

Rameswar Bartia Vs. the State

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Court : Guwahati

Decided On : Aug-01-1951

Judge : Thadani, C.J. and Ram Labhaya, J.

Appellant : Rameswar Bartia

Respondent : The State

Judgement :

Thadani, C.J.

1. We have before us an application under Article 134(1)(c), Constitution of India, asking this Court to certify that the case in which the petitioner's sentence was enhanced by this Court in criminal Reference No. 1 of 1951, is a fit case for appeal to the Supreme Court.

2. The petitioner Rameswar Bhartia was Convicted by Mr. C.K. Bhuyan, Magistrate of Labhimpur District, under Section 7(1), Essential Supplies (Temporary Powers) Act, 1946 (Act xxiv [24] of 1946) for contravention of the provisions of Sections 3 and 7, Assam Foodgrains Control Order, 1947, and sentenced to pay a fine of Rs. 50, or, in default, to undergo rigorous imprisonment for one month. The District Magistrate of Lakhimpur made a reference to this Court for enhancement of the petitioner's sentence as he was of the opinion that the sentence was 'grossly and manifestly inadequate.' In due course, the reference was heard by this Court, which, by its order, dated 1.6.51, accepted the reference

and enhanced the petitioner's sentence to one of rigorous imprisonment for six months and ordered him to pay a fine of Rs. 1000, or, in default, to undergo further R.I. for 2 months.

3. Mr. Lahiri for the petitioner has raised 3 points, on the strength of which he invites us to certify that the case is a fit one for appeal to the Supreme Court.

(i) According to Mr. Lahiri, the Magistrate Mr. C.K. Bhuyan, who tried the case, was disqualified from trying the case by reason of the provisions of Section 556, Criminal P.C. as illustrated by the Illustration to that section. He points out that Mr. C.K. Bhuyan who tried the case, was the person who granted sanction under Section 38, Assam Foodgrains Control Order 1947, for the prosecution of the petitioner under Section 7(1), Essential Supplies (Temporary Powers) Act, 1946, for the contravention of the provisions of Sections 3 and 7, Assam Foodgrains Control Order, 1947.

(ii) That Mr. C.K. Bhuyan was not a Director within the meaning of the word 'Director' mentioned in Sub-clause (3) of Section 2, Assam Foodgrains Control Order, 1947.

(iii) That there is no proof of mens rea and that the plea of 'guilty' entered by the petitioner does not, in law, amount to a plea of 'guilty.'

At the very outset, we wish to state that none of these three points was raised either at the trial or before us when Mr. M.N. Roy who then appeared for the petitioner to show cause against the Rule for enhancement of the petitioner's sentence, Under Clause (6) of Section 439(1), Criminal P.C., the petitioner's advocate, Mr. M.N. Roy, was entitled to show cause against the petitioner's conviction while avowing cause against the Rule, Mr. Roy did not avail himself of the right.

4. The question for our consideration arises - whether, for the purposes of a certificate under Article 134(1)(c), Constitution of India, we can give effect to any of the points now raised by Mr. - Lahiri and certify that the case is a fit one for appeal to the Supreme Court. Mr. Lahiri has urged that if on the face of the record it

appears that Mr. C.K. Bhuyan was disqualified from trying the case, having himself sanctioned the prosecution, the trial must be regarded as void, and, as this Court has no jurisdiction to review its order enhancing the petitioner's sentence, there are only 2 remedies open to the petitioner, namely, (1) either to apply to this Court for a certificate under the provisions of Article 134(1)(c), Constitution of India, or (2) to apply to the Supreme Court for special leave.

5. In disposing of the present application, I wish to express no opinion as to the second point raised by Mr. Lahiri for the short reason that it involves investigation into a question of fact, whether Mr. C.K. Bhuyan was, in fact, the D.C. of Lakhimpur on the date he sanctioned the prosecution of the petitioner. It was conceded by Mr. Lahiri that if Mr. C.K. Bhuyan was the D.C. on the material date, he would be regarded as a Director within the meaning of Sub-clause (3)(a) of Section 2, Assam Foodgrains Control Order, 1947, having regard to the fact that all Deputy Commissioners in Assam have been notified as Directors for the purposes of the Assam Foodgrains Control Order, 1947.

6. As to the third point, the petitioner has admitted in his examination under Section 342, Criminal P.C. that he was in possession of foodgrains in excess of the quantity permitted by law. His case was that he did not know that a licence was required. This statement, Mr. Lahiri argues, is a statement amounting to absence of *mens rea*. I am unable to agree with this contention. What the accused has pleaded in his examination is ignorance of the law, and not absence of *mens rea*. The plea of 'guilty' entered by the petitioner after a charge had been framed against him was 'an absolute plea of guilty and is not affected by the statement of the petitioner made in his examination under Section 342, Criminal P.C., pleading ignorance of the law.

7. As regards the first point, however, I cannot see how I can decline to certify that this is a fit case for appeal to the Supreme Court, if I think as I do that there is considerable force in the contention that the petitioner's trial was void having regard to the provisions of Section 550, Criminal P.C. Mr. Lahiri has pointed out that the sanction required to be given by a Director before a prosecution can be instituted for the contravention of the provisions of the Essential Supplies

(Temporary Powers) Act, 1946, is not to be regarded as a mere automatic formality on the part of the sanctioning authority, but a serious responsibility which he must discharge after directing his mind not only to the facts constituting the alleged contravention, but to other factors to which reference has been made by their Lordships of the Privy Council is the case reported in *Gokulchand Dwarkadas v. The King* 52 C.W.N. 325. In other words, Mr. Lahiri contends, that although Mr. C.K. Bhuyan was exercising his statutory powers as to the granting of sanction, he has never-the-less directed the prosecution of the petitioner within the meaning of the Illustration to Section 556, Criminal P.C. Mr. Lahiri has referred us to a decision of the Calcutta High Court; reported in *Sudhama Vpadliya v. Queen. Empress* 23 Cal. 328, in which the learned Judges observed:

That a disqualifying interest may result from a purely official connection with the initiation of criminal proceedings seems to be clear, and the same view was taken in the case of *Girish Chunder v. Queen Empress* 20 Cal. 857, in which the Magistrate, as in the present case, took an active part in forwarding the police inquiries and collecting evidence against the accused. The learned Judges who dealt with the case in this Court, quashed the convictions on that ground, observing in course of their judgment 'He (the Magistrate) may also, we think, be said to have been personally interested in them (the proceedings), for, the word 'personally' in Section 555 does not, we think, mean merely 'privately interested' or 'interested as a private individual', but includes such an interest as the District Magistrate must in this case have had in the conviction of the accused....' It was, however, contended that, granting the disqualification of the Assistant Magistrate, we were precluded under the provisions of Section 537 of the Code from setting aside his order unless it were shown that a failure of justice had resulted from his being personally interested in the case. We do not think that this contention is sustainable. The saving provision) of Section 537 extended only to the cricks and be forth of Courts of competent jurisdiction, and, in our opinion, a Magistrate who inclines to a personal disqualification is forbidden by law to try a particular case, though he may be authorized generally to try cases of the same class, cannot be said with respect to that case to be a Court of competent jurisdiction. Section 537 has, therefore, in our opinion, no application to the present case, and it must be dealt with on the footing of its having been tried by a Court which, for want of

jurisdiction, was incompetent to deal with it.

It is true that the facts of the case before us are different from the facts present before the learned Judges of the Calcutta High Court. But I think the principle applies.

8. As to the implications of a sanction, their Lordships of the Privy Council in *Sudhama Upadhyaya v. Queen Empress* 52 C.W.N. 325, observed:

The sanction to prosecute is an important matter; it constitutes a condition precedent to the institution of the prosecution, and the Government have an absolute discretion to grant or withhold their sanction: they are not, as the High Court seem to have thought, concerned merely to see that the evidence discloses a prima facie case against the person sought to be prosecuted; they can refuse sanction on any ground which commends itself to them, for example, that on political or economic grounds they regard a prosecution as inexpedient. Looked at as a matter of substance, it is plain that the Government cannot adequately discharge the obligation of deciding whether to give or withhold a sanction without a knowledge of the facts of the case. Nor in their Lordships' view, is a situation given without reference to the facts constituting the offence, a compliance with the actual terms of Clause 23. Under that clause, sanction has to be given to a prosecution for the contravention of any of the provisions of the Order, A person could not be charged merely with the breach of the particular provision of the Order; he must be charged with the commission of certain acts which constitute a breach; and it is to that prosecution that is, for having done acts which constitute a breach of the Order - that the sanction is required.

9. Applying these observations to the facts before us, it seems to me that in granting sanction, Mr. C K. Bhuyan did a great deal more than merely exercise his statutory powers. For all practical purposes, he directed the prosecution of the petitioner within the meaning of the Illustration to Section 556, Criminal P.C., Mr. Lahiri's contention that in these circumstances the petitioner's trial was void within the meaning of Section 530 (p), Criminal P.C., appears to be deserving of consideration, and the appropriate Court which can give effect to this contention, if it is found, is the Supreme Court. Had this aspect of the case been brought to our

notice when we were hearing the Rule for enhancement of the sentence, I might well have considered the question of a re-trial of the petitioner. It is from this point of view that I regard the case as a fit one for appeal to the Supreme Court. I would accordingly certify that this is a fit case for appeal to the Supreme Court.

Ram Labhaya J.

10. I agree.

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