

Balkishan Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Aug-05-1980

Reported in : 1980WLN(UC)415

Judge : M.B. Sharma, J.

Appeal No. : S.B. Misc. Petition No. 6 of 1979

Appellant : Balkishan

Respondent : The State of Rajasthan

Disposition : Application allowed

Judgement :

M.B. Sharma, J.

1. This is an application under Section 482 Gr. P.O. by the accused-appellant, praying that the order (sic)affi ming the conviction of the appellant recorded on 15-11-78 against the appellant by this Court (Sidhu J), be recalled because the appeal was heard without any notice to the appellant or his Advocate.

2. Petitioner, Balkishan was tried and convicted by the Special Judge (Anti-Corruption Department), Rajasthan, Jaipur under Sub-Section 161 IPC and Section 5(1)(d) of the Prevention of Corruption Act Under both the counts, he was sentenced to undergo one year's rigorous imprisonment and to pay a fine of Rs.

200/. In default of payment of fine so further undergo two months rigorous imprisonment for each default.

3. Against the judgment of the Trial Court an appeal was preferred by the accused-petitioner at Jodhpur in the year 1973. He was represented one by Mr. R P. Vvas, a Lawyer who is practising at Jodhpur. The Bench of the Rajasthan High Court was established and started in 1961 IPC and Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act. But while affirming the order of conviction, the learned Single Judge held that the quantum of sentence will be considered later. It was at this stage that an application was preferred by the petitioner to recall the order affirming the conviction of the petitioner dated 15-11-1978.

4. It may be mentioned here that normally, this application should have been dealt with by the learned Judge (Sidhu J) but to be fair, he ordered on 23rd February, 1979 that if there is no objection, application under Section 482 Cr. P.C., may be listed by Hon'ble the Chief Justice before another Bench. The case thereafter came before me but on 27th February, 1980 on the point of jurisdiction to hear the appeal, an order was passed but the question about the transfer and hearing of the appeal without notice to the petitioner in a criminal case was not considered.

5. Accused petitioner had engaged his lawyer at Jodhpur at the time when this Bench had not been created. He was represented by an Advocate from Jodhpur who does not practice at Jaipur Bench of Rajasthan High Court. There is no material on record that when the appeal was assigned to the Jaipur Bench, any intimation was given either to the petitioner or to his Advocate. Normally if a criminal case is transferred, an information should be given to the accused or his counsel so that proper arrangements should be made for representing the accused at the place and in the court to which the case is transferred. In case, criminal appeal is heard without any notice of transfer of the case to the accused or his counsel, then it can be said that right of hearing of an appeal, which under law is available to the accused petitioner, is denied to him. It will thus amount to denial of a case without affording an opportunity to one of the parties of being heard. In the facts and circumstances of this case, it is clear that the appeal was heard

by this Court without any intimation of transfer of the appeal to the petitioner or his counsel, from Jodhpur to Jaipur. Shri Vyas hid no notice of the transfer and therefore, neither he nor his client, i.e., the petitioner could appear when the case was listed for hearing. Under these circumstances, justice demands that the order passed by this Court (Sidhu J.) dated 15-11-78 affirming the conviction of the petitioner for the offences of which he was convicted by the Trial Court, should be re-called, the same having been passed without affording an opportunity of hearing to the accused petitioner.

6. I, then fore, deem it proper to allow this application under Section 482 Cr. P.C. in the facts and circumstances of this case, under of this Court (Sidhu, J.) dated 5-11-1978 confirming the conviction of the accused petitioner is hereby re-called as the same is necessary to prevent the abuse of the process of the Court and to secure ends of justice. Appeal may be restored to its original number and then listed for hearing as Mr. Calla represents the case. No notice be given to him or to the accused petitioner. It is always open to the accused to move an application before Honble the Chief Justice for transfer of a case from this Bench or vice-versa and if so advised, the petitioner may have recourse to avail that remedy.