Soney Lal And Anr. vs State on 16 March, 1953

Equivalent citations: AIR1953ALL610, AIR 1953 ALLAHABAD 610

JUDGMENT

Agarwala, J.

1. This in an application for leave to appeal to the Supreme Court against a decision of this Court dismissing the appeal of the applicants against their conviction under Section 325 read with Section 149, I. P. C. The application was not made before, or at the time of, the delivery of judgment as required by Rule 28, Ch. 23 of the Rules of the Court but was made later on. The application is liable to be dismissed on the ground that it has not been made in accordance with the aforesaid rule. But it is contended by learned counsel that the rule itself is 'ultra vires.' We are not prepared to accept this contention.

2. Rule 28, Ch. 23 of the Rules of the Court provides:

> "An application for a certificate under Article 132(1) or 134(1)(c) of the Constitution in a Criminal proceeding shall be made to the Court orally or in writing before or at the time when any judgment, final order or sentence is passed. The Court shall thereupon record an order granting or refusing to grant such certificate".

The provision regarding an application being made "before any judgment, final order or sentence is passed" at first sight would appear to be peculiar and impossible of compliance. But this provision is intended for the convenience of counsel who after the close of the arguments wish to absent themselves from the Court when the judgment is being delivered or if the judgment is reserved when it is to be delivered on a future date, so that they may in that case make an oral request to the court that in case the case is decided against their clients they may be granted leave to appeal to the Supreme Court. The provision is merely enabling and not obligatory. The application may be made at the time of delivery of judgment. No objection can be taken to the provision that the application should be made at the time when any judgment final order or sentence is passed. Judgments are delivered in open court and counsel can at once apply to the Court, either orally or in writing, whether they want a certificate under Article 132(1) or Article 134(1)(c) of the Constitution.

The bar to an application being made later on is intended to prevent accumulation of work in this Court and waste of the time of the Court in hearing the application later on. If the application is made at the time when the judgment is delivered, all the facts of the case are in the minds of the judges deciding the case and they can decide the application forthwith without wasting any time. We do not think that Rule 28 is 'ultra vires' of the powers of the Court.

However we have heard learned counsel in support of the application and considered the facts of the case on their merits and have come to the conclusion that there is no force in this application. The Court believed the prosecution witnesses and disbelieved the defence. The eye witnesses had implicated all the applicants and it was not necessary in the circumstances to examine the individual cases of the applicants because the evidence against each of them was identical. The common object of the applicants was found to be the giving of a severe beating to the deceased. The inference as to the common object may be deduced from the circumstances appearing in the case. It is not necessary, and indeed often impossible, that there should be direct evidence of common intention. The question involved in the case was purely one of fact and we do not think that we will be justified in granting the certificate prayed for by the applicants.

3. The application is rejected.