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In Re: Madanlal

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Court : Allahabad

Decided On : Apr-18-1960

Reported in : 1960CriLJ1546

Judge : Krishna Rao, J.

Appellant : In Re: Madanlal

Judgement :
ORDER

Krishna Rao, J.

1. This is an application for the suspension of a sentence of imprisonment and for ball, made Under Sections 426 (2 B), 498 and 561 A of the Cr.PC in the following circumstances. The petitioner was the 1st accused in Sessions case No. 8 of 1958 on the file of the Court of Session, bad and was convicted and sentenced by the Sessions ; Judge to rigorous imprisonment for 5 years for an offence punishable Under Section 326 read with Section 34 IPC He preferred an appeal to this Court against the conviction and sentence and was released on bail Under Section 426(1) pending the appeal.

On 23-4-1959, the Appeal was dismissed and on ~v 80-11-1959, he was granted a certificate under Article 134 of the Constitution for a further appeal to the Supreme Court. Thereafter he lodged his appeal in the Supreme Court, which was numbered as Criminal Appeal No. 16 of 1960 and made the present application on

25 2 1960 to this Court. He states that he hag not moved the Supreme Court for bail and prays that he may be continued on bail pending disposal of the appeal to the Supreme Court.

2. In Jairam Das v. Emperor , the Judicial Committee held that Section 498 Cr.P. C. : refers only to accused persons and not to persons who have been convicted; and that a High Court has no inherent power Under Section 561 A to grant bail to convicted persons. The application is therefore pressed on the ground that the petitioner's case comes Under Section 426(2 B), which is m the following terms:

Where a High Court is satisfied that a convicted person has been granted special leave to appeal to the Supreme Court against any sentence which the High Court has imposed or maintained, the High Court may, if it so thinks fit, order that pending the appeal the sentence, or order appealed against be suspended, and also, if such person is in confinement, that he be released on bail.

The first question that arises for consideration isi whether the issue of a certificate under Article 134(l)(c) of the Constitution would be a grant of Special leave to appeal to the Supreme Court.

3. Appeals on criminal matters may bo taken to the Supreme Court under Articles 132, 134 and 136 of the Constitution or under Sub-section (4) of Section 411 A of the Cr.PC. The expression 'Special ' leave to appeal' occurs in them only in Article 132(2) and Article 136 and in both instances, the special leave is granted by the Supreme Court. The contention of the learned Public Prosecutor is that the reference in Section 426(2 B) is only to the special leave so granted. On the other hand, the contention of the learned Counsel for tile petitioner is that the expression 'special leave' in the context of Section 426 (2 B) includes certificates of fitness granted by a High Court under Article 134.

4. There is considerable force in the submission of Sri M. Kesava Rao, the learned Counsel for the petitioner, that the expression 'special leave to appeal' in Section 426 (2 B) should be given its ordinary and natural meaning and not be construed as a term of art. The same expression occurs in S, 417(3), whereby High Courts are empowered to grant Special Leave to appeal from orders of acquittal. This .is

a strong indication that the legislature did) not intend to use the expression as a term of art. If the intention had been to limit the meaning in Section 426 (2 B) to special leave granted by the Supreme Court, the Legislature would have naturally said 'special leave to appeal to the Supreme Court'. In my opinion, there is nothing in the context of Section 426 (2 B) re enquiring the expression ''special leave' to be construed as special leave grant d only under Articles 132(2) or 136 of the Constitution.

5. Sri M. Kesava Rao, sought to reinforce his argument based on Section 417(3), by drawing my attention to an observation of a Division Bench of this Court in Gopalakrishna v. Krishna Yachendra : AIR 1955 AP264

It is a well settled canon of interpretation of statutes that the identical expression used in aa enactment will ordinarily carry the same meaning'. But the true rule appears to be that the presumption in construction that the same meaning is implied by the use of the same words in the same statute is very slight and that the intention of the legislature had to be gathered from what is required by the context. As observed by Grove, J. in Wakefield Local Board of Health v. Lee, (1876) 1, Ex. D. 336 at p. 343 : :Except in mathematics, it is difficult to frame exhaustive definitions of words.

In Edinburgh Street Tramways v. Torbain, (1877) 3 A. C. 58 at p. 68 Lord Blackburn said:

Words used with reference to one set of circumstances may convey an intention quite different from what the self same SPt of words used with reference to another set of circumstances would or might have produced.

The topic is discussed in Maxwell's Interpretation of Statutes, (Tenth Edition, 1953) at p. 322 and it to observed at p. 326:

Just as the presumption that the same meaning is intended for the same expression in every part of an Act is, as we have seen, not of much weight, so the presumption of a change of intention from a change of language (of no great weight in the construction of any documents) seems entitled to le SI weight in the

construction of a statute than in any other case for the variation is sometimes to be accounted for by a mere desire to avoid the repeated use of the same words, sometimes by the circumstance that the Act has been compiled from different sources, and sometimes by the alterations and additions from various hands which Acts undergo in their progress through Parliament.

Thus it would not be right to presume that the expressions 'certifies that the case is a fit one for appeal' and 'special leave to appeal' were used in a mutually exclusive sense in the Constitution.

6. The expression 'special leave' was construed in Thompson v. Partridge, (1853) 4 De G. M and G. 794 at p. 796, by the Court of Appeal in Chancery in 1953. The plaintiff appealed from an order of the Vice Chancellor extending the time within which the defendant could file affidavits as evidence. Knight Bruce, LJ said:

The Act of Parliament says, in the 38th Section, that after the time fixed for closing the evidence n further evidence is to be receivable without special leave of the Court previously obtained for that purpose. And my construction of the Act is, that by 'without special leave' is meant 'without learn granted on special grounds.

The other learned Judge, Turner L.J. took the same view and the impugned order was set aside as the defendant had' not shown special grounds. It ap pears to me that the true meaning of the expression 'special leave' is that it is 'leave granted on special grounds'.

7. There can be little doubt that the issue by a court of a certificate of fitness to appeal is the same thing as the grant of leave to appeal. In Ibw him v. King Emperor A.I.R. 1914 P.C. 155 at p. 163 Lord Summer observed:

The Board cannot give leave to appeal where the grounds suggested could not sustain the appeal itself; and conversely, it cannot allow an appeal on grounds that would not have sufficed for the grant pf permmision to bring it.

This clearly indicates that giving leave to appeal is synonymous with the grant of permission to bring die appeal. The function of a certificate under Article 134(1)(c) is to grant permission to take an appeal to the Supreme Court. Such a certificate is

referred to in ordinary language as leave - See Mangle shwari v. State of Bihar : AIR 1954 SC714 and Balaam v. State of U. P., (S) A.I.R. 1958 SC 181. The word 'certificate' nierely emphasises that in exercising its judicial discretion, the High Court must bring its mind to bear on the question involved, Sri M. Kesava Rao, also invited my attention to the working of a number of rules, relating to appeals on vil matters, treating the issue of certificates .a synonymous with the grant or leave.

The old Or. XLV R'. 3 of the C. P. C. dealt with the certificates of fitness to appeal to His Majesty in Council. They were mentioned as certificates of leave to appeal in the forming prescribed under the appellate side rules and as leave obtained from the Court appealed from in rule 2 of the Judl. Committee Rules, 1925. Special leave of His Majesty in Council was mentioned as 'leave' in Section 208(b) of the Government of India Act, 1935. If we give the ordinary and natural meaning to the expression 'special leave' it is clear that the issue of certificate of fitness to appeal on special grounds is one mode of the grant of special leave to appeal.

8. The learned Public Prosecutor referred me to the use of the expression 'special leave' in part III under Courts in Halsbury's Laws of England (third Edition Vol. 9), wherein the jurisdiction and fee procedure of the Judical Committee were deal with. He contended that prior to the Constitution, the expression was always associated with the grant leave to appeal by the highest tribunal and that after the Constitution, it must similarly be associated with the grant of leave by the Supreme Court. But it is not correct to say that 'special leave' was invariably associated with the Judicial Committee as would be apparent from the case of (1853) 4 De G. M. and G. 794 at p. 798, already cited.

The residum of the royal prerogative to interfere with the course of justice could naturally be invoked only on special grounds and it was for this reason that the entertainment of such appeals by His Majesty in Council was mentioned as by 'special leave'. I do not think that the expression 'special leave to appeal' had become a term of art prior to the Constitution and was capable of meaning only the grant of leave by His Majesty in Council,

9. The learned Public Prosecutor next relied on Kalavati v. The State , a decision of Ghowdary J.C. which was' followed by B. R. James J., in Gore Lai v. State :

AIR1958 All667 . It was held by Chowdary, J,C. that special leave is quite different from certificate of fitness under Article 134(l)(c) and that the High Court can grant bail Under Section 426(2 B) only where the Supreme Court has already glinted to the convicted persons special leave to appeal. The reasoning was (1) that special leave mentioned in Section 426(2 B) can be granted only J by the Supreme Court under Article 136(2) that although the certificate of the High Court could have the same effect it was an independent cause; (3) that no question of the High Court being 'satisfied' as required by Section 426(2 B) can arise unless the order in question was passed by another Court, and (4) that while the grant of bail Under Section 4262 A) is limited in its operation until the convicted person moves the appellate court, there is no such limitation in Section 426(2 B).

With all respect, it appears to me that the first two reasons beg the very questions raised; namely, whether the special leave mentioned in Section 426(2 B) means only the special leave mentioned in Article 136 and whether special leave can take the form of a certificate. The natural and ordinary meaning of special leave was rejected for no reason. Nor was any explanation suggested as to why Section 426 i'2 B) does not use the words 'special leave to appeal to the Supreme Court'. With regard to the third point a High Court might have granted the certificate on general and not on special grounds, in which event it would not be comprehended in the expression 'special leave'.

For instance, if a certificate were granted on the ground that the sentence of death has been confirm feed only by one Judge Under Section 377, Cr.PC, where the High Court consists of only one Judge or on the ground that a certificate has been granted to other persons convicted by the same judgment, these would only be general grounds, converting the Supreme Court into an ordinary court of Appeal. The position would be similar, if the certificate were granted on the ground that the appeal to the High Court was summarily dismissed.

No doubt the Supreme Court has ruled that certificates on these grounds do not satisfy the requirements of Article 134(l)(c) at all, and that generally speaking, a certificate would be proper only whether there is a question of law which ought to be authoritatively settled by the Supreme Court. But these decisions were

rendered by the Supreme Court long after Section 426(2 B) was enacted. The intention of Section 426(2 B) might well have been that even where a High Court has issued a certificate under Article 134(lXc), it should further satisfy itself that the ground are of a special character before ordering suspension of sentence and granting bail. The 4th point has no significance in construction, because the purpose . of enacting Sub-section (2 B) was entirely different from that of enacting Sub-section (2 A), V.

With great respect to the learned Judges, I find myself unable to agree with : AIR1958 All667 . As urged by Sri M. Kesava Rao, there is no basis for the discrimination in a matter of procedure between convicted persons who have been granted special leave by the Supreme Court and those to whom the certificates under Article 134(l)(c) were granted on special grounds and a construction which avoids that result should be preferred if the language merits it.

It appears to my mind that the plain meaning I of Section 426 (2 B) is that where a convicted person has been permitted' to appeal to the Supreme Court from the sentence of a High Court on special grounds, the High Court may, in its discretion, suspend the sentence and grant bail pending the appeal.

10. In the present case, the certificate has been issued on the ground that the question whether the identification of the petitioner in Court requires to law corroboration by means of an earlier test parade, has to be authoritatively settled by the Supreme Court, There was a special ground for the grant of the certificate and it is tantamount to special leave, I am, therefore, of opinion that the application is maintainable Under Section 426(2 B) Cr.PC

11. I have next to consider whether this is a fit case for suspending the sentence and continuing the petitioner on bail. The only ground put forward in his application is that he would be served most of the sentence if the appeal, which is already lodged In the Supreme Court, ultimately results in acquittal. It would appear that although the petitioner was released on bail pending the appeal to this Court and although that appeal was dismissed as long ago as on 23 4 1959, he has not surrendered to his bail. There is also no explanation as to why he did not apply to the Supreme Court for stay of the sentence under Or. XXI, Rule 15 of the

Supreme Court Rules, immediately after he lodged his appeal in the Supreme Court.

12. It may be useful in this connection to recall the circumstances in which Sub-section (2 B) of Section 426 Cr.PC came to be enacted. Consistently with the prohibition Under Section 369 Cr.PC against a court altering its own judgment the power to suspend execution of the sentence appealed against and to grant bail to convicted persons was originally vested only in the Appellate Court and in the High Court to which tile Appellate Court was subordinate, Under Sections (1) and (2) of Section 426 Cr.PC Subsequently, an exception was made in regard to persons convicted of bailable offences, because the Legislature considered it undesirable that they should be unnecessarily contaminated by serving a sentence in jail.

By Sub-section (2 A) which waS inserted by the amending Act II of 1945, the Court below was empowered to release on bail persons convicted of bailable offences, but only for a period sufficient to enable them to obtain the orders of the Appellate Court under Sub-section (1). The provisions of Sub-sections (1) and (2) of Section 426, however, were of no avail to convicted persons who appealed from a High Court to His Majesty in Council. The Judicial Committee always maintained that they did not sit as a Court of Criminal Appeal and refused to consider the matter of bail to a successful petitioner for special leave to appeal against his conviction. Diverse views were held by the High Courts in India as to their powers to grant bail to such persons. The question came up for consideration for the first time in and the Judicial Committee held that the High Courts had no such power, : They observed:

The questions which arise for consideration in such a case are of such a nature that they can only, their Lordships think, be properly dealt with by some authority in India possessing either knowledge of the relevant facts, or the means of acquiring that knowledge ....

and suggested the desirability of legislation vesting such a power in the High Courts, The suggestion was given effect to by the legislature and Sub-section (2 B) was inserted in Section 426 by the amending Act IV of 1946. Sub-section (2 B) ran thus:

(2 B) Where a High Court is satisfied that a convicted person has been granted special leave to appeal to His Majesty in Council against any sentence which it has imposed or maintained, or has been granted leave to appeal to His Majesty in Council against an order of the Federal Court on an appeal from the High Court involving the imposition of maintenance of a sentence it may if it so thinks tit order that pending the appeal the sentence or order appealed against be suspended, and also, if the said person is in confinement, that he be released on bail.

By the Adaptation of Laws Order, 1950, the present sub Section was substituted.

13. It will be seen that a power intended to be normally exercised by the higher appellate Court was given to the High Court, as a measure of necessity. The expression 'appellate Court' has not been defined in the Cr.PC; it obviously means a Court taking cognisance of appeals. After the Constitution; the Supreme Court takes cognisance of appeals in Criminal matters from High Courts. Or, XXI, Rule 15 of the Supreme Court Rules specifically provides for the Supreme Court ordering stay of execution of the sentence or order appealed against in criminal matters.

14. The privilege Under Section 426 (2 B) is not available to a convicted person who has a right or appeal under Article 134(1)(a) and (b). The justification for the differentiation would only be the existence of the Special grounds and in addition of eheumstances of necessity, as when it is shown that the delay involved in moving the Supreme Court for bail and of acquainting it with the relevant facts would result in exceptional hardship and serious injustice to the convicted person. No such circumstances are alleged in support of this application and it is therefore dismissed.

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