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Gyara Panch Vs. State

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Court : Madhya Pradesh

Decided On : Dec-13-1954

Reported in : 1956CriLJ535

Judge : Dixit and ;Nevaskar, JJ.

Appellant : Gyara Panch

Respondent : State

Advocate for Pet/Ap. : Mr. Shankarlal Dubey

Judgement :

Dixit, J.

1. This is an application for leave to the Supreme Court from our decision in Criminal Revision No. 131 of 1953 acquitting the opponents Abdul Majeed and Nasir of a charge under Section 188, I.P.C. The charge against the accused persons was that on 3-9-1952 they slaughtered some goats at the shop of one Abdul Gani in Naya Pitha Meat Market, Indore and sold meat to the public in contravention of an order issued on 1-8-1952 by the District Magistrate of Indore directing the closure of all butchers' shops in Indore City excepting those to whom licenses had been granted in accordance with the provisions of Chapter XXV of the Manual of Circulars, Notifications and Standing Orders, Part 1 of the former Indore State and in accordance with Madhya Bharat Government Notification No.

33-48 dated 9-8-1948.

The accused were found guilty by the Additional City Magistrate under Section 188, I.P.C. and sentenced to a fine of Rs. 20 each or in default to suffer ten days' rigorous imprisonment. Their joint appeal against the convictions and sentences was rejected by the Sessions Judge of Indore.

They were acquitted by this Court on the ground that Chapter XXV of the aforesaid Manual nowhere authorised the District Magistrate to issue an order as regards the closure of any butchers' shops during the Pajosan period and that, therefore, the accused persons could not be convicted under Section 188 for contravening an order which the District Magistrate was not lawfully empowered to promulgate.

2. We have heard Mr. Shankarlal Dubey, learned Counsel for the petitioners and in our opinion this petition must be rejected, on the short ground that Article 134 of the Constitution of India does not provide for an appeal from a decision of a High Court reversing an order of conviction of an accused person and acquitting him. This has been made very clear by the Supreme Court in the case of the State Govt. Madhya Pradesh v. R.G. Limsey' : AIR 1954 SC20 . In that case it has been observed:

Article 134 of the Constitution permits an appeal to this 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.

It does not provide for an appeal from a judgment, final order or sentence in a criminal proceeding of a High Court if the High Court has on appeal reversed an order of conviction of an accused person and has ordered his acquittal. In other words, there is no provision in the Constitution corresponding to Section 417, Criminal P.C. and such an order is final, subject however, to the overriding powers vested in this Court by Article 136 of the Constitution.

On the above observations of the Supreme Court this petition purporting to have been filed under Article 134 cannot but be dismissed. The petition clearly does not

fall under Article 132 as no question of law as to the interpretation of the Constitution was decided by us in acquitting the accused persons and none is, in fact, involved in the case.

It must also be noted that the petitioners the 'Gyara Panch' have no locus standi to challenge the order of acquittal of the accused persons. The prosecution was initiated by the State and the only interest of the petitioners in the case was that it was at their suggestion that the District Magistrate passed the order for the contravention of which the accused persons were challaned.

3. For the above reasons this petition is dismissed.

Nevaskar, J.

4. I agree.

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