failing to take advantage of the indulgence. It would appear that they filed their incompetent appeal just for the purpose of securing bail.

It has been suggested that some concession might be granted to them inasmuch as they did file a copy of the judgment though subsequent to the Sessions Judge's order of dismissal. I consider this a totally insufficient ground for revising the learned Judge's order of dismissal. After having violated at least two mandatory provisions of the Code it scarcely lies in the mouth of the applicants to complain of a sense of grievance. Finding no force in this revision I order it to be dismissed. The applicants shall surrender to their bail forthwith and serve out their sentences of imprisonment. I further set aside the order staying the realisation of their fine.