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

The State of Madhya Pradesh Vs. Ram Pratap and ors.

The State of Madhya Pradesh Vs. Ram Pratap and ors.

SooperKanoon Citation : sooperkanoon.com/500165

Court : Madhya Pradesh

Decided On : Feb-05-1974

Reported in : 1975CriLJ108; 1974MPLJ545

Judge : S.M.N. Raina and; Surajbhan, JJ.

Appellant : The State of Madhya Pradesh

Respondent : Ram Pratap and ors.

Judgement :

Raina, J.

1. This is an application by the State Government under Article 134(1)(c) of the Constitution for the grant of a certificate of fitness for appeal to the Supreme Court against the order of this Court dated 23-1-1974 in Criminal Revision No. 721 of 1973. A similar application has been filed by the State Government for the grant of a certificate of fitness for appeal to the Supreme Court against the order of this Court dated 23-1-1974 in Criminal Revision No. 720 of 1973 which has been registered as miscellaneous Criminal Case No. 61 of 1974. Both these cases have been heard together and the order in this case will govern both.

2. Non-applicants 1 to 3 in this case and non-applicant No. 1 in the connected case are forest contractors. They took on lease forest ranges of the North Forest Division of Surguja District for collection of Sal seeds. The South Forest Division

was given to the Madhva Pradesh State Tribal Co-operative Development Federation Ltd. (hereinafter called 'the Federation'). The Managing Director of the Federation made a report to the Superintendent of Police, Surguja, that the forest contractors of the North Forest Division had collected Sal seeds from the South Forest Division. This led to investigation by the Forest Officers as well as by the Police. The Forest Officers, after verification from the Barrier Registers and Transit Passes, found that there was some excess collection. The unaccounted quantities worked out to be 19515 quintals in (the case of non-applicant Ramblers, 923 quintals in the case of non-applicant Ramawtar, 17161 quintals in the case of non-applicant Rampratap and 940 quintals in the case of non-applicant Radheshyam. The Chief Conservator of Forests, therefore, directed that the 6tock of Sal seeds of the contractors, which could be accounted for on the basis of checking, should be released for sale by the contractors and for the balance the contractors should be called upon to give a bank guarantee at the rate of Rs. 4 per bag. The unaccounted for stock was to be released only on the contractors furnishing bank guarantee.

3. Before the aforesaid order of the Chief Conservator of Forests could be implemented, the police intervened and seized the entire stock of the contractors and sealed the godowns. Thereafter, the police reported to the Magistrate, First Class, Surguja, about the seizure on the ground that the goods were suspected to be connected with offences under Sections 379, 411, 487 and 468 of the Indian Penal Code and Sections 41 and 26 of the Forest Act. The contractors thereupon, approached the Magistrate for delivery of the Sal seeds to them as they were perishable goods. The Magistrate passed an order under Section 523 of the Code of Criminal Procedure directing disposal of the Sal seeds by public auction. Being aggrieved thereby, the contractors filed revision petitions in the Court of Session which were dismissed. Thereafter, they came up in revision before this Court. This Court set aside the order of the Magistrate and directed the contractors to furnish bank guarantee and security in various sums as indicated in the order in question. It further directed that on bank guarantee and security being furnished the entire stock be released to the Contractors. The State Government now wants to file appeal against this order before the Supreme Court.

4. A preliminary objection has been raised on behalf of the non-applicants (contractors) that the order in quesition is not a 'final order' within the meaning of Clause (1) of Article 134 of the Constitution and, therefore, these applications are not tenable. We shall deal with this contention first.

5. In Kuppuswami Rao v. The King AIR 1949 FC 1 : 49 Cri LJ 625 the expression 'final order' occurring in Section 205 of the Government of India Act, 1935 came up for consideration. Their Lordships observed in paragraph 11 that 'final order' must be an order which finally determines the points in dispute and brings the case to an end. Their Lordships further held that in order to constitute a final order, it is not sufficient merely to decide an important or even a vital issue in the case, but the decision must not keep the matter alive: (vide para 19).

In State of U.P. v. Col. Sujan Singh : 1965 CriLJ94 it was held that an order cannot be said to be 'final order' within the meaning of Article 134 of the Constitution if it does not of its own force bind or affect the rights of the parties.

6. The true meaning and import of the expression 'final order' were again considered by their Lordships in Mohanlal v. State of Gujarat : 1968 CriLJ876 in connection with an order directing filing of complaint under Section 476 of the Code of Criminal Procedure. It was held that the finality of the order was not to be judged by correlating the order with the controversy in the complaint; and the fact that the controversy remained alive was irrelevant. This decision was relied upon by the Advocate-General in support of his contention that an order under Section 523 of the Code of Criminal Procedure is a final order. On behalf of the non-applicant contractors reliance was placed on the decision of the Supreme Court in Tarapore & Co., Madras v. Tractors Export, Moscow : [1969]2SCR699 . In that case the expression 'final order' occurring in Clause (1) of Article 134 of the Constitution was considered and it was held that 'final order' means a final decision on the rights of the parties in dispute in a suit or proceeding; if the rights of the parties in dispute in the suit or proceeding remain to be tried after the order, the order is not final.

7. From the aforesaid decisions it is clear that an order can be treated as a final order if it satisfies the following tests :

(1) It must be an order which finally determines the points in dispute and brings the case to an end.

(2) It should not be a preliminary or interlocutory order made in the course of a proceeding.

(3) It should of its own force bind or affect the rights of the parties in relation to the controversy in the proceeding in which the order is passed.

8. Sub-section (5) of Section 523 of the Code of Criminal Procedure em-Dowers a Magistrate to make an order respecting the disposal of property before there is any enquiry or trial where such property has been seized by the police. The Magistrate has no power under this section to decide the question of title. He must confine himself to the question of possession. He has merely to consider how the property is to be disposed of or dealt with; and this question may have, in certain cases, to be decided without any claimants before him. An order under this provision does not conclude the rights of any person. Although the order may affect a party for the time being, it does not decide any point or dispute between the parties relating to the property. As such, in our view, it is not a 'final order' within the meaning of Article 134 of the Constitution.

9. Even if the order in question is held to be a 'final order' within the meaning of Article 134 of the Constitution, we do not consider this case to be a fit one for the grant of a certificate of fitness for appeal to the Supreme Court. The learned Advocate-General contended that this Court had no jurisdiction to pass an order of this nature under Section 435 read with Section 439 of the Code of Criminal Procedure. According to him, this Court should have confined itself to the question of the legality or propriety of the order passed by the Magistrate under Section 525 of the Code. We do not, however, find any merit in this contention. Section 525 of the Code must be read with Section 523. Where the property is of a perishable nature, the Magistrate may direct it to be sold if he is of opinion that its sale would be for the benefit of the owner. Sale of perishable goods is not imperative under this section and the Magistrate may direct that such goods to be delivered to the owner or the person entitled to their possession with such directions as he may think fit under Section 523 of the Code. In the instant case, this Court has directed

that the property in question be released to the contractors on bank guarantee and security being furnished. It has not been suggested that the bank guarantee or security is inadequate. It was only urged that the bank guarantee cannot be enforced by the Court in such cases. We are not impressed by this contention. We are also not impressed by the contention that an order of this nature cannot be passed by this Court. The powers of the High Court in revision are the same as that of a Court of Appeal in the case of an appeal from any order against which an appeal is allowed by the Code. The High Court is thus competent to alter or reverse an order of the lower Court and it can pass such order as the Magistrate himself could have passed, subject, however, to the provisions in the Code.

10. For the reasons given above, we hold that the order of this Court in question is not without jurisdiction. The learned Judge-has given reasons in detail for directing delivery of the property to the contractors on the terms specified in the order. The bank guarantee and the security required to be furnished will adequately protect the interests of the parties who may ultimately be entitled to the property. There is, therefore, no justification for the grant of a certificate of fitness for appeal to the Supreme Court in these cases and the applications must be dismissed.

11. The applications, therefore, fail and are hereby dismissed. The stay order passed on 29-1-1974 is hereby vacated.

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