

PETITIONER:
MUNIR SAYED IBNA HUSSAIN

Vs.

RESPONDENT:
THE STATE OF MAHARASHTRA & ANR.

DATE OF JUDGMENT 12/11/1975

BENCH:
BEG, M. HAMEEDULLAH
BENCH:
BEG, M. HAMEEDULLAH
GOSWAMI, P.K.

CITATION:
1976 AIR 1992 1976 SCR (2) 687
1976 SCC (3) 548

ACT:

Sec 421 of Criminal Procedure Code-Practice of High Court in dismissing criminal appeals without giving any reasons disapproved-Power of High Court to dismiss a Criminal appeal in limine.

HEADNOTE:

The appellant an owner of a hotel was prosecuted along with five others for forcibly dispossessing the complainant who was the Manager of the Hotel and further for misappropriating certain properties including some money belonging to the complainant. According to the appellant, the complainant was merely a licensee. The Trial Court acquitted accused Nos. 3 to 6 and convicted accused No. 1 and 2. The High Court admitted the appeal of accused No. 2 and acquitted him. The appeal of the appellant accused No. 1 was, however, rejected by the High Court in limine without giving any reasons for the rejection.

On an appeal by Special Leave,

^

HELD: 1. There is a whole catena of cases which have come up to this Court from the Bombay High Court in which this Court has consistently disapproved of the practice followed by the Bombay High Court of not giving reasons when exercising its power of summary dismissal of criminal appeals which lie both on questions of fact and law. In other High Courts such appeals are automatically admitted. The power of summary rejection under section 421 of the Criminal Procedure Code should be only exercised when the Court is satisfied from a perusal of the judgment as well as the record that there is absolutely no reasonable possibility of its success for reasons to be mentioned in the order of dismissal. In the present case, it cannot be said that there are no arguable points. It is difficult to believe that the judgments of this court have neither come to the knowledge of the Bombay High Court nor were cited on behalf of the appellant. In any case, the law having been declared by this Court, it is the duty of the Bombay High Court to act in accordance with Article 141 of the constitution and to apply it by giving proper reasons to justify whatever be its view. The judgment of the Bombay High Court was set aside and it was directed that the case

should, be treated as admitted for regular hearing in she Bombay High Court and should be disposed of in accordance with law. [688-C, E, F, G, 689-AB] F

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 191 of 1971.

(Appeal by special leave from the judgment and order of the Bombay High Court dated 25-2-1972 in criminal appeal No. 683 of 1971.)

M/s. M. K. Ramamurthi & Co. for the appellant.

M. N. Shroff and Vineet Kumar, for the respondents.

The Judgment of the Court was delivered by

BEG, J. The allegations, on questions of fact raised in the appeal now before us, were quite unusual. The judgment of a Division Bench of the High Court of Bombay in Criminal Appeal No. 683 of 1971, in respect of coaccused Syed Ali Naki Hade Hasan, who was acquitted on 25-2-1972, shows the nature of the allegations made by the prosecutor

688

in this case. On those allegations, it became necessary to consider whether the accused, who had been put on trial together with six others, was actually in possession of a Hotel. The appellant claimed to be the owner of a hotel of which Jagannath, complainant, was said to be the manager. The case of the Manager was that he had been forcefully dispossessed by the accused and that certain properties belonging to him and others, including some money, were misappropriated by the accused. Therefore, the appellant and five others were charged under Section 395 Indian Penal Code as well as under Section 452 read with Section 34 I.P.C. According to the accused, Shri Jagannath and his brother, the complainant, were only licensees. However, these are questions relating to the merits of a case in which the Trial Court had acquitted accused numbers 3 to 8 and the High Court acquitted accused No. 2. The appeal of the only remaining accused, accused No. 1, who is the appellant before us by special leave was, however, rejected in limine by the High Court without giving any reasons for the rejection.

There is a whole catena of cases which have come up here from the Bombay High Court in which this Court has consistently disapproved of the practice followed by the Bombay High Court of not giving reasons when exercising its power of summary dismissal of criminal appeals which lie both on questions of fact and law. In other High Courts, such appeals are automatically admitted. In any case, it is not possible for this Court to exercise its powers satisfactorily without giving an appellant, who may have an arguable case, an opportunity of first presenting his case to the High Court and getting a decision from it.

The power of a summary rejection of a criminal 1st appeal, even though it is exercisable under the provisions of Section 421 Criminal Procedure Code, should, in our opinion, be only exercised when the Court is satisfied, from a perusal of the judgment as well as the record, that there is absolutely no reasonable possibility of its success for the reasons mentioned in the order. In a case such as the one now before us, it cannot be said that there are no such arguable points that, after the High Court had an opportunity of fully considering both sides of the case, it must necessarily dismiss the appeal. At least, in such cases, where there are arguable points, the High Court

should give its grounds and reasons in support of its decision to reject summarily on some absolutely clinching ground. This Court has laid down the duty upon the High Court to record reasons. (See: Mushtak Hussein v. The State of Bombay (13); Krishna Vithu Surosha v. State of Maharashtra (2); Mustaq Ahmed Mohmed Hussain & Anr. v. The State of Gujarat(3); Kapurchand Kesrimal Jain v. The State of Maharashtra(4) .

It is difficult to believe that judgments of this Court have neither come to the knowledge of the Bombay High Court nor were cited on behalf of the appellant. In any case, the law having been declared by this Court, it is the duty of the Bombay High Court to act in accord

- (1) [1955] SCR 809. (2) [1974] (3) S.C.C. 404.
(3) [1973] (1) S.C.C. 702. (4) [1973] (3) S.C.C. 299.

689

ance with Article 141 of the Constitution and to apply it by giving proper reasons to justify whatever be its view.

Accordingly, we allow the appeal and set aside the order of the High Court rejecting the appeal summarily and order that the case will be treated as admitted for regular hearing of both sides by the Bombay High Court, and disposed of in accordance with the law. , ,

P.H.P.

Appeal allowed.

690