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Court : Kolkata

Decided On : Jun-04-1965

Reported in : AIR1965Cal622,1965CriLJ735

Judge : D.N. Sinha, ;G.K. Mitter and ;P. Chatterjee, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 404, 413, 414, 480, 485, 485A, 486 and 486(1)

Appeal No. : Full Bench Reference No. 4 of 1961 in Reference No. 11 of 1961

Appellant : The State

Respondent : Sukumar Chakraborty

Advocate for Def. : Iyotish Bose, Adv.

Advocate for Pet/Ap. : Priti Bhusan Burman, Adv.

Judgement :

Mitter, J.

1. This case has been referred to a full bench for disposal after decision of the following questions:

(1) Does an appeal lie to the Sessions Judge when in a proceeding under Section 480 or 485A of the Criminal Procedure Code a Magistrate of the First Class has

imposed a sentence not exceeding Rs. 50?

(2) Was the case of Bhowani Mohan Joardar v. Emperor, ILR 1944 (1) Cal 31 corresponding to : AIR1944 Cal382 rightly decided?

2. The case arose as follows: The accused Dr. Sukumar Chakraborty was summoned as a witness in a case pending in the Court of the Magistrate, First Class, Uluberia, being C. R. case No. 307 of 1959. As he failed to attend, a warrant was issued against him and after his appearance the witness, Dr. Sukumar Chakraborty, was tried summarily by the Magistrate, First Class, Uluberia, under Section 485A of the Criminal Procedure Code. He was convicted and sentenced to pay a fine of Rs. 50 in default to suffer simple imprisonment for one week. Against that conviction and sentence Dr. Sukumar Chakraborty filed an appeal in the Court of the Sessions Judge, Howrah, and the appeal was admitted. On November 30, 1960, an application was filed on behalf of Dr. Sukumar Chakraborty, before the Sessions Judge, Howrah, stating that he had been advised that no appeal was maintainable and praying that his memorandum of appeal might be treated as an application for revision and reference be made to the High Court under Section 438 of the Criminal Procedure Code. On receipt of this application the Sessions Judge, Howrah, treated the memorandum of appeal as an application for revision and transferred the case to the Court of the Additional Sessions Judge to be treated as a criminal revision application. On January 2, 1961, the Additional Sessions Judge made his report and sent the case to the High Court purporting to act under Section 438 of the Criminal Procedure Code. After consulting the record of G. R. Case No. 307 of 1959, he noted that the provisions of Sub-section (2) of Section 485A of the Criminal Procedure Code had not been complied with, that although there was no request by him in writing to be examined as a witness Dr. Sukumar Chakraborty was actually examined as an accused and as such the procedure laid down in the proviso to S. 342A had not been followed. He therefore recommended that the conviction and sentence of Dr. Sukumar Chakraborty should be set aside and a re-trial be held by a different Magistrate.

3. The reference was heard in the first instance by Amaresh Roy, J. Before him it was contended that an appeal did lie against the order of conviction and sentence passed by the Magistrate, Uluberia. Although the accused had filed an appeal he was advised by his lawyers on the strength of the decision in : AIR1944 Cal382 that no appeal lay from the sentence imposing a fine of Rs. 50 because of the provisions of Section 413 of the Criminal Procedure Code. The learned Judge was not inclined to take the same view of the law as was done by the division bench in Bhowani Mohan Joarder's case : AIR1944 Cal382 . He referred to a decision of the Allahabad High Court in the State v. Tribeni Sharma 0044/1960 : AIR1960 All214 where after considering the above Calcutta decision the learned Judges had come to a different conclusion. As the learned Judge was of the view that the question involved a right of appeal and there was a decision of the division bench of this Court which required reconsideration he referred the case to a division bench.

4. The reasoning of the learned Judges of the division bench was as follows:

(1) Sub-section (1) of Section 486 of the Criminal Procedure Code excluded the applicability of Section 413 contained in Chapter XXXI of the Criminal Procedure Code in respect of maintainability of appeals under the section.

(2) Sub-section (2) of Section 486 which laid down that 'provisions of Chapter 31 shall, in so far as they are applicable, apply to appeals under this section and the appellate court may alter or reverse the finding or reduce the sentence appealed from' could not signify that the bar of Section 413 of the Criminal Procedure Code against an appeal from a decision by a Magistrate of the First Class where the sentence of fine did not exceed Rs. 50 would be attracted.

(3) If it was intended to attract all the provisions of Chapter 31 of the Code, it would not be necessary to make a special provision for appeal from decision under Sections 480, 485 and 485A or to provide in Sub-section (2) of Section 486 that the Appellate Court may alter or reverse the finding etc.

(4) The power given to the Appellate Court did not include the power to order a retrial.

(5) In the result, Section 486 should be held to contain an independent provision for an appeal from a decision and sentence under Sections 480, 485 and 485A of the Code and the provisions of Chapter 31 would also be applicable in respect of other matters not included in Section 486, e.g., the provisions for issue of notices, calling for the records and so on.

5. Accordingly the division bench was disposed to agree with Amaresh Roy, J. that the decision in : AIR1944 Cal382 needed further consideration. The learned Judges of the division bench further noted that if their view was correct the recommendation made by the Additional Sessions Judge, Howrah, for retrial must be rejected and the appeal which was originally filed by Dr. Sukumar Chakraborty should be heard by the learned Sessions Judge, Howrah. Accordingly they referred the case to the full bench for disposal after decision of the questions mentioned above.

6. At the bar a number of cases of other High Courts was cited wherein a view contrary to that taken in Bhowani Mohan Joarder's case : AIR1944 Cal382 was adopted. Before considering these, it will be useful to refer to the relevant provisions of the Criminal Procedure Code to ascertain the correct position as if the matter was res integra. Under Section 5(1) of the Cr. P. C. all offences under the Indian Penal Code have to be investigated, inquired into, tried and otherwise dealt with according to the provisions of the Cr. P. C: Under Clause (2) of the section all offences under any other law have to be investigated, inquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, enquiring into, trying or otherwise dealing with such offences. The Cr. P. C. is divided into nine parts each part containing one or more chapters and again each chapter containing one or more sections. Part II of the Code contains provisions for the constitution and powers of Criminal Courts and offices. Part III contains provisions for various matters like arrest, escape and re-taking, processes to compel appearance, processes to compel the production of documents etc. Part IV contains provisions for prevention of offences. Part V deals with information to the police and their power to investigate. Part VI deals with proceedings in prosecutions. Part VII which consists of Chapters 31 and 32 relates

to appeals, reference and revision. Chapter 31 containing Sections 404 to 431 deals only with provisions for appeals from different courts and incidental matters like notices of appeal, powers of appellate courts etc. Part VIII containing Chapters 33 to 37 deals with special proceedings. Chapter 34 deals with lunatics. Chapter 35 containing Sections 476 to 478 provides for proceedings in case of certain offences affecting the administration of justice. Chapter IX deals with supplementary provisions like those relating to bail, commissions for the examination of witnesses, special rules of evidence, provisions as to bonds and certain miscellaneous matter.

7. It is therefore clear from the scheme of the Code as a whole that the general provision for appeals is to be found in Chapter 31, Section 404 illustrates the well known rule of law that an 'appeal is a creature of statute' and provides that 'no appeal shall lie from any judgment or order of a criminal court except as provided for by this Code or by any other law for the time being in force.' Sections 405 to 411A are a guide to the courts to which appeals may be preferred in respect of orders mentioned in the sections. Thus Section 408 lays down that any person convicted on a trial held by an assistant Sessions Judge, a District Magistrate or any other Magistrate, may appeal to the Court of Session. Section 409 lays down how appeals to courts of session are to be heard. Section 410 lays down that appeals from sentence of courts of session will lie to the High Court. Section 411 provides that a person convicted on a trial held by a Presidency Magistrate may appeal to the High Court if the sentence is one of imprisonment exceeding six months or if the fine imposed exceeds Rs. 200. Section 411A provides for appeals from sentence of High Court. Section 412 shows that where an accused has pleaded guilty and has been convicted by a High Court, a Court of Session or any Presidency Magistrate or Magistrate of the First Class on such a plea, there shall be no appeal except as to the appeal except as to the extent or legality of the sentence. Section 413 provides that

'notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person in cases in which a High Court passes a sentence of imprisonment not exceeding six months only or of fine not exceeding two hundred rupees only or in which a Court of Session passes a sentence of imprisonment not

exceeding one month only, or in which a Court of Session or District' Magistrate or other Magistrate of the First Class passes a sentence of fine not exceeding fifty rupees only.'

'Explanation: There is no appeal from a sentence of imprisonment passed by such Court or Magistrate in default of payment of fine when no substantive sentence of imprisonment has also been passed.'

Section 414 provides that notwithstanding anything contained hereinbefore, there shall be no appeal by a convicted person in any case tried summarily in which a Magistrate empowered to act under Section 260 passes a sentence of fine not exceeding two hundred rupees only. Section 415 is in effect a proviso to Sections 413 and 414. Section 415-A gives a special right of appeal in certain cases. The other sections from Sections 417 to 431 in Chapter XXXI provide for miscellaneous matters showing inter alia (a) on what matter an appeal is admissible; (b) procedure where appellant is in jail; (c) summary dismissal of appeal; (d) powers of Appellate Court in disposing of appeal; (e) the right of the Appellate Court to take further evidence or direct the same to be taken; (f) procedure where Judges of Court of Appeal are equally divided etc.

8. Chapter 32 deals with reference and revision. Under Section 435 (1) the High Court or any Sessions Judge or District Magistrate or any Sub-Divisional Magistrate duly empowered by the State Government, may call for and examine the record of any proceeding before any inferior Criminal Court situate within the local limits of its or his jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order and as to the regularity of any proceeding of such inferior Court. Under Section 438 (1) 'The Sessions Judge or District Magistrate may, if he thinks fit, on examining under Section 435 or others vise the record of any proceeding, report for the orders of the High Court the result of such examination, and, when such report contains a recommendation that a sentence or an order be reversed or altered, may order that the execution of such sentence or order be suspended, and, if the accused is in confinement that he be released on bail or on his own bond.' Under Sub-section (2) 'an Additional Sessions Judge shall have and may exercise all the powers of a

Sessions Judge under this Chapter in respect of any case which may be transferred to him by or under any general or special order of the Sessions Judge.' Section 489 contains provisions for the High Court's powers of revision.

9. Chapter 35 which is in Part VIII contains Sections 476 to 487. It is headed 'proceeding in case of certain offences affecting the administration of justice.' The sections contained in this Chapter go to show that the Chapter deals with procedure in respect of certain specified offences which affect only the administration of justice and are not ordinary criminal offences. Thus Section 476 provides that when any Civil, Revenue or Criminal Court is, whether on application made to it in this behalf or otherwise, of opinion that it is expedient in the interests of justice that an enquiry should be made into any offence referred to in Section 195, Sub-section (1). Clause (b) or Clause (c), which appears to have been committed in or in relation to a proceeding in that Court, such court may, after such preliminary inquiry, if any, as it thinks necessary, record a finding to that effect and make a complaint thereof in writing signed by the presiding officer of the Court, and shall forward the same to a Magistrate of the first class having jurisdiction' Under Sub-section (2) such Magistrate shall thereupon proceed according to law and as if upon complaint made under Section 200. Sub-clauses (b) and (c) of Section 195 mention various offences punishable under several sections of the Indian Penal Code when the offence is alleged to have been committed in or in relation to any proceeding in any Court. Section 480 provides for procedure in certain cases of contempt and lays down that 'when any such offence as is described in Section 175, Section 178, Section 179, Section 180 or Section 228 of the Indian Penal Code is committed in the view or presence of any Civil, Criminal or Revenue Court, the Court may cause the offender to be detained in custody and at any time before the raising of the Court on the same day and may, if it thinks fit, take cognizance of the offence and sentence the offender to a fine not exceeding two hundred rupees, and, in default of payment, to simple imprisonment for a term which may extend to one month.' Under Section 485 'if any witness or person called to produce a document or thing before a Criminal Court refuses to answer such questions as are put to him or to produce any document or thing in his possession or power which the Court requires him to produce, and does not offer any reasonable excuse for such refusal, such court

may, for reasons to be recorded in writing, sentence him to simple imprisonment

Section 485A under which the Magistrate, First Class, proceeded against the accused in this case, lays down by Sub-section (1) that 'if any witness being summoned to appear before a Criminal Court is legally bound to appear at a certain place and time in obedience to the summons and without just excuse neglects or refuses to attend at that place or time or departs from the place where he has to attend before the time at which it is lawful for him to depart, and the Court before which the witness is to appear is satisfied that it is expedient in the interests of justice that such witness should be tried summarily, the Court may take cognizance of the offence and after giving the offender an opportunity of showing cause why he should not be punished under this section, sentence him to fine not exceeding one hundred rupees.' Under Sub-section (2) 'the court is to follow as far as practicable, the procedure for summary trials in which an appeal lies.'

10. Section 486 (1) provides that 'any person sentenced by any Court under Section 480 or Section 485 or Section 485A, may notwithstanding anything hereinbefore contained, appeal to the Court to which decrees or orders made in such court are ordinarily appealable.' Sub-section (2) of the section lays down that

'the provisions of Chapter XXXI shall, so far as they are applicable, apply to appeals under this section, and the Appellate Court may alter or reverse the finding, or reduce or reverse the sentence appealed against.'

11. Section 486(1) thus gives a special right of appeal notwithstanding anything contained in the Code before this section. Clearly this shows that even if the sentence was not otherwise appealable there is a special right of appeal given to a person who is proceeded against under the three named sections. Sub-section (2) of the section does not purport to make all the provisions of Chapter XXXI applicable to appeals under this section but only seeks to attract such provisions of that Chapter so far as they are applicable. Clearly the right of appeal given by Sub-section (1) overrides any such right either given or denied by Chapter XXXI. If it was intended that Chapter XXXI should in its entirety apply to appeals under

Section 486 there was no need to mention in Sub-section (1) of the section that the right of appeal was 'notwithstanding anything hereinbefore contained,' nor was it necessary to circumscribe the application of Chapter XXXI by the addition of the words 'as far as they are applicable' in Sub-section (2). The appealability of a sentence and conviction passed under Section 485A is the subject matter of Section 486(1) while Section 486(2) purports to make applicable other provisions of law from Section 418 onwards contained in Chapter XXXI to appeals under Section 486(1).

12. Section 418 which is captioned 'no appeal in petty cases' takes away the right of appeal of a person who is sentenced to imprisonment for a term not exceeding six months or who is subjected to a fine not exceeding Rs. 200 or if the trial is by a Court of Sessions to a sentence of imprisonment not exceeding one month or to a fine not exceeding Rs. 50 imposed by a Court of Session, District Magistrate or other Magistrate of the First Class. This only means that if the Court trying an accused is of opinion that the sentence or fine to be imposed should not exceed the limits prescribed the accused is not to have a right of appeal whatever be the nature of the offence for which he is tried. But for Section 486(1) the same result would have followed a conviction and sentence by any Court under Section 480 or Section 485 or Section 485A. It appears to us that the legislature did not want that a conviction for contempt should be treated in the same way as a conviction for other criminal offences. It is not for us to enquire into the reason behind this difference in treatment. It may be that it was because the legislature felt that a Magistrate or other Court may at times be unduly sensitive about the conduct of a person before it and punish a person even if the case did not call for punishment.

13. In *Bhowani Mohan Joarder's case* : AIR1944 Cal382 it was argued before a division bench of this Court that

'the effect of Clause (1) (of Section 486) is to give absolutely a right of appeal in all cases and that Clause (2) is to be interpreted as applying only the general provisions of the Code relating to appeals contained in Chapter XXXI to such appeals when heard, but that the provisions of S, 413 contained in Chapter XXXI which limit appeals in certain cases will not be applicable.'

The learned Judges recognised that the matter was not free from difficulty and said that the question was whether the terms of Clause

(1) were to prevail over those Clauses

(2) or vice versa. With respect, this was in my opinion a wrong approach to the question. The well settled canon of construction of a statute is that effect must be given to all the sections even if they are apparently conflicting so as to harmonise with each other and there is no question ordinarily of one section prevailing over the other unless one is forced to come to that conclusion. Another well known rule of construction is that a special provision must override a general provision. Chapter XXXI including Section 413 contains general provisions with regard to appeals and appealability of sentences and convictions. Section 486 makes a special provision with regard only to a particular class of offences; consequently the special provision must be given effect to in derogation of the general provision. So far as Section 486 is concerned Sub-sections

(1) and

(2) must be construed so as to harmonise with each other and this is only possible if we hold that Sub-section

(1) only deals with appealability of sentences and convictions while Sub-section

(2) deals with other provisions relating to such appeals. Again, I find myself unable to follow the reasoning in Bhowani Mohan Joarder's case : AIR1944 Cal382 that 'the legislature has on this interpretation' (the one canvassed in support of the right of appeal) 'not made any special provision limiting the right of appeal when the order under Section 480 is passed, for instance by the District Judge or by any Presidency Magistrate or by other Courts exercising the powers under Section 413, although, it has, by the clear provision in Section 413, limited the right of appeal where an order is passed by a Court of Session, District Magistrate, or other Magistrate of the First Class.' This observation ignores the fundamental difference between the scope of Section 413 and that of Section

486. Section 413 deals with the right of appeal in criminal cases in general which ordinarily are tried by High Court, a Court of Session, a District Magistrate or other Magistrate of the First Class whereas Section 486 aims at punishment of any person who commits an offence described in Sections 175, 178, 179, 180 or 228 of the Indian Penal Code in the view or presence of any civil, criminal or revenue court. This means that Section 480 is applicable to all classes of Courts while Section 413 is limited to ordinary criminal courts of the land.

14. This point came up for consideration by a Division Bench of the Allahabad High Court in 0044/1960 : AIR1960 All214 . There a Magistrate of the first class took summary proceedings against some persons under Section 480 of the Criminal Procedure Code and recorded their statements. On the view that the statements amounted to a plea of guilty he sentenced them to a fine of Rs. 30 each for contempt of Court and in default of payment of fine each of the respondents was to suffer simple imprisonment for ten days. The respondents went in appeal to the Sessions Judge against their convictions and sentences. A preliminary objection was raised against the maintainability of the appeal on the strength of Section 413 of the Code. This was overruled by the Sessions Judge who however allowed the appeals on the ground that the Magistrate had failed to observe the mandatory provisions of Section 481(2) of the Code. Before the High Court it was contended on behalf of the State that the effect of the expression 'so far as they are applicable' occurring in Sub-section (2) of Section 486 is as it were to incorporate Section 413 as a proviso to Sub-section (1) of that section.' Reliance was placed in support of this contention on the case of Bhowani Mohan Joarder, ILR (1944) 1 Cal 31: (AIR 1944 Cal 3821 On a careful examination of the relevant provisions of the Code the learned Judges were of opinion that the expression 'so far as they are applicable' in Sub-section (2) of Section 486 did not cut down the extent of the right of appeal conferred by Sub-section (1). According to the bench

'when an enactment confers a right of appeal, as Sub-section (1) of Section 486 does, it becomes necessary to provide for three ancillary matters. The enactment should institute an appellate authority; it should provide for the procedure in appeal, and it should further define the powers of the appellate authority.'

They went on to observe that Sub-section (1) of Section 486 created the right of appeal as also the forum of appeal. The second segment of subsection (2) of the section defined the powers , of the appellate court by providing that the court of appeal may alter or reverse the finding or reduce or reverse the sentence appealed against, 'The first segment of Sub-section (2) of Section 486 which was sandwiched between the second part of Sub-section (1) and the second segment of Sub-section (2) was designed to provide for the remaining matter concerning appeals, namely the procedure in appeal.' It was further pointed out that there appeared to be no provision in Chapter XXXV of the Code providing for the procedure in appeals under subsection (1) of Section 486. The learned Judges were further of opinion that the words 'notwithstanding anything hereinbefore contained' enabled Section 486(1) to override the earlier provisions of the Code.

15. With respect I find myself in general agreement with the reasoning adduced by the learned Judges of the Allahabad High Court and see no reason to come to a different conclusion.

16. The point came up for consideration by a division bench of the Madhya Pradesh High Court in State of Madhya Pradesh v. Premchand Kashyap, 1962(2) Cri LJ 680 (MP). Although neither the Calcutta case nor the Allahabad Case appear to have been cited before the bench and no elaborate reasons were given the learned Judges were of the view that Section 486 Criminal Procedure Code would override the provisions of Section 413 in a case where the Court imposed a fine under Section 485A of the Criminal Procedure Code.

(16a) A similar view was taken by a single Judge of the Hyderabad High Court in Vijay Rao v. State AIR 1953 Hyderabad 285.

17. In the result, we must hold that an appeal against the conviction and sentence under Sections 480, 185 and 485A of the Criminal Procedure Code is maintainable under S, 486(1) of the same Code notwithstanding Section 413 even if the fine imposed does not exceed the limits prescribed in the said section. Accordingly we answer the first question submitted to the Full Bench in, the affirmative and the second question in the negative.

18. As the accused had a right of appeal from the order of the first class Magistrate at Uluberia the application for revision filed by him was not maintainable and we direct the matter to be sent back for disposal of the appeal according to law.

Sinha, J.

19. I agree.

Chatterjee, J.

20. I agree.

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