

Saru Smelting And Refining Corpn. Ltd. vs State on 18 April, 1951

Equivalent citations: AIR1951ALL709, AIR 1951 ALLAHABAD 709

ORDER

Brij Mohan Lall, J.

1. This appln. arises in the following circumstances, viz :

2. A criminal revn. was filed by the appct. & It came up before the late Hon. Seth J. He heard the revn. & dismissed it by his order dated 14-9-50. He remarked in the course of his order that an important question of law had been raised but he was not disposed to interfere with the proceedings that were going on in the Ct. below "at this stage of the case". It seems that he had questioned the learned counsel whether the charge had been framed in the case & the answer given to him by the learned counsel was in the affirmative.

3. Sometime after the dismissal of that revn. the learned counsel presented an appln. Under Section 561A, Cr. P. C. stating that the charge had, in fact, not been framed till then & that he had, on account of defective instructions, made an incorrect statement before the Ct. & that incorrect statement had influenced the judgment. He prayed that the Ct. might review its order. This appln. was also put up before the late Hon. Seth J. who heard the arguments & after full hearing dictated a judgment on 22-1-51 rejecting the appln. On 26-1-51 Seth J. died before signing the transcript of the judgment. The Order Sheet also does not bear his signature; but it has not been disputed that the transcript of the judgment which is on the record correctly reproduces the order dictated by the late Hon. Seth J. in open Ct. After the death of Hon. Seth J., Office put up the case again for orders obviously under the impression that the unsigned judgment was not a judgment in law. When the matter came up before me I ordered notice to issue. Later on, the office put up another note stating that the judgment delivered in open Ct. by the late Hon. J. was a valid judgment, notwithstanding the fact that it had not been signed or initialled by him. Reference was made in the office note to the case of 'Emperor v. Prag Madho Singh', A. I. R. (20) 1933 All. 40. In that case the late Hon. L. M. Banerji J. had died after dictating several judgments in open Ct. but before signing them. The matter was placed before the Hon'ble the Chief Justice for orders & he was of the opinion that the judgments dictated in open Ct. were valid judgments, even in the absence of signatures on the fair copies. He pointed out that there was nothing in the Cr. P. C. requiring a Judge to affix his signature on the judgment. This is exactly the contention which is now raised by the Asst. Govt. Advocate. He contended that there is no case pending which may be dealt with by me now & that the appln. presented by the appct. Under Section 561A Cri. P. C. was effectively & completely disposed of by the late Hon. Seth J. by his order dated 22-1-51.

4. The learned counsel for the appct., however disputes that proposition. He refers to Rule 8 of Chap. VII of the Rules of the Ct. This rule runs as follows :

"When a written judgment has been delivered, & when a judgment or order recorded by a judgment clerk has been signed by the Judge or Judges, who delivered or passed it, after inspection, supervision & correction, the Bench Reader shall seal such judgment or Order with the seal of the Ct". In my opinion, there is nothing in this rule to help the appct. This rule simply lays down the steps which the Bench Reader has to take in respect of a judgment or order after the Judge has signed it. Normally, every page of a typed judgment is signed & initialled as a matter of precaution by the Judge with a view to guard against the possibility of a different page being substituted in place of the original. Because of this practice this rule speaks of a judgment being signed by a Judge. But there is nothing in this rule which imposes an obligation on the Judge to affix his signature. The rule does not say that the judgment remains incomplete if unsigned.

5. The learned counsel for the appct. has taken his stand on the following cases of this Ct. viz. 'Queen-Empress v. Lalit Tiwari', (21 All. 177) : Emperor v. Kalloo (27 All. 92) & 'Emperor v. Gobind Sahai', (38 All. 134).

6. All these cases lay down the proposition that it is open to a Judge to alter his view & modify his judgment, if necessary, before the judgment is sealed. But there is nothing in these three authorities to support the contention that the judgment delivered by the Ct. is not a valid judgment until signed. It will, therefore, follow that the late Hon. Seth J. could certainly alter the judgment or review it at any time before his death. But this is something totally different from saying that the judgment was not a valid judgment until signed. This distinction was prominently brought out in the case of 'Mohan Singh v. Emperor', A. I. R. (31) 1944 Pat. 209. In that case a D. B. dictated a judgment. But before signing it the learned Judges wanted to change their view because some fresh facts were brought to their notice. The party, in whose favour they had originally pronounced the judgment, cited the aforesaid Allahabad case, viz. 'Prag Madho Singh v. Emperor', A. I. R. (20) 1933 All. 40, & contended that the Bench could not alter its judgment. Repelling this contention, the learned Judges remarked as follows :

"That case is only an authority for the proposition that a judgment which has been pronounced in open Ct. is final, although not signed, unless & until it is modified. It is not an authority for the proposition that an unsigned judgment may not be properly altered or modified".

7. I agree, with respect, with the view expressed by the Bench in the Patna case. I am also of the opinion that, while the late Hon. Seth J. could certainly alter the judgment if he chose, the judgment was nonetheless valid.

8. It is contended before me by the learned counsel for the appct. that, if the late Hon. Seth J. could review, I can also do this. This contention is not valid. This point was expressly raised in the case of

'Emperor v. Gobind Sahai' 38 All 134 at p. 138. Their Lordships refd. to the two earlier Allahabad decisions in the cases of 'Queen-Empress v. Lalit Tiwari' 21 All. 177 and 'Emperor V. Kalloo'; 27 All. 92 & remarked :

"But in accordance with those two rulings it is only the Judge concerned who can deal with the matter. It will be open therefore to the present appct. to make any such appln. as he deems fit to Banerji J. in view of these two rulings. It is not possible for us to deal with this matter".

9. It will, therefore, follow that it was the late Hon. Seth J. alone who could review & alter his own judgment & none else. It may also be pointed out that the order was an order refusing to review a previous judgment & it is extremely unlikely that even late Hon. Seth J. should have thought to review his order refusing to review a previous judgment.

10. In the circumstances, I uphold the preliminary objection & hold that the appln. presented Under Section 561A, Cr. P. C., by the appct. was completely & effectively disposed of by the late Hon. Seth J.

by his order dated 22-1-51 & that nothing remains pending on which I may now pass any order.