Romesh Chandra Arora vs The State on 6 October, 1959

Equivalent citations: AIR1960SC154, 1960CRILJ177, [1960]1SCR924

Author: S.K. Das

Bench: A.K. Sarkar, M. Hidayatullah, S.K. Das

JUDGMENT

S.K. Das, J.

1. This is an appeal on a certificate granted by the Punjab High Court under Art. 134(1)(c) of the Constitution.

2. The facts giving rise to the appeal are somewhat sordid and we shall set out such of them only as are relevant to it. On December 14, 1954, a person whom we shall refer to as X submitted a written report to the Superintendent of Police, Delhi City, to the effect that one of his daughters was being molested and threatened by the appellant and that he had received letters of an objectionable nature from him "for the purpose of blackmailing and extorting money". Some of these letters were shown to the Superintendent of Police. The latter sent the report to the Station Officer, Karol Bagh police station, with a direction to register a case under s. 506, Indian Penal Code, and investigate it. The Station Officer investigated the case and submitted a charge-sheet against the appellant. He also took in charge some of the letters said to have been received by X. They contained a reference to photographs of a daughter of X, and at least one of the letters said that a sample photograph was being enclosed with it. These photographs, it appeared subsequently in evidence, were taken in the nude and were of a character which, if made public, would undoubtedly compromise the reputation of the girl as well as of her father. X said in evidence that he first tried to persuade the father and other relatives of the appellant to exercise their influence on the appellant so as to put a stop to the blackmail. He, however, failed to get any sympathetic response from them. In November 1954, he met the appellant and requested him to behave properly; the appellant, however, said that it was his profession to extort money by blackmail through girls and he further threatened that he would circulate the photographs to the relatives of the girl unless "hush money" was paid. The appellant was tried on a charge under s. 506, Indian Penal Code, by the learned Magistrate exercising first class powers at Delhi. The learned Magistrate found that the appellant took indecent photographs of the girl by showing false love to her, and threatened X, in letters written to him, with publication of the photographs with intent to extort money from the latter. He accordingly convicted the appellant and sentenced him to rigorous imprisonment for one year. This was on May 18, 1956.

3. On June 9, 1956, the appellant preferred an appeal from his conviction and sentence to the Sessions Judge of Delhi. It appears, however, that on June 14, 1956, Kapur, J., of the Punjab High

Court (as he then was) suo motu called for the record of the case on reading a report thereof in a newspaper, and directed the issue of a notice to the appellant to show cause why the sentence should not be enhanced. Presumably, this action was taken under the provisions of ss. 435 and 439 of the Code of Criminal Procedure. On August 17, 1956, the appeal pending before the Sessions Judge of Delhi was transferred to the High Court itself for hearing. We again presume that this order was passed under the provisions of s. 526(1)(e)(iii) of the Code of Criminal Procedure; because neither the order dated June 14, 1956, nor the order dated August 17, 1956, have been printed in the paperbook and the exact terms of the two orders have not been made available to us. The High Court heard together the appeal and the rule for enhancement. By a judgment pronounced on December 21, 1956, it affirmed the finding of the learned Magistrate, upheld the conviction, dismissed the appeal, and enhanced the sentence to two years' rigorous imprisonment. On or about January 10, 1957, an application was moved on behalf of the appellant for a certificate that the case was a fit one for appeal to this Court in which it was alleged (1) that on the finding of the learned Magistrate affirmed by the High Court, the appellant could not only be found guilty of the offence under s. 384 read with s. 511, Indian Penal Code, for which the maximum punishment was 18 months only; (2) that the High Court could not issue a notice for enhancement of the sentence when an appeal form the conviction and sentence was pending before the Sessions Judge; (3) that the order transferring the appeal to the High Court was not validly made and, in any case, it was improperly made without issuing a notice to the appellant; and (4) that the procedure adopted had deprived the appellant of his right of getting first a decision from the court of appeal and then another from the High Court in the exercise of its revisional jurisdiction. By an order dated January 14, 1957, Falshaw, J., of the Punjab High Court gave the necessary certificate. He said in his order that though the grounds mentioned above were not urged before him at the time when the appeal and the rule for enhancement of sentence were heard by him, it appeared to him that the grounds could be legitimately raised and the case was, therefore, a fit one for appeal to the Supreme Court. The present appeal has come before us on that certificate.

4. Learned counsel for the appellant has urged before us the same four grounds which were taken on his behalf while asking for a certificate under Art. 134(1)(c) of the Constitution.

5. We proceed now to consider those grounds in the order in which we have stated them. Learned counsel for the appellant has drawn out attention to the charge framed against the appellant by the learned Magistrate. That charge said, in effect, that in the years 1953 to 1954 the appellant committed criminal intimidation by threatening X and his daughter with injury to their reputation by publication of the nude photographs, with intent to cause alarm to them. It is pointed out that there was no reference to blackmail or extortion in the charge. The argument before us is that the charge mentioned that the intent was to cause alarm only to X and his daughter, but the finding was that there was an attempt to extort money from X on the threat of publishing the objectionable photographs. It is contended that on this finding the conviction of the appellant under s. 506, Indian Penal Code, was bad; he might have been found guilty under s. 384 read with s. 511, Indian Penal Code, if a charge were properly made under those sections.

6. We are unable to accept this contention as correct. We agree with the High Court that the charge framed against the appellant was not as clear as it might have been. It stated, however, that the

offence of criminal intimidation was committed by threatening X and his daughter with injury to their reputation by having the indecent photographs published; the intent mentioned was to cause alarm to X and his daughter. The real intention, as disclosed by the evidence accepted by the trial Magistrate and the High Court, was to force X to pay "hush money." Section 506 is the penal section which states the punishment for the offence of criminal intimidation; the offence itself is defined in s. 503. Leaving out what is not necessary for our purpose, the section last mentioned is in two parts; the first part refers to the act of threatening another with injury to his person, reputation or property or to the person or reputation of anyone in whom that person is interested; the second part refers to the intent with which the threatening is done and it is of two categories : one is intent to cause alarm to the person threatened and the second is to cause that person to do any act which he is not legally bound to do or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat. On the findings arrived at against the appellant, the first part of the section is clearly fulfilled; and as to the intent, it comes more properly under the second category, that is, to cause X to do any act (in other wards, to pay hush money) which he was not legally bound to do, as a means of avoiding the execution of the threat. It is perhaps correct to say that the threat of publication of the photographs must have also caused alarm to X; but the real intention of the appellant appears to have been not so much to cause alarm only as to make X pay "hush money" to him. It is not unoften that a particular act in some of its aspects comes within the definition of a particular offence in the Indian Penal Code, while in other aspects, or taken as a whole, it comes within another definition. There are obvious differences between the offence of extortion as defined in s. 383 and the offence of criminal intimidation as defined in s. 503. It is unnecessary to dilate on those differences in the present case. All that we need say is that on the finding of the learned Magistrate, which finding was affirmed by the High Court, the appellant was clearly guilty of the offence of criminal intimidation. We, therefore, hold that the conviction of the appellant under s. 506 is correct. We further agree with the High Court that no prejudice was caused to the appellant by reason of the defect, if any, in the charge as to the intent of the appellant. He was fully aware of the case made by the prosecution and had full opportunity of rebutting the evidence given against him.

7. We now go to the second point. Learned counsel for the appellant has drawn our attention to ss. 435 and 439 of the Code of Criminal Procedure. Leaving out what is not essential for our purpose, s. 435 states in substance that the High Court may call for and examine the record of any proceeding before any inferior criminal court situate within the local limits of its jurisdiction for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceedings of such inferior court. Section 439 then states (we are again leaving out what is not essential for our purpose) that in the case of a proceeding the record of which has been called for by the High Court, it may in its discretion exercise any of the powers conferred on a court of appeal and may enhance the sentence. In the case under our consideration it is obvious from the materials on the record that the High Court called for the record on June 14, 1956, in order to satisfy itself as to the propriety of the sentence passed by the learned Magistrate, and on the materials placed before us it is not possible to say that the High Court was aware that a few days earlier than June 14, 1956, the appellant had preferred an appeal to the Sessions Judge of Delhi. The argument before us is that when an appeal was pending before the Sessions Judge, the High Court had no power to call for the record of the proceeding of the learned

Magistrate in order to satisfy itself about the propriety of the sentence passed. Learned counsel has put his argument in the following way. Firstly, he submits that the sentence passed by the learned Magistrate was itself one of the points for consideration in the appeal before the Sessions Judge and the question of the propriety of that sentence could only arise after that appeal had been disposed of. Secondly, he submits that the expression "any proceedings of such inferior court" in s. 435 cannot refer to the court of the Magistrate when an appeal was pending before the Session Judge. Learned Counsel submits that in the circumstances of this case the power to call for the record of any proceeding before any inferior criminal court given by s. 435 could be exercised only in respect of the proceeding before the learned Sessions Judge of Delhi after the latter had dealt with the appeal. We do not think that these contentions are correct. Firstly, these contentions do not take notice of what happened on August 17, 1956, when the appeal pending before the Sessions Judge of Delhi was transferred to the High Court itself for hearing. Assuming that that order was valid, and we shall presently give reasons for holding that it was a valid order of transfer, the legal position was really this : the High Court had before it the appeal preferred by the appellant as also the rule for enhancement of the sentence which had been issued after calling for the record under s. 435, Criminal Procedure Code. It is necessary to mention here that sub-s. (2) of s. 439 says that no order under s. 439 shall be made to the prejudice of an accused person unless he has an opportunity of being heard either personally or by pleader in his own defence, and sub-s. (6) says that when an opportunity is given to a convicted person to show cause why his sentence should not be enhanced, he will be entitled also to show cause against his conviction. The notice to show cause why the sentence should not be enhanced was issued in the present case by reason of the provisions of sub-s. (2) of s. 439, and in showing cause the appellant was entitled to show that the conviction itself was wrong. The whole case against the appellant was, therefore, at large before the High Court. In the circumstances of this case there is no point in the distinction which learned counsel for the appellant is seeking to make as to the meaning of the expression "such inferior court"; for, when the High Court was itself in seizin of the appeal, the inferior court from whose decision the appeal was being heard was clearly the court of the Magistrate who convicted and sentenced the appellant. After the appeal had been transferred from the file of the Sessions Judge of Delhi, the latter was no longer in the picture. Secondly, we do not consider that learned counsel for the appellant is right in limiting the scope of s. 435 in the way suggested by him. If the High Court was not aware of the filing of an appeal, it was open to it to call for the record of the proceeding before the Magistrate in order to satisfy itself whether the sentence passed was a proper one or not. When, however, it was brought to the notice of the High Court that an appeal was pending before the Sessions Judge of Delhi, it could order that the appeal be withdrawn to the High Court so that the appeal and the rule could be heard together. We are unable to hold that the High Court committed any illegality in adopting the course which it did.

8. We must make it clear that we are not considering in the present case the question whether in exercise of the combined powers of appeal and revision, it is open to the High court to set aside an order of acquittal. That is a different question altogether, one aspect of which was dealt with by the Privy Council in Kishan Singh v. The King Emperor [(1928) L.R. 55 I.A. 390]. Some of the earlier decisions of Indian High Courts on that question were referred to by their Lordships. The later decisions on the same question were briefly summarised is a decision of the Patna High Court, Ambika Thakur v. Emperor [A.I.R. (1939) Pat. 611]. As we are not dealing with the question of the

power of the High Court to set aside an acquittal in exercise of the combined powers of appeal and revision, no useful purpose will be served by reviewing the decisions on that question. It is sufficient to state that there is clear authority in the decision of the Privy Council in In re Chunbidya [(1934) L.R. 62 I.A. 36], that in the exercise of its revisional powers under s. 439, Criminal Procedure Code, a High Court upon having the record of a criminal proceeding brought to its notice on an appeal from the conviction therein, can call upon the appellant to show cause why the sentence should not be enhanced, and having heard and dismissed the appeal can forthwith enhance the sentence under that revisional power although precluded by s. 423, (as it stood prior to its amendment in 1955) from doing so in the appeal. It is true that the appeal in the present case was originally preferred to the Sessions Judge of Delhi and was subsequently transferred to the High Court. To that extent, the present case can be distinguished from the facts of the case which the Privy Council was considering (In re Chunbidya) [(1934) L.R. 62 I.A. 36]. We do not, however, think that, on principle, the distinction is of any materiality. Provided the appeal was validly transferred for hearing to the High Court, it was open to the High Court to enhance the sentence in exercise of its revisional power under s. 439, Criminal Procedure Code, when it dismissed the appeal on merits after hearing the appellant. There can be no doubt in the present case that the appellant has had an opportunity of being heard both as to the correctness of his conviction and the propriety of the sentence.

9. Section 423, Criminal Procedure Code, deals with the powers of the appellate court in disposing of an appeal. This section was amended by the Code of Criminal Procedure (Amendment) Act, 1955 (26 of 1955) which came into force on January 1, 1956, and sub-s. (1A) was added which says that where an appeal from a conviction lies to the High Court, it may enhance the sentence notwithstanding anything inconsistent therewith contained in clause (b) of sub-s. (1). We wish to make it clear that we are not basing our decision on the provisions of sub-s. (1A). Those provisions do not apply in the present case, because an appeal from the conviction of the appellant did not lie to the High Court, but lay to the Sessions Judge of Delhi. The appeal came to the High Court on a valid order of transfer made under s. 526, Criminal Procedure Code. We are basing our decision on the power of the High Court to enhance the sentence under s. 439, Criminal Procedure Code, after having given the appellant an opportunity to show cause in the matter of his conviction as well as sentence. The decision of the Privy Council in In re Chunbidya [(1934) L.R. 62 I.A. 36], was a decision with reference to s. 423 as it stood before its amendment in 1955. If in the present case an appeal from the conviction lay to the High Court, it would have been unnecessary for the High Court to invoke its powers under s. 439, Criminal Procedure Code. It could act under its powers under sub-s. (1A) of s. 423, Criminal Procedure Code. As, however, the appeal came to the High Court on an order of transfer, the High Court had before it the appeal as well as the rule asking the appellant to show cause why the sentence should not be enhanced. It was necessary, therefore, for the High Court to consider both the appeal and the rule and this the High Court did in the judgment which it pronounced on December 21, 1956.

10. Now, as to the order of transfer. The provisions of s. 527, Criminal Procedure Code, appear to us to be a sufficient answer to the contention urged on behalf of the appellant. It states, inter alia, that whenever it is made to appear to the High Court that such an order is expedient for the ends of justice, the High Court may order that any particular case or appeal be transferred and tried before itself. This is stated in express terms in s. 526(i)(e)(iii) and sub-s. (3) of s. 526 states expressly that

the High Court may act on its own initiative in passing such an order. In this particular case the High Court had the further circumstance that it had earlier issued a rule for enhancement of sentence, without knowing perhaps that an appeal had been filed to the Sessions Judge of Delhi a few days earlier. When this latter circumstance was brought to the notice of the High Court, it thought it expedient for the ends of justice to transfer the appeal to the High Court. We are unable to agree with learned counsel for the appellant that the High Court committed any illegality in passing the order of transfer. It is true that the records does not disclose that any notice was issued to the appellant before the order of transfer was made. It was open to the High Court to act on its own initiative and the appellant can make no grievance of the order of transfer on the ground of prejudice, because the appellant was fully heard both as to the correctness of his conviction and the propriety of the sentence originally passed against him by the learned Magistrate.

11. As to the last point that the procedure adopted had deprived the appellant of his right of getting first a decision from the court of appeal and then another from the High Court in the exercise of its revisional jurisdiction, we do not think that there is any substance in it. The High Court had validly before it both the appeal and the rule for enhancement of sentence. It heard the appellant fully with regard to both. Therefore, no question arises of depriving the appellant of any his rights under the Code Criminal Procedure.

12. In conclusion, we wish to add that we have considered in the present case the question if the High Court committed any illegality in passing the two order, one on June 14, 1956, and the other on August 17, 1956. We have held that the High Court committed no illegality. Nothing said in this judgment should be taken as commending or encouraging a departure from the usual practice which, we understand, is that when an appeal is pending before an inferior court, the High Court exercises, if necessary, its powers of revision after the appeal has been disposed of. There may, however, be exceptional cases where the ends of justice require that the appeal itself be heard by the High Court and in such a case it is open to the High Court to exercise its powers of revision under s. 439, Criminal Procedure Code, of enhancing the sentence after having heard and dismissed the appeal. The present case was an exceptional case of that nature and we do not think that the procedure adopted by the High Court was in any way illegal or prejudicial to the appellant. We find no good grounds for interference by this Court.

13. Accordingly, we hold that the appeal is devoid of merit and direct that it be dismissed.

14. Appeal dismissed.