

T.A. Bashiruddin Vs. State of Mysore

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Court : Karnataka

Decided On : Nov-08-1951

Reported in : AIR1952Kant88; AIR1952Mys88

Judge : Venkata Ramaiya and ;Mallappa, JJ.

Acts : [Constitution of India](#) - Articles 133, 133(1), 134 and 134(1); [Indian Penal Code \(IPC\), 1860](#) - Sections 161; Prevention of Corruption Act, 1948 - Sections 5(1) and 5(2); [Code of Civil Procedure \(CPC\), 1908](#) - Sections 109; Code of Criminal Procedure (CrPC)

Appeal No. : Criminal Petn. No. 127 of 1951-1952

Appellant : T.A. Bashiruddin

Respondent : State of Mysore

Advocate for Def. : Adv. General

Advocate for Pet/Ap. : S.K. Venkataranga Iyengar, Adv.

Judgement :

Mallappa, J.

1. This petition is under Article 134(1)(c) of the [Constitution of India](#) for the issue of a certificate by this Court that this is a fit case for appeal to the Supreme Court.

2. The petitioner, T.A. Bashiruddin Ahmed, was convicted of offences under Section 161 I. P. C. and Section 5(1) (d) read with Section 5(2) of the Prevention of Corruption Act, 1948, and his son the second accused in the case was convicted of abetting the said offences. On appeal, the convictions of both the persons under both the Sections have been confirmed but the sentence in the case of the first accused is reduced to six months' rigorous imprisonment for each offence, sentences being ordered to run concurrently. However, the sentence of fine with respect to the offence under Section 5(1) (d) read with Section 5(2) of the Prevention of Corruption Act is set aside but with respect to the offence under Section 161 I.P.C., is confirmed.

3. The petitioner was the Rent Controller, an officer of the grade of an Assistant Commissioner, and the case against him was that he received Rs. 400/- as illegal gratification in order to show favour in four cases pending before him. According to the prosecution case, he did so with the assistance of his son, the second accused. It is contended on behalf of the petitioner that the case mainly depends upon the evidence of the person who actually offered the bribe and as such it should not be lightly accepted. There could be no doubt about this aspect of the matter and in the course of the judgment it has been observed that the accused are entitled to ask in a case of this kind that the evidence should be scrutinized with care and accepted with caution. The evidence of the witness has been accepted only as it is corroborated on material particulars.

A good number of other circumstances have been relied on as circumstantial evidence corroborating the evidence of the person offering the bribe that money was offered and received as bribe. The statement of the accused is elaborate and it did not necessitate any further questioning of the accused on any material aspect of the case than what has been done.

4. A recent decision reported in 'VENKATA RAO v. THE KING' : AIR1951 Ori281 was brought to our notice to show how in a similar case it was held that it was unsafe to convict the accused on the evidence of decoy witnesses only unless there is some independent evidence, either direct or circumstantial to prove his guilt. It must be remembered that unlike that case, there is in this case

circumstantial evidence corroborating the prosecution case. Moreover, the learned Judges who decided that case took care to add as follows: 'We shall not, however, be understood to say that no prosecution can be based upon police traps of the kind. I should agree, with great respect with the observation of Lord Alverstone C. J., of England, in the case of the KING v. MORTIMER', (1911) 1 K B 70:

'The particular transaction of which evidence is given was the result of a police trap. & though I do not like the police traps, any more than any one else, still it is only fair to remember that it is almost impossible to detect this class of offence in any other way.'

5. It is not however on points of kind that his court can give a certificate that the case is fit for appeal to the Supreme Court. It is no doubt true that some points of law have been raised in the case. But there is hardly any case in which points of law do not arise for consideration and it cannot be said that every case in which some points of law are raised deserves a certificate under Article 134(1)(c) of the [Constitution of India](#). The words of this article are analogous to the provisions of Section 109(c) of the Civil Procedure Code.

As observed by Govinda Menon J., in 'NA-RAYANA v. KESAPPA' : AIR1951 Mad721 : 'In interpreting S. 109(c), C. P. C. in 'RAMANATHAN CHETTY v. AUDINATHA AIYANGAR' : AIR1931 Mad642 Venkatasubba Rao & Madhavan Nair JJ. have laid down that the existence of a question of law of some difficulty is not a sufficient ground for certifying the case to be a fit one for appeal to the P. C. unless it is of general & public importance. The learned Judge, Madhavan Nair J., discussed a largo body of case law and came to that conclusion. Is there a question of law of some difficulty and sufficient importance in this case? Probably, it might be stated that the question we have to decide is of some importance because of the construction of Section 145(4) Cr. P. C., but we do not feel that it is a matter of any great difficulty.'

This observation was made in spite of the fact that there had been sharp divergence of judicial opinion on the construction of Section 145 (4) Cr. Procedure Code which was under consideration in that case.

As observed by Gajendragadkar J. in the case reported in 'W. H. KING v. EMPEROR' : AIR1950 Bom380

'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 Art. 133(1)(c) of the Constitution. Sub-clause (c) 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.....

There is no conflict of judicial decisions on the point raised by the petitioner.

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.' (6) In the case reported in 'KAPIL DEO SINGH v. THE KING', 1950 S C J 143, Mahajan J., who delivered the judgment of the Federal Court of India referred to the observations of their Lordships in some cases of the Privy Council, for showing in what cases the Federal Court could interfere in appeal in criminal cases and it may be useful to give an extract from that Judgment:

'In, 'IN RE ABRAHAM MALLORY DILLET', (1887) 12 A C 459 it was observed that Her Majesty would not review criminal proceedings unless it be shown that by a disregard of the forms of legal process or by some violation of the principles of natural justice or otherwise substantial and grave injustice has been done. In 'IBRAHIM v. THE KING', AIR 1914 P C 155, it was observed that the ground for His Majesty's interference in criminal matters is the violation of the principles of natural justice. In 'DAL SINGH v. EMPEROR', 44 Cal 876 the following observations were made on the subject:

According to the practice of the Judicial Committee in dealing with an appeal in a criminal case, the general principle is established that the Sovereign in Council

does not act in the exercise of the prerogative right to review the course of justice in criminal cases in the free fashion of a fully constituted Court of Criminal Appeal. The exercise of the prerogative takes place only where it is shown that injustice of a serious and substantial character has occurred. A mere mistake on the part of the Courts below, as for example, in the admission of improper evidence, will not suffice if it has not led to injustice of a grave character. Nor do the Judicial Committee advise interference merely because they themselves would have taken a different view of evidence admitted. Such questions are, as a general rule, treated as being for the final decision of the Courts below.* * * In 'GEORGE GFELLER V. THE KING' AIR 1943 P C 211 Sir George Rankin pointed out that for them to interfere with a criminal sentence there must be something so irregular or so outrageous as to shock the very basis of justice and that this direction as such, even irregularity as such, will not suffice and that there must be something which in the particular case deprives the accused of the substance of fair trial and the protection of the law.'

The above extract is of some importance as this case has been referred to with approval in the judgment of the Supreme Court reported in 'PRITAM SINGH v. THE STATE' : 1950 CriLJ1270 . The Supreme Court has in this case laid down that special leave should not be granted 'Unless it is shown that exceptional and special circumstances exist, that substantial and grave injustice has been done and that the case in question presents features of sufficient gravity to warrant a review of the decision appealed against.'

7. The case reported in 'ARJUNA MISRA v. INDIAN UNION' : AIR1950 Ori235 is the only case relied on as one in which a certificate under Article 134(1)(c) was granted and it is urged that the above circumstances cannot be said to have existed, in that case. But it will be seen that it was not without hesitation that Narasimham J. agreed with the opinion of Ray C. J. in that case. Moreover, that was a case decided prior to the decision of the Supreme Court referred to above and the same Court took a more serious view of the law on the point when they refused to grant a certificate in the case reported in 'BANA BEHERA v. THE STATE OF ORISSA' : AIR1951 Ori261 relying on the decision of the Supreme Court.

8. There should not only be in the case, substantial points of law but also exceptional and special circumstances in the case and it must also be shown that substantial and grave injustice has been done to enable the High Court to issue a certificate under Article 134(1)(c) of the [Constitution of India](#). The fact that one of the many Assistant Commissioners in the State is convicted of the offence of taking a bribe does not make the case one of great public importance. It cannot be said in this case that any special or exceptional circumstances exist or that substantial or grave in-justice has been done. In this view the petition stands dismissed.

9. VENKATA RAMAIA, J.: I agree and wish to add that in view of what has been expressed by me and a Division Bench of this Court while dealing with similar petitions, this case cannot be certified to be a fit one for appeal to the Supreme Court. This is not a case which falls under Clause (a) or (b) of Article 134 of the [Constitution of India](#) by which the appeal is allowed in certain circumstances. The conditions necessary to be satisfied for a certificate under Clause (c) are not specified but the need of a certificate implies .that there should be something more than what is required for an ordinary appeal under the Code of Criminal Procedure. The several points enumerated in the petition are noticed and discussed by me in the judgment. Though some of these are pressed as arguable, there is, I think, no point of novelty or complexity such as to affect the decision in the case. The case itself is of a familiar kind which has arisen for consideration in other Courts as seen from the published reports and there is no peculiarity either in the materials relied upon for the purpose of the conviction or the rules of law bearing on the consideration of these.

At any rate it is not shown that there is any seriously contentious point going to the root of the case or of special importance. The mere fact that questions of law are involved in the case does not entitle the accused to the certificate as that is a feature common to all cases. No objection was taken to the procedure or the charges with respect to which the accused were tried: nor is it shown that the accused were prejudiced by these. The petition is therefore to be dismissed.

10. Petition dismissed.

