In Re: Sakthi Velu

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SooperKanoon Citation : sooperkanoon.com/775628

Court : Chennai

Decided On : Apr-20-1950

Reported in : AIR1951Mad212; (1950)2MLJ767

Judge : Govinda Menon and ;Krishnaswami Nayudu, JJ.

Acts : Constitution of India - Article 134(1); Code of Criminal Procedure (CrPC) - Sections 411-A

Appeal No. : Criminal Misc. Petn. No. 773 of 1950

Appellant : In Re: Sakthi Velu

Advocate for Def. : Government Prosecutor

Advocate for Pet/Ap. : F.S. Vaz and ;P.M.V. Srinivasan, Advs.

Judgement :

Govinda Menon, J.

1. This is an application for leave to appeal to the Supreme Court in a case in which the petitioner, who had been acquitted at the trial held at the third criminal sessions of 1949 of this Court, was found guilty, on appeal, by the State under Section 411-A, Criminal P. C., and sentenced to transportation for life. Article 134, Clause (1) of the Constitution of India provides for an appeal 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 has, on appeal, reversed an order of acquittal of an accused person and sentenced him to death. On the face of it, this provision cannot apply because the petitioner has not been sentenced to death on appeal by the State. But the learned counsel for the petitioner places reliance on Sub-clause (c) which says that if the High Court certifies that the case is a fit one for appeal to the Supreme Court, an appeal shall lie. Our attention has not been drawn to any provision made under Clause (1) of Article 145 as stated in the proviso; nor are there any conditions established by the High Court. In such circumstances, we have to decide whether the case is a fit one for appeal to the Supreme Court.

2. Mr. Vaz appearing for the petitioner contends that the learned Judge who granted leave to appeal did not place before himself in the forefront the conditions laid down by their Lordships of the Judicial Committee at pp. 81 and 82 of the report in Thiagaraja Bhagavathar v. Emperor, There, their Lordships observed as follows :

'Whether the fear expressed by the learned Judge that the right of appeal given by Section 411-A will reduce trial by the jury in the High Courts to a mockery must depend on the manner in which the Judges of the High Courts exorcise the powers conferred upon them by the section. If Judges make a practice of giving leave to appeal on facts from the verdict of a jury which is not perverse or unreasonable on the ground that the Judge himself does not agree with the verdict, or that he thinks that the Court of appeal might take a different view of the evidence from that which appealed to the jury ..... the result, no doubt, will be to deprive peopletried in the High Court of the effective enjoyment of their rights to trial by jury; but the remedy lies in the hands of the Judges.'

In granting leave to appeal on a question of fact, the learned Judge baa given expression to the following view :

'I give no opinion as to whether the verdict in this case is perverse, but I have no doubt whatever that there was sufficient evidence let in by the prosecution in this case on which the jury might well have returned a unanimous or majority verdict of 'guilty'. In that view, I certify that this is a fit case for appeal (even though it is a

case of acquittal) on a question of fact. More than this it will not be proper for me to say at this stage. The application is granted.'

In our judgment we have expressed the opinion that it would have been better if the learned Judge bad expressed an opinion as to whether the verdict was perverse or not, instead of stating that the evidence was such that it was open to the jury to have come to a different conclusion. 'We were bound by the Privy Council decision cited above and therefore it was not open to us, leave once having been granted, to go behind it and say that it is invalid. On the merits of the case, we came to the conclusion that the verdict of the jury was wrong and having considered the evidence let in, in the light of the observations made by Lord Russell of Killowen in Sheo Swarup v. Emperor , we held that the petitioner was guilty of the offence. It seems to us that the question as to whether an appellate Court at the time of hearing an appeal under Section 411-A, is entitled to go into the validity or otherwise of the order granting leave to appeal by the trial Judge is a question of importance regarding procedure on which there is no direct authority.

3. Mr. Vaz invited our attention to the observations of Lord Denman in O'Connell v. Beg, (1844) 8 E. R. 1061 : (11 cl. & Fin. 155) but we are of opinion that in considering the question before us those observations are not of any help. The learned counsel further contended that the decision in Thiagaraja Bhagavathar v. Ring-Emperor, being one in a case of an appeal against conviction should not be applied when the Court has to decide an appeal against an acquittal by the State under Section 411- A, Criminal P. C. It seems to us that there is not much point in that objection because their Lord ships of the Judicial Committee at the time of considering the appeal against the conviction have followed previous observations of theirs inSheo Swamp v. King-Emperor which itself arose out of the reversal by the Allahabad High Court of an order of acquittal by the Sessions Judge. We therefore certify under Sub-clause (c) of Clause (1) of Article 134, Constitution of India, that this is a fit case for appeal to the Supreme Court against our judgment.