State Vs. Hari Shankar

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Court : Allahabad

Decided On : Apr-30-1971

Reported in : 1972CriLJ60

Judge : W. Broome, ;Yashoda Nandan and ;S. Malik, JJ.

Appellant : State

Respondent : Hari Shankar

Judgement :

Yashoda Nandan, J.

1. The following question has been referred to this Full Bench for its opinion by K. N. Srivastava arid Hari Swarup, JJ:

Whether the benefit of the time requisite for obtaining a copy of the judgment as laid down in Section 12(2) Limitation Act can be extended to the Government in an appeal under Section 417, Criminal P. C. when the copy filed along with the memorandum of appeal was obtained by the accused and sent to a Department of the State Government for a purpose other then the filing of Government appeal?

2. The material facts giving rise to this-reference are that the respondent Hari Shankar was convicted under Section 125 (91 of the Defence of India Rules and sentenced to undergo six months' rigorous imprisonment by the City Magistrate,

Bareill v. Hari Shankar appealed against his conviction and sentence. The learned Additional Sessions Judge, Bareilly, allowed the appeal and set aside the conviction and sentence of the respondent. The State Government did not apply for a certified copy of the judgment. The respondent, however, procured a certified copy of the appellate judgment by which his conviction and Sentence had been set aside. He submitted it to the Regional Food Controller. Lucknow, along with an application for restoration of his licence under the U. P. Foddgrains (Control. Requisition and Distribution) Order. 1963, which had been cancelled consequent on his conviction by the learned City Magistrate. The State Government preferred an appeal to this Court under Section 417. Criminal P. C. against the judgment of the court below. The requirements of Section 419, Criminal P. C. were complied with by the State Government by its filing along with the petition of appeal the certified copy of the judgment which had been obtained by Hari Shankar and submitted to the Regional Food Controller. After exclusion of the time taken by the respondent in obtaining the certified copy of the judgment of the learned Additional Sessions Judge, the appeal filed by the State Government was within time. The office reported that the appeal was within, limitation. It was consequently admitted to hearing. When the appeal was posted for hearing before K. N. Srivastava and Hari Swarup JJ., an affidavit was filed by Hari Shankar stating that the State Government had not applied for a certified copy of the judgment appealed against at all and that the copy of the judgment accompanying the memorandum of appeal was the one obtained by him and sent to the Regional Food Controller in-support of his claim for restoration of his licence. No counter-affidavit denying the allegations made in Hari Shankar's affidavit was filed on behalf of the State. A preliminary objection was taken at the hearing of the appeal to the effect that it was barred by time on the date of its presentation, because the State was not entitled to exclusion of the time taken by Hari Shankar in obtaining the certified copy of the judgment appealed against. The preliminary objection was contested by the State and it appears to have been contended that for the application of Section 12(2) of the Indian Limitation Act (hereinafter referred to as the Act), it was immaterial as to who had obtained the certified Copy of the impugned judgment and for what purpose it had been obtained. Reliance in support of the contention was placed by the State on the Division Bench decision of this Court in Ram

Kishan Shastri v. Kashi Bai (1907) ILR 29 All 264 : 4 All LJ 152. The Division Bench before which the appeal by the State came UP for hearing appears to have been of the view that the decision in (1907) ILR 29 All 264 : 4 All LJ 152, (supra) has a bearing, on the preliminary objection with regard to the applicability .of Section 12(2) of the Act to the facts of the present case and consequently was impelled' to refer the question quoted in an earlier part of this order to a Full Bench for its opinion.

3. Before we proceed to consider the question referred to this Bench, we might state that the facts of Ram Kishan Shastri' case (1907) ILR 29 All 264 : 4 All LJ 152 (supra) were entirely different from those of the instant case and the decision has no application to it In Ram Kishan Shastri's case, the trial court passed a decree against the defendant, who left it to her counsel to obtain certified copies of the decree and judgment. The counsel in his turn left the matter in the hands of his clerk to apply for and obtain certified copies of the decree and the judgment. Kashi Bai presented an appeal before the lower appellate court, the memorandum of appeal being accompanied by the certified copies obtained by the clerk of her counsel. The appeal was within time if the time taken in obtaining the certified copies was taken into consideration. The lower appellate court in computing the limitation refused to take into account this time. It held that the appellant would have been entitled to the exclusion of time taken in preparing the copy of the decree only if it had been applied for either by herself or on her behalf by some recognised agent. Since the clerk of her counsel was not her recognised agent, the lower appellate court dismissed the appeal of Kashi Bai as barred by time. She appealed to this Court. Knox, J. allowed the appeal, set aside the decree of the court below and remanded the case with a direction to readmit the appeal to its original number of pending appeals. Aggrieved by the order of the learned single Judge, the plaintiff Ram Kishan appealed under Section 10 of the then Letters Patent of this Court. The Bench consisting of Stanley. C. J. and Burkitt. J. on an interpretation of Section 12 of the Limitation Act of 1877 held as follows:

We think that it would be unduly restricting the language of Section 12 of the Limitation Act if we were to hold as did the lower court, that the application for a copy of the judgment must necessarily be by the appellant or somebody proved to

have been acting in the matter as her agent.

The appeal under the Letters Patent was dismissed. The certified copies filed along with the memorandum of appeal in Ram Kishan Shastri's case (1907) ILR 29 All 264 : 4 All LJ 152 (supra) had been obtained, though not on the basis of an application made by the party appealing or her duly authorised agent, but undoubtedly on an application by one who had implied authority to act on her behalf. The certified copies had been obtained for her benefit and she unquestionably had authority to utilise them. We are in the present case not concerned with the question as to whether the benefit of Section 12(2) of the Act can be availed of by a party only on the basis of certified copies applied for and obtained by himself or his duly authorised agent or also if applied for on his behalf and for his benefit by an implied agent. In the case before us, while the State was interested in impeaching the judgment of the court below. Hari Shankar's interest lay in no appeal being preferred against his acquittal. The interest of the respondent was manifestly adverse to that of the State. The respondent had property rights in the certified copy obtained by him and had submitted it to the Regional Food Controller only to establish that he had been found innocent; of the crime, which had led to the cancellation of his licence and was consequently entitled to its restoration. The certified copy submitted by him was in trust with the Regional Food Controller and Hari Shankar had not authorised either explicitly or impliedly the use of it by the State for the purpose, of filing an appeal Against him. The limited question which we are consequently called upon to answer in the present reference is as to whether the State is entitled to the exclusion of time spent in obtaining a copy of the judgment appealed against, by a party whose interest as far as the appeal is concerned is adverse to that of the State and who can in no sense be considered to have obtained it for the benefit of the State.

4. The answer to the question referred to this Bench rests upon the construction of Section 12(2) of the Act, which runs as follows:

In computing the period of limitation for an application for leave to appeal or for revision or for review of a judgment, the day on which the judgment complained of was pronounced and the time requisite for obtaining a copy of the decree,

sentence or order appealed from or sought to be revised or reviewed shall be excluded.

5. It is the requirement of Section 419 of the Code of Criminal Procedure that every appeal under the Code must be accompanied by a copy of the judgment or order appealed against unless the court to which it is presented otherwise directs. Similarly, appeals under the Code of Civil Procedure have to be accompanied by certified copies of the judgment and decree appealed against vide provisions of Order 41. R. 1. C. P. C. Thus, in appeals both under the Code of Criminal Procedure as well as Civil Procedure Code the statute require the appellant concerned to file along with the memorandum of appeal certified copies of orders, judgments and decrees sought to be impeached. Even in appeals where the Statute concerned does not require the appellant to file certified copies of the impugned judgment, decree or order, the appellant normally requires them to discover the mistakes therein in order to frame the grounds for challenging their correctness. Copies of the judgments or orders of the court sought to be appealed against are thus necessary requirements of the appellant himself. The meaning of the term 'requisite' according to Webster's New Twentieth Century Dictionary (2nd Edition) is that 'which is necessary something indispensable'. When Section 12(2) of the Act speaks of 'time requisite for obtaining a copy of the decree sentence or order appealed from', it has in our opinion reference to the necessity of the appellant, to the indispensability of the copy for him and to the time spent by him in obtaining it. The provision does not contemplate, exclusion of time, in computing the limitation, not spent, by him but bv a party whose interest, as opposed to his own, lies in the judgment, order or decree being maintained. In our judgment on a true and correct interpretation of Section 12(2) of the Act the time requisite for obtaining a copy of the judgment decree or order appealed against is the time beyond the appellant's control occupied by the Copying Department after an application for certified copies has been duly made by or for the benefit of the appellant and not the time spent in obtaining it by a party who cannot even be said to have been impliedly acting on his behalf.

6. We are fortified in the view we are taking with regard to the scope and applicability of Section 12(2) of the Act by a decision of the Privy Council in

Pramatha Nath Roy v. W. A. Lee 49 Ind APR 307 : AIR 1922 PC 352. The facts giving rise to the appeal before the Privy Council were that the suit instituted against the appellant was decreed by a learned Single Judge of the Calcutta High Court on its original side on February 14, 1918. An application made by him for setting aside the decree was refused on July 26, 1918. The appellant preferred an appeal against the decree of the learned single Judge on August 30 of the same year. Rules of the Court provided that every memorandum of appeal should be accompanied by a copy of the decree or order appealed from and with this rule the appellant did not comply. The memorandum of appeal was, however, admitted, without the order, subject to all objections that might be raised at the hearing. The appellant did not apply for a copy of the order appealed against till September 9, 1918. At the hearing of the appeal it was decided/ that the appeal was out of time and against that judgment the appellant went up to the Privy Council. The appellant, in challenging the correctness of the view taken by the High Court placed reliance on Section 12(2) of the Indian Limitation Act, 1908, which was similar to the same provision of the present Act. The Facts on the basis of which the appeal was disposed of by the Privy Council are stated in the following words:

Alter the order had been made on July 26 no steps were immediately taken by the plaintiff to have the order drawn up. but after the lapse of four days it was competent to the defendant to apply for that purpose. The four days elapsed and nothing was done. On August 6 application was made by the plaintiff to have the order drawn up, and on August 7 the draft of the order was sent to the appellant. The order was simplicity itself, but the appellant only returned the draft on August 16. On August 28 it was signed, and on September 3 it was filed by the plaintiff.

Lord Buckmaater delivered the opinion of the Judicial Committee in the following terms:

Now the learned judges in the appeal Court have held that in determining what is the requisite time referred to in Section 12, Sub-section (2) of the Limitation Act the conduct of the appellant must be considered, and their Lordships think that in so determining they have rightly regarded the statutory provision. In their Lordships' opinion, no period can be regarded as requisite under the Act, which

need not have elapsed if the appellant had taken reasonable and proper steps to obtain a copy of the decree or order. In the present case he took none, and the periods between July 30 and August 6, and again between August 7 and August 16, which were within the appellant's control, are sufficiently great to prevent the appellant saying that the time that did elapse must have elapsed even if he had acted with reasonable promptitude.

This decision is an authority for the proposition that for the application of Section 12(2) of the Act it is the conduct of the appellant which is relevant and not that of the respondent. In the instant case, the appellant State never applied for a certified copy of the order appealed against, but utilised the judgment obtained by Hari Shankar and wants to take advantage of the time spent by him in securing the copy. This, in our opinion, is not permissible. No decision either of this Court or of any other Court has been brought to our notice in which on facts similar to those with which we are concerned a contrary view has been taken.

7. For the reasons given above, our answer to the question referred to this Bench is in the negative.