

Banwari and ors. Vs. Rex

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Court : Allahabad

Decided On : Oct-01-1948

Reported in : AIR1949All216; 1949CriLJ325

Judge : Agarwala, J.

Appellant : Banwari and ors.

Respondent : Rex

Judgement :

ORDER

Agarwala, J.

1. The applicants were convicted by a Special Magistrate, 1st Class, under Sections 147 and 323, Penal Code. Each of them was sentenced to a fine of Rs. 50 under Section 147, Penal Code, and of Rs. 25 under Section 323, Penal Code. (The total amount of fine payable by each of them thus came to Rs. 75). In default of the payment of fine, each of them was to undergo rigorous imprisonment for three months under Section 147 and one month under Section 323, Penal Code, respectively.

2. They filed an appeal before the learned Sessions Judge of Mainpuri. A preliminary objection was raised on behalf of the Crown that no appeal lay. This preliminary objection was based upon the provisions of Section 413, Criminal P.

C. The learned Judge accepted this objection and held that the appeal was incompetent. He, however, treated the appeal as a revision, went into the merits of the case and dismissed the revision. The applicants have now come up in revision to this Court.

3. Mr. B. S. Darbari, counsel appearing for the applicants, has argued that the view of law taken by the lower Court on the question of the competency of the appeal before it was not correct. The relevant provisions are contained in Sections 408, 413 and 415, Criminal P. C. They are as follows:

408. Any person convicted on a trial held by an Assistant Sessions Judge, a District Magistrate or other Magistrate of the first class, or any person sentenced under Section 349 (or in respect of whom an order has been made or a sentence has been passed under Section 380) by a Magistrate of the first class, may appeal to the Court of Session:

Provided as follows : b) when in any case an Assistant Sessions Judge or a Magistrate specially empowered under Section 80 passes any sentence of imprisonment for a term exceeding four years, or any sentence of transportation, the appeal (of all or any of the accused convicted at such trial) shall lie to the High Court, (c) when any person is convicted by a Magistrate of an offence under Section 124A, Penal Code, the appeal shall lie to the High Court. 413. Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person in cases in which a Court of Session passes a sentence of imprisonment not exceeding one month only or (in which a Court of Session or District Magistrate or other Magistrate of the first class passes a sentence) of fine not exceeding fifty rupees only.

Explanation: - There is no appeal from a sentence of imprisonment passed by such Court or Magistrate in default of payment of fine when no substantive sentence of imprisonment has also been passed.

415. An appeal may be brought against any sentence referred to in Section 413 or Section 414 by which any punishment therein mentioned is combined with any other punishment, but no sentence which would not otherwise be liable to appeal

shall be appealable merely on the ground that the person convicted is ordered to find security to keep the peace.

The general rule is given in Section 408. An appeal lies against every order of conviction on a trial held by an Assistant Sessions Judge, a District Magistrate or other Magistrate of the first class. An exception to that general rule is engrafted in Section 413. That exception refers to cases in which so far as is relevant for the present purpose, 'a sentence' of fine not exceeding Rs. 60 only is passed. In some cases the words 'a sentence' were taken literally as implying a sentence on one count only, and it was held that if an accused person was sentenced for two offences to a fine not exceeding Rs. 50 cumulatively even then an appeal would lie. This was the view taken in the case of Makrand Singh v. Ganga . This was also the view of Cuming J. in Akabbar Ali v. Emperor 59 Cal. 19 : A.I.R. (18) 1981 Cal. 642: 38 Cr. L. J. 90), though in that case the total amount of fine was over Rs. 50 and the decision could be supported on other grounds. This view, however, has not been followed in this Court- reference may be made to Gorakh Prasad v. Emperor I.L.R. (1942) ALL. 665 '. (A.I.R. (29) 1942 ALL. 836:43 Cr.L.J. 716), Laljiv, Emperor A.I.R. (30) 1948 ALL. 18 : 44 Cr. L. J. 189). it has been held in these cases that if the total amount of fine imposed is Rs. 50 or less, an appeal would not lie. This is also the view of the Calcutta High Court as will appear from decision in Nawabali Haji v. Jainab Ali : AIR1932 Cal551 and of the Bombay High Court, vide Shidlingappa Gurulingappa v. Emperor : AIR1926 Bom416 . This Court, in a recent case, Kunj Behari v. King Emperor 1947 A. L. J. 3 : A.I.R. (34) 1947 ALL. 169: 48 Cr. L. J. 672) has also expressed the same view.

4. Section 415, after its amendment in 1945, in my opinion, further clarifies the position. This section is by way of explanation to Sections 413 and 414, Criminal P. C. In effect, it lays down that where a case falls under Section 413 or Section 414, an appeal would still lie if the punishment mentioned in those sections is combined with any other punishment. 'Any other punishment' has been interpreted in the case of Kunj Behari v. King' Emperor (1947 A L. J. S ; A.I.R. (3d) 1947 ALL. 169: 48 Cr. L. J. 672) (ubi supra), as meaning any other kind of sentence. Thus, Section 415 would allow an appeal only if one of the punishments mentioned in ss, 413 and 414 is combined with any other kind of punishment. It is thus clear that (I)

where there is one sentence of imprisonment of one month only or one sentence of fine not exceeding Rs. 50 only, no appeal lies, (2) where there are more than one sentence of imprisonment totaling more than one month, or where there are more than one sentence of fine exceeding Rs. 50, an appeal would lie, and (3) where there is one sentence of imprisonment not exceeding one month and in addition there is also a sentence of fine not exceeding Rs. 50 or a sentence, say of whipping, an appeal would lie even though the sentence of imprisonment did not exceed one month and the sentence of fine did not exceed Rs. 50.

5. As, in the present case, the total sentences of fine exceeded Rs. 50, an appeal lay to the lower appellate Court. It was wrongly rejected. It is true that the case has been considered on the merits as well, but consideration of a case on the merits by way of revision is entirely different from its consideration as an appeal. I therefore think that this is a fit case in which I should exercise my revisional powers and set aside the order of the lower Court.

6. I accordingly allow this revision and send back the case to the learned Sessions Judge for hearing it as an appeal.