

Sm. Kalawati Vs. the State

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Court : Himachal Pradesh

Decided On : Jun-17-1952

Reported in : AIR1952HP67

Judge : Chowdhry, J.C.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Section 426(2B); ;[Constitution of India](#) - Articles 132, 132(1), 134, 134(1) and 136

Appeal No. : Criminal Misc. Petn. No. 10 of 1952

Appellant : Sm. Kalawati

Respondent : The State

Advocate for Def. : Bakshi Sita Ram, Govt. Adv.

Advocate for Pet/Ap. : R.L. Kohli, Adv. on behalf of Yaspal Gandhi, Adv. and; J.N. Bannerji, Adv.

Judgement :

ORDER

Chowdhry, J.C.

1. As a result of a Government appeal under Section 417, Cr. P. G., Srimati Kalawati has been convicted by this Court under Section 302, read with Section 114, I. P. C., and sentenced to transportation for life. Her application for a

certificate of fitness for appeal to the Hon'ble the Supreme Court has been granted by me. This order refers to the application which she has filed for being granted bail to enable her to present an appeal to the Supreme Court.

2. The relevant provision of the Code is Section 426 (2B), which reads as follows:

'Where a High Court is satisfied that a convicted person has been, granted special leave to appeal to the Supreme Court against any sentence which the High Court has imposed or maintained, the High Court may, if it think fit, order that, pending the appeal the sentence or order appealed against be suspended, and also, if such person is in confinement, that he shall be released on bail.'

It was argued by the learned counsel for the petitioner that the words 'special leave to appeal to the Supreme Court' in the above provision signify the same thing as the grant of a certificate by this Court as to the case being a fit one for appeal to the Supreme Court. It was pointed out that this is the inevitable conclusion to be arrived at since the words used are 'appeal to' and not 'appeal by' the Supreme Court. To my mind, however, the crucial words in the provision are 'special leave'. A reference to the provisions of Articles 132, 134 and 180 of the Constitution will show that special leave is quite different from the certificate of fitness. The former can only be granted by the Supreme Court under Article 136, and all that a High Court can do is to grant a certificate under Article 132 (1) or under the Article 134 (1) (c).

2a. The learned counsel for the petitioner cited to me the provisions of Section 411A (b) of the Code. He contended that as under that provision the effect of a leave of the appellate Court and of a certificate of the Judge who tried the case, is one and the same, namely, accrual of a right of appeal to the High Court, the two things were identical. He therefore wanted me by analogy to draw the inference that, so far as the words 'special leave' in Section 426 (2B) are concerned, they should be interpreted as being in effect the same as a certificate of the High Court. The contention is wholly untenable. The same effect may follow from two independent causes. In fact, Section 411A serves to emphasise the fact that the leave of the appellate Court is not the same thing as the certificate of the High Court.

3. There are other grounds too for not accepting the interpretation put by the learned counsel for the petitioner on the provisions of Section 426 (2B) of the Code. It requires that before granting bail the High Court should be 'satisfied' that the convicted person has been granted special leave to appeal to the Supreme Court. If the provision also applied to the case of certificate, no question of the High Court being 'satisfied' could arise for the certificate was granted by the High Court itself. On the other hand, the question of satisfaction would arise if the order in question were passed by another Court, in the present case the order granting special leave passed by the Supreme Court.

4. A comparison of the provisions of this subsection with those of Sub-section (2A) also leads to the same conclusion. The satisfaction which is a condition precedent to the passing of an order of bail under the latter provision is that the convicted person intended to present an appeal. In that case, the convicted person is granted bail and time is granted to him to enable him to present his appeal and obtain orders of suspension of execution of sentence and of release on bail from the appellate Court. No such, or equivalent, provisions appear in Sub-section (2B), and this therefore confirms the view that the latter provision does not apply, as does the provision of Sub-section (2A), to the stage where the convicted person has not yet moved the appellate Court.

5. I am clearly of the opinion that bail can be granted to a convicted person by the High Court under the provisions of Sub-section (2B) of Section 426 of the Code only where the Supreme Court has already granted him special leave to appeal to that Court and not before or merely upon the certificate of the High Court under Article 132 (1) or Article 134 (1) (c). It may sound strange that there should exist this difference in the matter of the granting of bail by the High Court between a case where special leave has been granted by the Supreme Court and one where, though no such leave has been granted, the High Court certifies the case as a fit one for appeal to that Hon'ble Court. It may even work hardship in certain cases. But that is a matter for the legislature. The Court must follow the law as it is, and not law as it thinks it should be. The application is rejected.