Ranjha Vs. State

Ranjha Vs. State

SooperKanoon Citation : sooperkanoon.com/888371

Court : Himachal Pradesh

Decided On : Jul-20-1951

Reported in : AIR1952HP5

Judge : Chowdhry, J.C.

Acts : Judicial Commissioner's Courts (Declaration as High Courts) Act, 1950 - Section 6; ;Code of Criminal Procedure (CrPC) , 1898 - Sections 342 and 377; ; Constitution of India - Articles 134(1), 216, 241, 241(2) and 368; ;Evidence Act, 1872 - Section 118; ;Oaths Act, 1873 - Section 5

Appeal No. : Criminal Misc. Petn. No. 9 of 1951

Appellant : Ranjha

Respondent : State

Advocate for Def. : Bakshi Sita Ram, Adv.

Advocate for Pet/Ap. : K.C. Pandit, Adv.

Disposition : Application allowed

Judgement :
ORDER

Chowdhary, J.C.

1. Ranjha was convicted under Section 302, I. P. C., by the learned Sessions Judge, Mahasu on 21-4-1951 for the murder of one Durga and sentenced to death. On an appeal by him and submission of the proceedings by the Sessions Judge, his appeal was dismissed and the sentence of death was confirmed by 'this Court on 27-6-1951. Ranjha nas now applied from jail for a certificate under Article 134(1)(e). Constitution of India, that the case is a fit one for appeal to the Supreme Court.

2. The application submitted from jail contains no ground taut the learned counsel appearing for Ranjha has urged three points in support of the application, namely, (1) that this Court consisting as it does of only one Judge had not the power to confirm the sentence of death, (2) that the trial of the applicant in the sessions Court was prejudiced by Laldin having been produced as a prosecution witness and (3) that there was no proper compliance with the provisions of Section 342, Criminal Procedure Code, in the Sessions Court.

3. The argument put forward in support of the first point is as follows. Under Article 216 of the Constitution, which applies to the High Courts in Part A States, every High Court shall consist of more than one Judge. The Court of the Judicial Commissioner of Himachal Pradesh was established on and from the 15th of August, 1948, under the Himachal Pradesh (Courts) Order, 1948. Under Article 241(1) of the Constitution relating to Part C States, of which Himachal Pradesh is one, the Parliament may declare any Court in any such State to be a High Courts for all or any of the purposes of the Constitution. The Parliament declared the Court of the Judicial Commissioner of Himachal Pradesh to be a High Court by the Judicial Commissioners' Courts (Declaration as High Courts) Acts, 1950, which came into force on 26-1-1950. Under Clause (2) of Article 241 the provisions of Chapter V of Part VI of the Constitution relating to High Courts in Part A States shall apply to this Court subject to such modifications and exceptions as the Parliament may by law provide. One of such exceptions and modifications made by the said Act of 1950 was that the provisions of Article 216 of the Constitution shall not apply to this Court, with the result that the Court of the Judicial Commissioner of Himachal Pradesn is a rightly constituted High Court even though consisting of only one Judge. It was argued by the learned counsel for the

applicant that persons sentenced to death by Courts of sessions, and the confirmation of whose sentence of death is submitted to the Court of the Judicial Commissioner, have thereby been deprived of the right which they otherwise would have had under Section 377, Criminal Procedure Code, of the confirmation of tne sentence being made and signed by at least two Judges. He further argued that this valuable right has been taken away from such persons under the said Act of 1950 without the procedure for amendment of the Constitution laid down in Article 868 being followed. According to him it was necessary to follow this procedure in passing the said 1950 Act because the word modification in Article 241(2) was tantamount to amendment.

4. There appear to me to be three obvious objections to the tenability of the above argument. Firstly, there is nothing to show that fie procedure provided by Article 368 was not followed in passing the said 1950 Act. Secondly, it was a case of exception and not of modification since all that Section 6(a) of the 1950 Act laid down was that Article 216 shall not apply to this Court. Thirdly, the said exception under Section 6(a) of the 1950 Act was made under and by virtue of one of the provisions of the Constitution itself, namely, Article 241(2), and no part of the Constitution was thereby amended.

5. For reasons recorded above, it is mainfest that the first point urged by the learned counsel for the applicant as to this Court as a single Judge Court not having had the power to confirm the sentence of death has no force. I would, however, if I may, take this opportunity of submitting for consideration of the authorities concerned the desirability of making some provision, either by an amendment of the Judicial Commissioners' Court (Declaration as High Courts) Act, 1950, or otherwise, whereby the salutary provision under Section 377, Criminal Procedure Code, of the making and signing of the confirmation of sentence of death by at least two Judges is extended to persons under that sentence in Part C States also.

6. As regards Laldin, he was committed to sessions to take his trial for the same oiTence along with the applicant and others. He however pleaded guilty to the charge and was convicted thereon by the learned Sessions Judge. Thereafter the

Sessions Judge proceeded with the trial of the other accused, including the present applicant, and Laldin was produced as a prosecution witness. On an appeal by Laldin to this Court his conviction and sentence were set aside and a retrial ordered. It was argued by the learned counsel for the applicant that if the learned Sessions Judge had taken a correct view of the law Laldin would not have been convicted merely on his plea of guilty and would therefore have been tried jointly with the applicant, so that he would not have been available as a prosecution witness. For the purposes of determining whether Laldin was or was not a competent prosecution witness it is immaterial whether the learned Sessions Judge was wrong in convicting him merely on his plea of guilty. What is material is that before Laldia was produced as a prosecution witness against the present applicant he had already been convicted and so ceased to be an accused. The oar under Section 5 of the Oaths Act against administration of oath to an accused person in a criminal proceed-ing, therefore, did not apply to him and he was a competent witness against the applicant.

7. The third point urged by the learned counsel for the applicant has, however, considerable force. It is unfortunate that it was not urged before me in the course of argument in appeal. The reason for this omission, as stated by the learned counsel for the applicant, was that the judgment of the Hon'ble the 'Supreme Court in 'Tara Singh v. the State', Criminal Appeal No. 14 of 1951, on appeal from the Punjab High Court at Simla, dated 1-8-1951, on which his argument is based, had not come to his notice by that time. His Lordship of the Supreme Court ordered a retrial because of two grave defects in the proceedings in the sessions Court which, in His Lordship's opinion, vitiated the trial. And one of these defects was that the examination of the appellant in the sessions Court had not been made in accordance with the provisions of Section 342, Criminal Procedure Code. It was laid down by His Lordship as follows : 'Section 342 requires the accused to be examined for the purpose of enabling him 'to explain any circumstances appearing in the evidence against him'. Now it is evident that when the sessions Court is required to make the examination, under this section, the evidence referred to is the evidence in the sessions Court and the circumstances which appear against the accused in that Court. It is not therefore enough to read over the questions and answers put in the committing Magistrate's Court and ask the accused whether he

has anything to say about them.' And again :

'Now, Section 342(2) requires that the answers given by the accused may be taken into consideration. If the accused had been properly questioned and had given reasonable explanations and the Sessions Judge had omitted to take them into consideration, it is obvious that that would have constituted a grave defect in his judgment. Now much graver is the defect when the accused is not questioned at all and is not given an opportunity of explaining the circumstances which are intended to be used against him.'

8. Now, in the present case also, as in the case which was in appeal before the Hon'ble the Supreme Court, all that the learned Sessions Juuge did was to read over the examination of the applicant in the Court of the committing Magistrate and ask him whether he had made that statement and at was correct. No question was put to the applicant regarding the evidence produced and circumstances appearing against him in the sessions Court. Even as regards the evidence which was recorded exclusively in the Sessions Court, namely, the evidence of Laldin, only a general question was put to the applicant as to whether he had to say anything in regard to the evidence of Laldin. It would be an act of supererogation on my part to opine whether the said omissions fell within the category of curable irregularities or whether, on the contrary, they amounted to such gross disregard of the provisions of Section 342, Criminal Procedure Code, as to have prejudiced the trial of the applicant. These are matters which must be left to the decision of the Hon'ble the Supreme Court. Those omissions are however sufficient in my opinion to justify my allowing the present application and certifying that the case is a fit one for appeal to the Supreme Court.

9. Accordingly allowing Ranjha's application, Ihereby certify that the case is a fit one for appealto the Hon'ble the Supreme Court.