

Sobha Singh Vs. Jai Singh

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Court : Himachal Pradesh

Decided On : Jan-16-1954

Reported in : AIR1954HP45

Judge : Ramabhadran, J.C.

Acts : [Constitution of India](#) - Article 134(1)

Appeal No. : Civil Misc. Petn. No. 2 of 1954

Appellant : Sobha Singh

Respondent : Jai Singh

Advocate for Pet/Ap. : Indar Singh Karwal, Adv.

Judgement :

Ramabhadran, J.C.

1. This is a petition under Article 134 of the Constitution, wherein I am requested to certify that this case is a fit one for appeal to the Supreme Court.

2. The facts giving rise to this petition may be stated briefly. The petitioner is being tried of an offence under certain Section 409, I. P. C., in the Court of the Magistrate, First Class, Mandi. The petitioner objected to being tried and moved the Magistrate to drop the proceedings. The Magistrate, however, directed the trial to proceed. The petitioner then went up in revision to the learned Sessions Judge

of Mandi, but was unsuccessful there too.

He then came up in revision to this Court and prayed either that the criminal proceedings pending in the Magistrate's Court be quashed, or, in the alternative, the proceedings in the Magistrate's Court be stayed pending decision of civil proceedings between the parties. Both the prayers were refused for reasons stated in this Court's order dated 18-12-1953. I further directed therein, that the trial pending against the petitioner do proceed without further delay. Hence, this petition under Article 134 of the Constitution.

3. I have heard learned counsel for the petitioner. Under Article 134, an appeal lies to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of a High Court, if the High Court certifiesthat the case is a fit one for appeal to the Supreme Court. Parts (a) and (b) of Article 134(1) are not applicable here, because, the petitioner has not been sentenced to death. Learned counsel for the petitioner was called upon to show how this Court's order dated 18-12-1953 can be deemed to be a final order within the meaning of Article 134. Counsel's reply was that as far as the revision petition to this Court was concerned, it was finally decided by this Court's order dated 18-12-1953 and, therefore, it should be deemed to be a final order.

I do not, however, agree. The proceedings against the petitioner are still pending in the Magistrate's Court and no final order by way of acquittal or conviction has been passed against him. I am supported in my view by a ruling of the Federal Court reported in--'Sridhar Achari v. The King', AIR 1949 FC 11 (A). There, the facts were that an accused person was prosecuted for contravention of the provisions of Ordinance III of 1946. An objection was taken by the accused to his trial on the ground that the Ordinance was no longer in force. The objection was overruled by the trial Court. Revisions to the Sessions Court and to the High Court were dismissed. The High Court directed the trial to proceed but granted a certificate under Section 205(1), Government of India Act, 1935. Their Lordships of the Federal Court held, following--'Kuppuswami Rao v. The King', AIR 1949 FC 1 (B), that the order made by a High Court on a criminal revision application is not a final order within the meaning of Section 205(1), Government of India Act.

On the same analogy, the order passed by this Court on 18-12-1953, on the criminal revision petition moved by the petitioner, cannot be said to be a final order within the meaning of Article 134 (1) of the Constitution. Therefore, in my view, the petition is not competent.

4. Even on merits, I am unable to hold that the case is a fit one for appeal to the Supreme Court. The petitioner is standing trial under Section 409, I. P. C., in the Court of Magistrate, First Class at Mandi. The allegations made against the petitioner were that in his capacity as a partner, he withdrew and misappropriated certain sums of money. In my order dated 18-12-1953, I have given my reasons for holding that a complaint under Section 409, I. P. C., under such circumstances was not incompetent. Case law has been quoted therein.

I further gave my reasons for holding that criminal proceedings could not be stayed merely because proceedings under the Arbitration Act for rendition of accounts and dissolution of partnership were pending between the parties. In the concluding para of my previous order, I referred to the conduct of the petitioner, particularly to his tactics in delaying the trial. In my view, the trial against the petitioner should proceed and there is nothing in the case to support the view that it is a fit one for appeal to the Supreme Court. The petition is, accordingly, rejected.