SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Bhagwan Singh Vs. State

Bhagwan Singh Vs. State

SooperKanoon Citation : sooperkanoon.com/498632

Court : Madhya Pradesh

Decided On : Sep-16-1954

Reported in : 1956CriLJ618

Judge : A.H. Khan and ;Chaturvedi, JJ.

Appellant : Bhagwan Singh

Respondent : State

Judgement :

A.H. Khan, J.

1.This is an application by accused Bhagwan Singh who was convicted by the Sessions Judge of Morena under Section 302, I.P.C. and whose death sentence in appeal No. 41 of 1954 has been confirmed by us on 20-8-1954. He says that he intends to file an appeal before the Supreme Court and requests that till then the execution of sentence be suspended and stayed.

2 The accused has filed Miscellaneous Application No. 39 of 1954 before us for leave to appeal to the Supreme Court. That application I have rejected. The question is whether in the circumstances, we can order the stay of the execution of the sentence confirmed by us. The learned Government Advocate opposes the application.

3 The learned Counsel for the applicant, Mr. Dey did not say in the application under what provision of law, it was being presented to us, but in the course of his arguments, he has urged that we are competent to pass an order sought by him under Sections 426 (2B) and 561A, Criminal P.C. of 1898.

4 His first contention that under Section 426 (2B), Criminal P.C. such an application lies Is wholly untenable. Section 426 (2-B) la as follows:

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.

5 This section empowers the High Court to stay the proceedings only in cases when the High Court is satisfied that special leave to appeal to Supreme Court has been granted. In the present case, so far as we are concerned, we have rejected his application for leave to appeal. In the circumstances, the above section does not apply.

6 Regarding his submission that we are competent to grant a stay under inherent powers of the High Court (under Section 561A, Criminal P.C.) I frankly confess that I entertain serious doubts about it. Section 561A reads thus:

Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to and' order under this Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

7 The inherent powers are usually invoked to prevent the abuse of the process of a Court for which no other remedy is provided. Now to say that the carrying out of the sentence passed by the Sessions Judge and confirmed by us is an abuse of the process of a Court is stretching the language to a breaking point. After a final order is passed by a Court (such as our judgment confirming the sentence of death), the Court becomes 'functus officio. And but for the fact that there is

provision in law to hear applications for leave to appeal, that too we could not have heard.

8 Section 426 (2B) only empowers the High Court to grant stay after leave to appeal has been granted. If under inherent powers we could always grant a stay, then Section 426 (2B) was redundant. This section seems to circumscribe our powers. The learned Counsel for the applicant has failed to cite any authority to substantiate the point he has urged.

9 The learned Government Advocate contends that if a stay before leave to appeal is granted, then after the leave is granted, there would be no need to invoke Section 426 (2B) for any stay, thus rendering this provision nugatory. The argument is not without force.

10 After giving the matter my serious and anxious consideration, I am of the opinion that in the circumstances of the case-specially when we have rejected the application for leave to appeal - we are incompetent to grant the application, which is in consequence dismissed.

Chaturvedi, J.

11. I agree that Section 428 (2B), Criminal P.C. does not apply to this case.

12 In view of the general observations of their Lordships of the Judicial Committee in- 'Jai Ram Das v. Emperor' AIR 1945 PC 94 (A) that Section 561A of the Code confers no new powers on the High Court but merely safeguards all existing inherent powers possessed by it necessary to secure the ends of justice, I am also of opinion that it will not be proper to apply the provisions embodied in this Section to suspend the execution of the death sentence till the petitioner gets a stay order from the Supreme Court. The petition will, therefore, be dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com