

K.P. Vasu and ors. Vs. the State

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SooperKanoon Citation : sooperkanoon.com/717033

Court : Kerala

Decided On : Mar-20-1974

Reported in : AIR1975Ker15

Judge : P. Narayana Pillai, J.

Acts : [Constitution of India](#) - Article 134(1); [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 496

Appeal No. : Crl. M.P. Nos. 113 and 186 of 1974

Appellant : K.P. Vasu and ors.

Respondent : The State

Advocate for Def. : State Prosecutor

Advocate for Pet/Ap. : P.V. Ayyappan,; N.K. Sreedharan and; M.A.T. Pai, Adv

Judgement :
ORDER

P. Narayana Pillai, J.

1. The point raised here is straightforward. It is this. Is an order passed on a bail application a final order as envisaged by Article 134(1) of the Constitution? By an order passed on the 14th of last month I dismissed Crl. M. P. No. 186 of 1974, a

petition for bail filed on behalf of accused Nos. 1 and 4 to 10 in P. E. No. 25 of 1973 on the file of the Sub-Magistrate, Trichur. The present application is for leave to appeal from that order to the Supreme Court under Article 134(1)(c) which reads :

'134 (1) An appeal shall lie to the Supreme 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-

.... (c) certifies that the case is a fit one for appeal to the Supreme Court.'

2. The words 'final order' have not been defined either in the Constitution or in the General Clauses Act. But to Article 132 where also those words occur there is an Explanation and it is stated there that they include an order deciding an issue which, if decided in favour of the appellant, would be sufficient for the final disposal of the case. The same words occur in Section 109 of the Civil P. C. and they occurred in Section 205 of the Government of India Act, 1935, which corresponds to Article 132. The Privy Council held in *Firm Ramchand Manjimal v. Firm Goverdhandas Vishandas Ratanchand*, AIR 1920 PC 86 that an order refusing stay under Section 19 of the Indian Arbitration Act of 1899 was not a final order under Section 109 of the Civil P. C. as it did not finally dispose of the rights of the parties. In *Mohammad Amin Brothers Ltd. v. Dominion of India*, AIR 1950 FC 77 in interpreting the expression 'final order' occurring in Section 205 of the Government of India Act, 1935, the Federal Court held that the expression 'final order' meant an order which finally determined the points in dispute and brought the case to an end. Even the fact that the decision was on an important or a vital issue in the case was by itself held to be not sufficient to constitute it a 'final order'. In *Dr. Hori Ram Singh v. Emperor*, AIR 1939 FC 43 = (40 Cri LJ 468) the same court held that an order directing rehearing of a criminal appeal could not be treated as a final order. The Madras High Court in *In re, Nijam Mohideen*, AIR 1960 Mad 76 = (1960 Cri LJ 250) and the Calcutta High Court in *Sawal Ram Goenka v. The State*, AIR 1961 Cal 169 = (1961 (1) Cri LJ 370) held that an order regarding bail was not a final order. No doubt CrI. M. P. No. 113 of 1974 was finally disposed of by me but

the finality is only as regards that petition. The character of the order passed has also to be taken into account before determining whether it is final or not. The expression 'final order' has been used in Article 134(1) in contradistinction to 'interlocutory order'. The paramount requirement of a 'final order' is that it should terminate the proceeding one way or the other. The order here is one regarding bail. It is open to an accused to file a series of applications for bail at different stages and in different courts. Bail may be refused at one stage and may be granted at another. Bail already granted may at any time be rescinded or modified. In proper cases cancellation of bail may be made even without an application from a party. The effect of granting bail is not to set an accused free but only to release him from the custody of law. Bail is only to secure his attendance at trial. Grant or refusal of bail does not in the least affect determination of the question of guilt or innocence of the accused. It does not terminate the case. It does not even decide a point for decision in the case. Approaching the matter on that footing I am of the clear opinion that it is not a final order as contemplated by Article 134(1). I dismiss this application.