

Phoolchand and anr. Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Aug-23-1971

Reported in : 1972CriLJ352

Judge : B.P. Beri and; L.S. Mehta, JJ.

Appellant : Phoolchand and anr.

Respondent : State of Rajasthan

Judgement :

B.P. Beri, J.

1. Reversing an order of acquittal dated 16-6-1967 passed by the learned Additional Sessions Judge, Aimer, we, by our judgment dated 9-8-1971, convicted Phoolchand under Section 302 read with Section 34 of the Indian Penal Code and awarded him imprisonment for life and Shymlal under Section 201 of the same Code and sentenced him to three years' rigorous imprisonment. Phoolchand and Shyamlal have now applied for certificate under Article 134 of the Constitution of India for leave to appeal to the Supreme Court and for suspension of sentence.

2. We have heard the learned Counsel for applicants and the learned Counsel for the State at some length.

3. In so far as the case of Phoolchand, who has been sentenced to imprisonment for life, is concerned right to appeal to the Supreme Court is available to him under the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 (Act 28 of 1970) (hereinafter called 'the Act'. The relevant provision reads:

2. Enlarged appellate jurisdiction of Supreme Court in regard to criminal matters.

Without prejudice to the powers conferred on the Supreme Court by Clause (1) of Article 134 of the Constitution, an appeal shall lie to the Supreme Court from any judgment final order of sentence in a criminal proceeding of a High Court in the territory of India if the High Court-

(a) has on appeal reversed an order of acquittal of an accused person and sentenced him to imprisonment for life or to imprisonment for a period of not less than ten years:

(b) ...

It appears, therefore, that no certificate from this Court for the exercise of his right of appeal by Phoolchand is necessary.

4. The case of Shyamlal stands on different footing because he has been awarded only 3 years' imprisonment. The argument of the learned Counsel is that because Phoolchand and Shyamlal have been convicted by a common judgment and their criminal liability rests on common evidence it would be anomalous if Phoolchand is acquitted and Shyamlal suffers imprisonment and this possibility should be considered to be an adequate reason for grant of a certificate under Article 134(1)(c).

5. Article 134 of the Constitution defines the appellate jurisdiction of the Supreme Court. It 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-

(a) has on appeal reversed an order of acquittal of an accused person ,and sentenced him to death; or

(b) has withdrawn for trial before itself any case from any Court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death; or

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

Provided that an appeal under Sub-clause (c) shall lie subject to such provisions as may be made in that behalf under Clause (1) of Article 145 and to such conditions as the High Court may establish or require.(2) Parliament may by law confer on the Supreme Court any further powers to entertain and 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 and limitations as may be specified in such law.

6. In the absence of any provision made under the proviso to Article 134(1)(c) it is the construction which we place on the language of Article 134(1)(c) that will regulate our grant or refusal of the certificate asked for by Shyam Lal.

7. The word 'certifies' has been considered by the Supreme Court as a 'strong word'. It indicates that before granting or refusing a certificate the High Court must bring its mind to bear on the question and the order should articulate the reasons on which this judicial order proceeds enabling the Supreme Court to know that the High Court had firstly applied its mind to the matter and secondly indicate exactly what the High Court's difficulty was and what question of outstanding difficulty or importance the High Court faced, which the Supreme Court ought to settle. (Cf *Baladin v. State of Uttar Pradesh* : 1956 CriLJ345 .) The discretion under Article 134(1)(c) is not one for 'granting leave' but for 'certifying' and the High Court would be in error if it grants a certificate on a mere question of fact and when there are no complexities of law. (See *Sidheswar Ganguly v. State of West Bengal* : 1958 CriLJ273 . This discretion conferred by Article 134(1)(c) on the High Court in the opinion of the Supreme Court in *Babu v. State of Uttar Pradesh* : 1965 CriLJ539 'must be exercised with great circumspection and only in a case which is fit for

appeal. It is impossible by a formula to indicate the precise limits of such discretion.' Their Lordships have, further observed, 'The certificate should not be granted to afford another hearing on facts unless there is some error on a fundamental character.' In *Sushil Kumar Gupta v. Joy Shankar Bhattacharjee* : [1970]3SCR770 their Lordships say-A certificate under Article 134(1)(c)' is impermissible on questions of fact and unless a case discloses a substantial question of law or principle then the certificate granted by the High Court is liable to be revoked....'

8. The basic principle which could be gleaned from the above decisions and many others is that the word 'certifies' in Article 134(1)(c) indicates that before a High Court certifies a case to be fit one for appeal - it should state what question of law or principle presented difficulty and complexity and which calls for an authoritative adjudication by the Supreme Court. Negatively speaking on more question of fact it is not permissible to grant the certificate to the case.

9. 'Case' as appearing in Article 134(1)(c) in the language of their Lordships of the Supreme Court 'means the case of each individual'. See *Nar Singh v. State of Uttar Pradesh* : [1955]1SCR238 . It is, therefore, clear that the certificate which is being asked from us is in the case of Shyamlal as an individual.

10. It is not disputed that his conviction rests purely on appreciation of evidence and no difficulty or complexity of any question of law is involved. Shyamlal is not entitled to any certificate on the plain language of Article 134(1)(c).

11. Now remains the argument of the possible anomaly which may result should the appeal of Phoolchand, now available to him under the Act, succeeds. The conferment of right of appeal in certain cases by the Parliament pursuant to Article 134 (2) cannot influence the language of Article 134(1)(c) and our obligations arising thereunder. While limiting such a right in cases of imprisonment for life or for a period not less than 10 years the legislature reflects its anxiety that only in grave cases an appeal is competent. This provision does not appear to confer any right on others who may have been tried together. In case there is any eventual anomaly Article 136 of the Constitution of India appears to provide an answer.

12. The result is that while Phoolchand does not stand in need of any certificate, Shyamlal's case however is not strewn with any difficulty or complexity persuading us to certify it to be a fit case under Article 134(1)(c) of the Constitution. We see no good ground to suspend the sentence of Phoolchand or Shyamlal. The applications Nos. 942 and 944 of 1971 are accordingly dismissed.

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