

Chiddu Vs. the State

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Court : Madhya Pradesh

Decided On : Apr-26-1951

Reported in : 1951CriLJ1533

Judge : Dixit, J.

Appellant : Chiddu

Respondent : The State

Judgement :

ORDER

Dixit, J.

1. This is an application under Article 134(o) of the Constitution of India for a certificate that my decision in Cri. Revn. No. 172 of 1950, The State v. Madan is a fib one for appeal to the Supreme Court.

2. The facts of the case are stated in my order dated 8-3-1961 disposing of the Criminal Revision. I do not propose to repeat them here. By that order I reversed the decision of the Sessions Judge Gwalior and restored the order of the City Magistrate Lashkar directing that certain ornaments seized by the Police from the applicant and suspected to have been stolen shall be held at the disposal of the Government. As the person entitled to the property was not known, the Magistrate issued a proclamation, under Section 523 (2), Criminal P.C. No person came

forward to establish his claim to the property within six months from the date of the proclamation. The Magistrate, therefore, proceeded under Section 521 and on the evidence produced by the applicant and the State, came to the conclusion that the petitioner Madan had failed to show that the ornaments were legally acquired by him. He, therefore, ordered that the property should be held at the disposal of the Government. In appeal the learned Sessions Judge directed the return of the ornaments to Madan. He held that the police had no evidence which really connected Madan with any theft; that the property was not claimed by any one even after the issue of proclamation under Section 523 of the Code and that as the property was found in possession of Madan it must be presumed under Section 110, Evidence Act that he was the owner of the property. I agreed with the finding of the City Magistrate that the petitioner had failed to show that the property was legally acquired by him and took the view that as the petitioner's possession was not shown to be lawful no presumption could be drawn in his favour under Section 110, Evidence Act.

3. The present application is not the first of its kind to be made to this Court. A division Bench of this Court has recently disposed of an application for a certificate under Article 134(c). In the matter of State v. Rajkumar Singh, (Cri. Misc. No. 159 of 1951 Indore Bench) it has been pointed out by the Division Bench that except in cases falling under Sub-clauses (a) and (b) of Art, 134(1) in all other criminal matters the Constitution of India intends that the High Courts in the respective States in the territory of India should normally and ordinarily be the final Courts of appeal and that in determining the question whether a case is a fit one for appeal the principles and conditions which the Supreme Court would itself follow in exercising its discretion in granting special leave under Article 136 should be borne in mind. It was also suggested therein that in the construction of Article 134(c) guidance may be taken from the authoritative judicial interpretation put on the expression 'provided the said High Court declares that the case is a fit one for such appeal' used in Clause 41 of the Letters Patent of Calcutta, Bombay & Madras High Courts. The learned Chief Justice observed in that case

The High Court when considering an application for the grant of a certificate under Article 134(1)(c), does not sit in judgment upon its decision. It has however been

authorised to grant a certificate of fitness to appeal to the Supreme Court in any case that it might consider appropriate. I am clear that it would not be proper for any Judge to attempt to define in what cases or Classes of cases a certificate of fitness should be granted & thus to restrict the wide generality of the language advisable used by the Framers of the Constitution.

He went on to say that a Court would not be justified in granting a certificate of fitness for appeal even if its decision involved a substantial question of law unless it was satisfied that it had resulted in grave & substantial injustice.

4. It seems to me beyond doubt that in cases not covered by Sub-clauses (a) & (b) of Article 134(1) there is no right of appeal from the decision of the High Court in a criminal case to the Supreme Court, using the term 'right of appeal' in its proper sense. That the Supreme Court is not a general court of appeal in every criminal case is made further clear by Clause (2) of Article 134 which provides that Parliament may by law confer on the Supreme Court any further powers to entertain & hear appeals from any judgment final order or sentence in a criminal proceeding of a High Court in the territory of India subject to such conditions & limitations as may be specified by such law. I venture to think that "leave to appeal" should not be given lightly & without reference to the precise phrase of Sub-clause (c) certifies that case is a fit one for appeal' & with, out reference to the other provisions of Article 134 or to Art 136, so as to convert the Supreme Court into a Court of Criminal Appeal in every criminal case. To my mind, if the development of law is to be on principles of co-ordination & synthesis, the principles & the conditions which are followed in granting leave to appeal under the analogous provisions in Section 109(c) of C P, Code & the Letters Patent of the High Courts in Part 'a' States & the principles which the Supreme Court would follow with regard to criminal matters sought to be taken by way of appeal under Article 136, must with the necessary modifications be taken for guidance in determining whether a case is a fit one for appeal to the Supreme Court under Art 134(c).

5. In *Pritam Singh v. State* A.I.R. (37) 1960 8 0. 169 Fazl Ali J. in delivering the judgment of their Lordships of the Supreme Court made these observations:

Generally speaking, Supreme Court will not grant special leave to appeal in criminal cases unless it is shown that exceptional & special circumstances exist, that substantial & grave injustice has been done & that the case in question presents features of sufficient gravity to warrant a review of the decision appealed from.

It was further pointed out by the Supreme Court that it was not bound to follow too rigidly the principles laid down by the Privy Council in granting special leave in criminal cases, yet some of these principles were useful as furnishing in many cases a sound basis for 'invoking the discretion of the Court in granting special leave.

These principles are enunciated & explained in a number of cases which came up before the Privy Council subsequently to the leading case *Be Dillet*, (1897) 12 A. C. 459. It is not necessary to repeat the well-known observations of Lord Watson in relation to a review of criminal proceedings before the Privy Council in the case* of *Be Dillet*. It seems to be quite clear that such Board did not review or interfere with the course of criminal proceedings unless it was satisfied that grave or substantial injustice had occurred by a violation of the principles of natural justice or the forms of legal process. The Board repeatedly declined to act as a general Court of Appeal in criminal cases & always treated applications for leave to appeal & the hearing of criminal appeals so admitted as being upon the same footing. In order, therefore, to succeed in his application under Article 134(c) the party must bring himself within the principles laid down by the Privy Council with regard to criminal appeals, which as indicated by the Supreme Court in *Pritam Singh v. State*, A. 1. E. (37) 1950 8. C, 169 are useful as furnishing in many cases a sound basis for invoking the discretion of the Court in granting special leave.

6. From the principles laid down by the Privy Council in the cases reported in *Banarsi Prasad v. Kashikrishna Narain*, 28 All. 227; *Badhakrishna Aiyar v. Swaminatha Aiyar* A.I.R. (8) 1921 P.C. 25 & *Ernest Hugh Canning v. Soobram Pariah* A.I.R. (28) 1941 P.C. 106 & accepted by the Federal Court in *Moolji Jaitha & Co v. Khandesh Spinning & Weaving Mills Co. Ltd.*, A. 1. R. (37) 1950 F. C. 83 as to the special circumstances that must exist for granting certificates under

Section 109(e), C. P. Code, or from the conditions prescribed in Article 133(1)(c) of the Constitution of India for appeals to the Supreme Court in civil matters, it would not be right to extract a rule as to the circumstances in which a case should be certified under Article 134(o) as a fit one for appeal to the Supreme Court, but, semble the circumstances need to be very special indeed. For the purposes of the present case it is sufficient to say that a case cannot be certified under Article 134(1)(c) as a fit one for appeal to the Supreme Court, if injustice of a serious & substantial character has not occurred to the petitioner & if the case does not involve such a substantial question of law as breason of the question not being well settled or by reason of there being a conflict of existing authorities as to the principle of law involved, requires an authoritative decision of the highest Court in the land.

7. Turing to the grounds on which a certificate that the Case is a fit one for appeal to the Supreme Court has been prayed for, it is first urged that the question as to the construction of Section 524, Criminal P.C. & Section 110, Evidence Act, is of 'great importance' & to hold that a person in whose possession any property is found, must, in order to retain the possession thereof, show that it was legally acquired by him is to render the provisions of Section 110, Evidence Act, nugatory. I considered the question & held that

In imposing on the party found in possession, of the property the burden to show that it was legally acquired by him, Section 524 of the Code does not lay down any rule inconsistent with the rule laid down in Section 110, Evidence Act. The direction in B. 524 that the party found in possession of the property must show that it was legally acquired by him, only emphasises the condition that must be satisfied before the presumption under Section 110, Evidence Act can be drawn in his favour. The presumption under Section 110 arises only if the party in possession proves that the possession is natprima facie wrongful. A possession which is wrongful in its origin is not a possession of such a character as would lead to the presumption of title under Section 110, Evidence Act.

I have not held that Section 524 of the Code overrides Section 110, Evidence Act. Counsel for the applicant did not cite before me at the hearing of the revision

petition or this application, any authority in support of the proposition that possession to come within the scope of Section 110, Evidence Act need not be lawful possession. He relied on the decisions reported in *In re Kareppa Chanbasappa* A.I.R. (2) 1915 Bom. S95 & *Aslum Gulmahomed v. Emperor*, A-I.R. (1) 1914 Sind 34. I distinguished these decisions on facts & observed that they did not lay down the proposition that even if the party found in possession of the property fails to show that it was legally acquired by him, the presumption under Section 110, Evidence Act, should be drawn in his favour & the property should be returned to him. Learned counsel for the applicant has not been able to show me any authority contrary to the view I took, namely that in an enquiry under Section 624 as to the nature of possession the question has to be considered uninfluenced by the consideration that no claim to the property was made after the issue of proclamation under Section 523 of the Code & without making any initial presumption in favour of the party from the mere fact of his possession. The point raised by the applicant is no doubt a question of law, but to my mind it is not a substantial question of law in respect of which it can be said that there is, or there may be a difference of opinion. In fact if the petitioner's point is accepted, the provisions of Section 524 of the Code would be virtually rendered nugatory.

8. It was then argued that the provisions of Section 62P & 524 do not apply to any property surrendered to the police by a person with whom it was deposited for safe custody. This point was not taken by the applicant during the hearing of the revision petition before me or in the Courts below. In all the Courts the applicant took the plea that he inherited the ornaments from his grand father. The evidence by which he sought to prove that the ornaments were lawfully acquired, by him from his grandfather was disbelieved by me & by the Magistrate, who held the proceedings under Ss. 523 & 524 of the Code. The applicant cannot now be allowed to raise the contention that as a depositary he was in lawful possession of the ornaments, I think when the principle of law is well established then the applicability of the law to the facts of a case is not a substantial question of law.

9. The last ground on which the applicant prays for a certificate to appeal, is, as he says in the petition, that in this case 'the effects of Article 19(f), 14 & 31 have to be determined upon Ss. 523 & 524, Criminal P.C.' In so far as this point is concerned,

the petition for a certificate to appeal, would come under Art, 132(1) of the Constitution of India. Learned Counsel for the petitioner did not make any efforts before me to show in what manner a substantial question of law as to the interpretation of the Constitution arises. He did not urge that the provisions of 89. 523 & 524 of the Code being repugnant to Article 14, 19(f) & 31 of the Constitution are void, though I take it, that this is what he intended to suggest. I have not had the advantage of any considered arguments on the point from the learned Counsel & I do not see how the provisions contained in Ss. 523 A 524 of the Code deny to any person equality before the law or the equal protection of law, or infringe the fundamental right of citizens to acquire, hold* dispose of property, or are inconsistent with Article 31. As at present) advised, in my opinion, the contention raised is without any foundation

10. The applicant has failed to show that the case satisfies the conditions laid down by the Supreme Court in Pritam Singh v. State : 1950 CriLJ1270 . There is no substantial question of law in the case; & there are no special & exceptional circumstances whatever in connection with the case. I am not at all satisfied that the decision sought to be appealed against has led to any miscarriage of justice. I, therefore, refuse to certify that the case is a fit one for appeal to the Supreme Court. The application is rejected.

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