

State of Himachal Pradesh Vs. Ishwar Chand

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Court : Himachal Pradesh

Decided On : Nov-12-1975

Reported in : AIR1976HP52,1977CriLJ43

Judge : R.S. Pathak, C.J.,; D.B. Lal and; C.R. Thakur, JJ.

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

Appeal No. : Supreme Court Appln. (Cr.) No. 10 of 1975

Appellant : State of Himachal Pradesh

Respondent : ishwar Chand

Advocate for Def. : K.D. Sud, Adv.

Advocate for Pet/Ap. : Adv. General

Disposition : Petition rejected

Judgement :

R.S. Pathak, C.J.

1. This is a petition for a certificate under Article 134 of the Constitution to enable the State of Himachal Pradesh to appeal to the Supreme Court on certain points of law arising in a bail application.

2. The respondent Ishwar Chand is a member of a partnership firm, Mahabir Trading Company, carrying on business in foodgrains at Solan. On a surprise check made on July 8, 1975 the police discovered that the godowns of the firm contained stocks of rice and salt in contravention of, the Himachal Pradesh Commodities Price Marking and Display Order. A case was registered under the Defence and Internal Security of India Rules, 1971 and a report was submitted to the Chief Judicial Magistrate that it was proposed to arrest the respondent. The respondent applied for anticipatory bail before the Chief Judicial Magistrate, and on the application being rejected he applied to this Court for bail.

3. In a number of other cases, also allegedly involving a contravention of the said price Marking and Display Order, applications for anticipatory bail under Section 438 of the Code of Criminal Procedure or applications for bail under Section 439 of the Code were made. The applications came on for hearing before one of us (D. B. Lal, J.) and being of opinion that the points raised substantial questions of law he referred the applications to a larger Bench. The cases came on for hearing before a Full

Bench. Having regard to the wide variety of facts calling for consideration in the several applications it was proposed to express an opinion on the major questions of law only and to send the cases back with the opinion of the Full Bench to the learned single Judge for disposal. On August 22, 1975 the Full Bench pronounced the following opinion on the points before it:--

(1) The Himachal Pradesh Commodities Price Marking and Display Order, 1975 or any part thereof is not ultra vires on the grounds taken by the petitioners.

(2) Rule 184 of the Defence and Internal Security of India Rules, 1971 does not come into play. Accordingly, the question whether mens rea is a concomitant of the offences of which the petitioners have been accused and the question whether Rule 184 is ultra vires on the grounds taken by the petitioners need not be considered.

(3) The High Court has powers under Section 438 and Section 439 of the Criminal Procedure Code 1973 to grant bail to the petitioners.

The reasons for that opinion were rendered later, on September 12, 1975. When the respondent's application for bail was heard by D. B. Lal, J. he made an order allowing it and directing the release of the respondent on bail.

4. A perusal of the petition before us discloses that the State desires a certificate against the 'judgment dated September 5, 1975 of the Hon'ble Full Bench of this Hon'ble Court accepting the petition of the respondent for release on bail.' The Full Bench did not allow the respondent's petition for release on bail, nor was any order made on September 5, 1975 by the Full Bench. To remove the confusion emanating from this recital in the petition the learned Advocate General, appearing for the State of Himachal Pradesh, clarified that the petition was filed in respect of the opinion expressed by the Full Bench on August 22, 1975 and with reference to the reasons rendered on September 12, 1975. We must, therefore, consider whether the State is entitled to a certificate to enable it to appeal to the Supreme Court against that Opinion.

5. A preliminary objection has been raised by Shri K.D. Sud, learned counsel for the respondent. He contends that no certificate can be granted under Article 134 (1) of the Constitution inasmuch as the opinion pronounced by this Court is not a 'judgment, final order or sentence' in a criminal proceeding of this Court. In reply, the learned Advocate General urges that the matter before the Full Bench was a 'proceeding' in itself and the opinion expressed by the Full Bench disposed of that proceeding and was, therefore, to be considered as a 'judgment, final order or sentence'. On careful consideration, I think that the preliminary objection must be sustained.

6. The learned Single Judge referred the bail application itself to the Full Bench for decision. The Full Bench expressed its opinion merely on certain points of law arising in the bail application. It did not dispose of the case, but returned it to the learned Single Judge for disposal in the light of the opinion expressed by it. The points of law on which the Full Bench expressed its opinion were only some of the points arising in the case. There were other questions affecting the merits of the case which remained to be considered by the learned Single Judge, and in his judgment he was to determine whether bail should be granted or refused. It is apparent that the proceeding before the Full Bench was in no sense different from the proceeding

initiated originally before the learned Single Judge and later disposed of by him. It was the bail application itself. All that the Full Bench did was to express its opinion on certain points of law arising in the case and sent the case back for decision to the learned Single Judge. The contention of the learned Advocate General that the matter before the Full Bench was a distinct proceeding in itself is rejected.

7. New, Article 134 (1) of the Constitution envisages an appeal from a 'judgment, final order or sentence'. The opinion of the Full Bench is obviously not a 'sentence'. Nor, to my mind, is it a 'judgment' or 'final order'. In *S. Kuppaswami Rao v. The King*, AIR 1949 FC 1 the Federal Court construed the expression 'judgment' and 'final order' in Section 205 (1) of the Government of India Act, 1935. Section 205 (1) provided:

'An appeal shall lie to the Federal Court from any judgment, decree or final order of a High Court in British India, if the High Court certifies that the case involves a substantial question of law.....'.

After examining the cases decided by the courts in England and the courts in our country, the Federal Court laid down that the expression 'judgment' indicated a judicial decision given on the merits of a dispute brought before the court. It observed that in criminal cases it was the decision terminated by an order of conviction or acquittal of the accused and did not include a preliminary or interlocutory order. Nor was it the statement given by the court of the grounds for that decision. It was the decision itself, and a decision on the merits of the dispute. The expression 'final order' in relation to criminal cases was confined by the Federal Court to orders which finally determined the points in dispute and brought the case to an end. It must be an order disposing of a point which, decided either way, would terminate the matter before the court finally. An order was not a final order, even if it decided an important or even a vital issue in the case, when it allowed the matter to remain alive and left it to be tried in the ordinary way. In *State of U. P. v. Col. Sujan Singh* AIR 1964 SC 1897 the Supreme Court considered the scope of Article 134 (1) of the Constitution and held that the expression 'final order' contained therein referred to an order which of its own force bound or affected the rights of the parties.

8. In the present case, the Full Bench merely expressed an opinion on certain points of law arising in the bail application. The nature of the opinion was advisory only. It was intended to advise the learned Single Judge of what the law is on certain points arising in the case. It is well settled that when an opinion is pronounced on a question of law, the opinion cannot be described as a 'judgment' or 'final order' *Narayan Row v. Ishwarlal Bhagwandas* AIR 1965' SC 1818.

9. The learned Advocate General cited a number of cases to show that the expression 'proceeding' included a distinct part of a case or a step in a case, but in the view taken by me this aspect of the matter does not arise.

10. Upon the aforesaid considerations, I am of the view that the opinion pronounced by the Full Bench cannot be described as a 'judgment, final order or sentence' within the meaning of Article 134 (1) of the Constitution. The present petition for a certificate is misconceived and incompetent.

11. The petition is rejected. The respondent is entitled to his costs.

D.B. Lal J.

I agree.

C.R. Thakur, J.

I agree.

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