

Rangadhar Barik Vs. the State

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SooperKanoon Citation : sooperkanoon.com/535760

Court : Orissa

Decided On : Nov-24-1995

Reported in : 1996CriLJ1531

Judge : A. Pasayat and ;P. Ray, JJ.

Acts : [Constitution of India](#) (Forty-Fourth) Amendment Act, 1978; [Indian Penal Code \(IPC\), 1860](#) - Sections 302; [Constitution of India](#) - Articles 132, 132(1), 133, 133(1), 134, 134(1) and 134A

Appeal No. : Supreme Court Appeal No. 1 of 1995

Appellant : Rangadhar Barik

Respondent : The State

Advocate for Def. : Addl. Govt. Adv.

Advocate for Pet/Ap. : A.K. Mohapatra, ;G.S. Namtour and ;P.K. Mishra, Adv.

Disposition : Application dismissed

Judgement :

A. Pasayat, J.

1. This is an application for issue of a certificate to appeal to the Supreme Court of India under Article 134A of the [Constitution of India](#), 1950 against judgment of this

Court dated 11-7-1995 in Criminal Appeal No. 104 of 1991.

2. The petitioner (applicant) Rangadhar Barik (hereinafter referred to as the 'convict') filed the aforesaid criminal appeal against the order of conviction under Section 302, of the IPC, 1860 (in short, IPC). By judgment dated 11th July, 1995, the said criminal appeal was dismissed. The convict was duly represented by learned Advocates. After the judgment was delivered no oral prayer for grant of certificate under Article 134A of the [Constitution of India](#) was made by the learned counsel for the convict. Subsequently the convict has sent a letter from the Jail to this Court praying for grant of leave to appeal before the Hon'ble Supreme Court of India. The said letter has been treated as a petition from the convict in Jail.

3. It appears from the letter of the convict that he received the copy of the judgment first on 25th September, 1995, and thereafter again on 20th October, 1995 from the Court of Session. The letter sent by the convict is dated 2nd Nov. 1995.

4. Article 134A reads as follows :

'134A. Certificate for appeal to the Supreme Court.- Every High Court, passing or making a judgment, decree, final order, or sentence, referred to in clause (1) of Article 132 or clause (1) of Article 133, or clause (1) of Article 134, -

(a) may, if it deems fit so to do, on its own motion, and

(b) shall if an oral application is made, by or on behalf of the party aggrieved, immediately after the passing or making of such judgment, decree, final order or sentence, determine, as soon as may be after such passing or making, the question whether a certificate of the nature referred to in clause (1) of Article 132, or clause (1) of Article 133 or, as the case may be, sub-clause (c) of clause (1) of Article 134, may be given in respect of that case.'

The Article was inserted in the Constitution by 'The Constitution (Forty-Fourth) Amendment Act, 1978', which received the assent of the President on 30-4-1979. The objects and reasons are that the High Court should consider the question of granting of a certificate of fitness for appeal to the Supreme Court under Article

132(1); Article 133(1) or Article 134(1) immediately on the delivery of the judgment, decree, final order or sentence concerned, on the basis of an oral application by a party or, if the High Court deems it fit so to do, on its own motion.

5. In the present case, no oral application was made after the judgment was delivered. As already pointed out above, the convict's letter is dated 2nd November, 1995. The Article 134A has been inserted with the purpose of avoiding delay in obtaining the certificate from the High Court. It is accepted by Mr. Mohapatra for the petitioner that no motion was made for issue of a certificate immediately after the passing of the judgment. A bare perusal of the Article makes it clear that an oral application has to be made by the party aggrieved immediately after passing or making of judgment, decree, final order or sentence. A written application is neither prescribed nor contemplated. If no oral motion is made immediately after judgement is delivered, any application filed at a later point of time is not maintainable. It is open to the Court at the time of delivering the judgment to grant a certificate on its own. In the instant case, the Court did not do so.

6. A Full Bench of the Karnataka High Court in *Keshava S. Jamkhandi v. Rama Chandra S. Jamkhandi*, : AIR1981 Kant97 , considered the meaning and implication of the words 'immediately after the passing or making. It has been held by the said Full Bench (at p. 102 of AIR):

'...the Court has to decide having regard to the facts of the particular case as to whether the oral application for grant of certificate can be regarded as having been made immediately after the passing or making of a judgment, decree, final order or sentence. It is impossible to catalogue all possible situations when an oral application can be regarded as having been made immediately. But it can safely be stated that if the oral application for grant of a certificate is made then and there after the passing or making of a judgment, decree, final order or sentence, such an application has to be regarded as having been made immediately. If the oral application is not made then and there, then the Court has to examine the circumstances of each case having regard to the principles stated earlier as to whether the application can be regarded as having been made immediately.'

It has also been held in that judgment that as Article 134A provides for an oral application being made to the Court for grant of a certificate, making of a written application is impliedly barred.

7. Thus, normally an oral application is to be made immediately after the delivery of judgment. There may be circumstances in which an oral application cannot be made just after the delivery of the judgment and in such cases an oral application made afterwards can be regarded as having been made 'immediately' if the Court upon examining the circumstances which ruled out making of the application immediately after the delivery of the judgment. Such circumstances may be very rare, but such circumstances may arise.

8. The expression 'immediately' conveys a sense of continuity and sometimes a sense of urgency. It must be construed in its setting. What meaning is to be adopted depends on the context. In the background of Article 134A it is intended to convey reasonable despatch and promptitude. The idea is to avoid dilatoriness, and import a sense of all convenient speed.

9. In the facts and circumstances of the present case, it cannot be said that the application has been made immediately as contemplated under Article 134A of the Constitution. When the appellant-petitioner was duly represented by learned counsel he cannot also claim any special consideration or right merely because he is in Jail and he could not be present at the time of delivery of judgment.

10. Accordingly, the present application is not maintainable and is dismissed as such.

P. Ray, J.

11. I agree.