

W.H. King Vs. Emperor

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Court : Mumbai

Decided On : Apr-10-1950

Reported in : AIR1950Bom380; (1950)52BOMLR534

Judge : Gajendragadkar and ;Vyas, JJ.

Acts : [Constitution of India](#) - Article 134(1)

Appeal No. : Criminal Appln. No. 191 of 1950

Appellant : W.H. King

Respondent : Emperor

Advocate for Def. : H.M. Choksi, Adv.

Advocate for Pet/Ap. : I.C. Dalal, Adv.

Disposition : Application dismissed

Judgement :

Gajendragadkar J.

1. This is an application for a certificate under Article 134(1)(c) of the [Constitution of India](#). The petitioner was prosecuted in the Court of the Presidency Magistrate, 19th Court, Bombay, for offences under Section 18(1) and Section 19(2), Bombay Rents, Hotel and Lodging House Rates Control Act (Bom. Act LVII [57] of 1947).

At the trial a charge was framed against him under both the aforesaid sections. The learned Magistrate held that on the facts proved the petitioner was guilty of the offence under Section 19(2) of the said Act. He accordingly convicted him of the said offence and sentenced him to undergo simple imprisonment for a day and to pay a fine of Rs. 30,000. In default he was ordered to undergo simple imprisonment for six weeks. Against this order of conviction and sentence the petitioner preferred an appeal to this Court, but the said appeal was summarily dismissed on 20th February 1950. The petitioner now wants a certificate under Article 134(1)(c) that his case is a fit one for appeal to the Supreme Court.

2. The facts alleged against the accused are not disputed before us, but it is argued by Mr. Dalal that the question which he proposes to raise in his appeal before the Supreme Court is whether on the facts proved the petitioner could be said to have committed the offence under Section 19(2). Mr. Dalal's argument is that his client cannot be said to have relinquished his tenancy in favour of the complainant, because the word 'relinquishment' must necessarily mean surrender of the tenancy in favour of the landlord; and since the prosecution case is that the tenancy was surrendered in favour of a stranger by the accused, he could not be said to have relinquished his tenancy and as such no offence under Section 19(2) can be said to have been proved in this case. Mr. Dalal contends that this is a matter of the construction of Section 19 of Bombay Act LVII [57] of 1947 and his case can therefore be certified to be a fit one for appeal to the Supreme Court. Mr. Dalal has also mentioned that there are two other points which he seeks to raise in this appeal. He argues that Section 4(1) applies to the premises in question and as such he could not be said to be guilty under Section 19 even if it is held that he has relinquished his tenancy to the complainant after accepting consideration. There is no substance whatever in this point because it is clear that the premises in question do not fall under the protection of Section 4(1) of the Act. Mr. Dalal has also suggested that though it may be illegal to accept consideration for relinquishment validly made by the tenant, it would be no offence to accept such consideration for relinquishment which is contrary to law. We have no doubt that this argument also is without any substance. The question which, therefore, falls to be decided in this case is whether we would be justified in granting a certificate under Article 134(1)(c) because a point is raised as to the construction of Section 19

of Bombay Act LVII [57] of 1947. It is no doubt a question of law, and if a certificate could properly be granted under Article 134(1)(c) if a point of law arises in the appeal, Mr. Dalal would clearly be entitled to such a certificate.

3. The appellate powers of the Supreme Court are dealt with in Articles 132 to 136 of the [Constitution of India](#). Article 132 confers appellate jurisdiction on the Supreme Court in civil, criminal or other proceedings where the case involves a substantial question of law as to the interpretation of the Constitution itself. Article 133 deals with appeals in civil matters and it corresponds with Sections 109 and 110, Civil P. C. except for the enhancement of the amount of RS. 10,000 to Rs. 20,000. Article 134 relates to criminal matters. Article 135 saves the jurisdiction and powers which were being exercised by the Federal Court immediately before the commencement of the Constitution, while Article 136 gives jurisdiction to the Supreme Court in its discretion to grant special leave to appeal in cases decided by any Court or tribunal in the territory of India. This last article confers wide appellate powers on the Supreme Court and in due course the Supreme Court may have to lay down the principles which it would apply in exercising its discretion under this articles. In the present case we are concerned with Article 184(1)(c) under which the petitioner claims a certificate from us.

4. It is well known that before the [Constitution of India](#) came into force the Privy Council and thereafter the Federal Court which exercised the jurisdiction of the Privy Council for some time were not Courts of criminal appeal. In fact it has been repeatedly pointed out by their Lordships of the Privy Council that the Privy Council was not a revising Court of criminal appeal and was not prepared or required to retry a criminal case. Viscount Simon L.C. observed in Muhammad Nawaz v. Emperor, that broadly speaking the Judicial Committee would only interfere where there has been an infringement of the essential principles of justice. For example, a conviction following a trial where it could be seriously contended that there was a refusal to hear the case of the accused, or where the trial took place in his absence, or where he was not allowed to call relevant witnesses. Similarly, if the tribunal was shown to have been corrupt, or not properly constituted, or incapable of understanding the proceedings because of the language in which the proceedings were conducted. Also, if the Court had no

jurisdiction either to try the crime, or to pass the sentence. There can be no doubt that it was the well-settled practice of the Privy Council that in order to invoke their jurisdiction in criminal matters it was necessary to show that by a disregard of the forms of legal process or by some violation of the principles of natural justice, or otherwise, substantial or grave injustice had been done. In other words, it had to be shown that something so irregular or so outrageous had happened as to shake the very basis of justice. It is, therefore, clear that before the [Constitution of India](#) came into force this appeal would not at all have been treated as fit to go before the Privy Council. But Mr. Dalal argues that the [Constitution of India](#) has made a change in this position and it is his case that the Supreme Court has been constituted into a Court of criminal appeal by Article 134. We are unable to accept this contention. It is quite true that the Supreme Court has been constituted as a Court of criminal appeal in certain cases. Article 134 provides that an appeal shall lie to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India if the High Court has on appeal reversed an order of acquittal of an accused person and sentenced him to death, or has withdrawn for trial before itself any case from any Court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death. There can be no doubt that in regard to the two cases mentioned in Sub-clauses (a) and (b) of Clause (1) of Article 134 the Supreme Court has been constituted as a Court of criminal appeal. Then we have Sub-clause (c) under which a case has to be certified as a fit one for appeal to the Supreme Court. The proviso to Article 134(1) says that an appeal under Sub-clause (c) shall lie subject to such provisions as may be made in that behalf under Clause (1) of Article 145 and to such conditions as the High Court may establish or require. We are not aware that any provisions have been made so far by the Supreme Court under Clause (1) of Article 145 and no conditions have been yet laid down by our High Court also in this behalf as contemplated by the proviso. We have, therefore, to construe Sub-clause (c) without reference to this proviso. Before doing so, however, it is material to refer to Clause (2) of Article 184. This clause provides that Parliament may by law confer on the Supreme Court any farther powers to entertain and hear appeals from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India subject to such conditions and

limitations as may be specified in such law. This clause clearly shows that the Supreme Court is not intended to be invoked as a Court of criminal appeal in every criminal case. Its criminal appellate jurisdiction is at present confined to cases under Sub-clause (a) and (b) of Clause (1), and it may in future be extended to such other cases as the Parliament may by law decide. We have therefore to construe Sub-clause (a) bearing in mind all the material provisions contained in Article 134 of the Constitution.

5. Now, Clause (c) of Article 134 is identical with Clause (c) of Section 109, Civil P. C., which has been judicially interpreted on several occasions. It has been held that a mere substantial question of law arising between the parties is not sufficient for the purpose of this clause vide *Iqbal Bahadur v. Ram Sree* : AIR1934 All58 . The question must also be of great public importance. This clause is also identical with Sub-clause (c) of Clause (1) under Article 133 of the Constitution. Article 133 deals with appeals in civil matters and in cases where the judgment, decree or final order appealed from affirms the decision of the Court immediately below, it provides that an appeal shall lie against such judgment, decree or final order if the amount or value of the subject-matter exceeds Rs. 20,000 both in the Court of first instance and still in dispute on appeal if the High Court further certifies that the appeal involves some substantial question of law. It would be noticed that except for the variation made in the amount from as 10,000 to 20,000 this article is substantially the same as Section 110, Civil P. C. Recently this Court had occasion to consider the expression 'substantial question of law' as used in Section 110, Civil P. C., in *Kaikhushroo v. C. P. Syndicate Ltd.* 50 Bom. L. R. 744: A.I.R 1949 Bom. 134. It was observed in *Kaikhushroo's* case 50 Bom. L. R. 744 : A.I.R 1949 Bom. 134 that it was by no means easy to determine what a substantial question of law is. But while interpreting this expression it may not be immaterial to remember that the Court of Appeal in the Bombay High Court is normally and ordinarily the final Court in the State of Bombay. It was pointed out that law favours a finality in litigation and it was only in the special circumstances laid down in the Code that a litigant was entitled to travel outside the Province and go to the highest Court in the realm, which then was the Federal Court. It was held in this case that where the question of law is not well-settled or where there is some doubt as to the principle of law involved or there is a conflict of judicial decisions, it

may be that a substantial question of law can be said to arise which may require the final adjudication by the highest Court. What is true of civil matters is, in our opinion, still more true of criminal matters. Before the [Constitution of India](#) came into force the High Courts in the Provinces were intended to be the final Courts of Appeal in all criminal matters. No doubt a change has been made by the [Constitution of India](#); but we think that the change is not as wide as Mr. Dalal contends. Except in cases falling under Sub-clauses (a) and (b) of Article 134(1) in all other criminal matters it seems to us that the [Constitution of India](#) intends that the High Courts in the respective States in the territory of India should normally and ordinarily be the final Courts of appeal. This fact must therefore be borne in mind in deciding the question as to whether a certificate of fitness should be given in a case like the one before us. We must of course have at least a substantial question of law; or considerations like those mentioned by Viscount Simon L. C., in *Muhammad Nawaz v. Emperor* should be shown to be present; or it should be a matter of great public importance. The mere fact that the petitioner raises a point which may be a point of law does not in our opinion justify his claim for a certificate under Article 134(1)(c). A mere point of law would not be enough even under Article 133(1)(c) of the Constitution. Sub-clause (e) under Clause (1) of Article 133 would require not only a substantial question of law, but something more. If that is so, we do not think that in dealing with Article 134 we would be justified in construing Clause (1) (c) more liberally in favour of the petitioner. As we have already mentioned there is no dispute about the facts in this case and there can be no dispute about these facts before the Supreme Court. The only question which the petitioner raises is as to the construction of a section of Bombay Act LVII [57] of 1947. It is not an Act passed by the Indian Legislature and on the construction of the particular section this Court felt no doubt whatever as is clear from the fact that the petitioner's appeal was summarily dismissed. There is no conflict of judicial decisions on the point raised by the petitioner, and in fact if the petitioner's point is accepted, the provisions of Section 19 of the Act would be virtually rendered nugatory. It is true that in a large number of criminal appeals before this Court points of law are raised; but we think it would obviously be contrary to the spirit and the letter of the provisions of Article 134(1)(c) of the Constitution to take the view that in every case where a point of law is raised the matter should be

certified as a fit one for appeal to the Supreme Court. We must, therefore, hold that this case is not a fit one for appeal to the Supreme Court.

6. The application, therefore, fails and must be dismissed.

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