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April 25,
2022
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C.R.R. No.625 of 2016
With
CRAN 1 of 2022

In Re: An application under Article 227 of the Constitution.

Dr Nazrul Islam
Versus
Basudeb Banerjee & Ors.

Dr Nazrul Islam. Petitioner-in-person.

Mr. S. N. Mukherji, Ld. A.G.,
Mr. Saswata Gopal Mukherjee, Ld. P.P.,
Mr. Ranabir Ray Chowdhury,
Mr. Ayan Bhattacharjee.
...for the State.

The petitioner in person appears in Court after filing an application under Article 134(1)(c) of the Constitution of India and prays for certificate for Leave to Appeal before the Hon'ble Supreme Court.

Learned Advocate General at the inception had taken an exception to the written application under Article 134(1)(c) of the Constitution of India being filed. To that effect, learned Advocate General has relied upon certain judgment which are as follows:

- (1) Reckeit And Colman of India Vs. Fifth Industrial Tribunal & Ors. 84 C.W.N. 657;**
- (2) Keshava S. Jamkhandi Vs. Ramachandra S. Jamkhandi AIR 1981 Karnataka 97;**

(3) Karun Sinha Roy Vs. Charan Das Baral 1992
(1) CLJ 530;

However, the written application under Article 134(1)(c) of the Constitution of India was filed by the petitioner as at the time of delivery of the judgment he sought leave for a certificate to prefer an appeal and this Court asked the petitioner to set out the substantial questions of law on the foundation of which such certificate is to be granted.

The petitioner has preferred an application filed a written notes of arguments as also set out number of questions in paragraph 4 of the written notes of arguments which are as follows:

(1) whether previous sanction is required for ordering investigation u/s 156(3) CRPC, against public servant, or information disclosing cognizable offences, under IPC only;

(2) whether Hon'ble High Court judge can pass judgment by accepting a part of the ratio of a Supreme Court judgement and rejecting other part of the ratio of the same judgment;

(3) whether a High Court judge can refuse to order investigation on the plea that, High Court or Supreme Court did not interfere with the Civil Violations, on the same set of act;

(4) whether Hon'ble High Court judge can order

non-investigation of cognizable offences violating the fundamental rights of equality of the victim guaranteed u/a 14;

- (5) whether Hon'ble High Court judge can pass judgment on the basis recording of facts and laws which are contrary to truth and contrary to the records of the case;
- (6) whether Hon'ble High Court judge can state that, a valid sanction is mandatory for ordering investigation u/s156(3) CrPC against public servants for cognisable offences u/s IPC only when the Ld Magistrate had stated that taking cognisance only is barred by section 197(1) CrPC; and
- (7) whether an Hon'ble High Court judge can decide a case following only a part of ratio {and not taking note of another part (which was against His Lordship's contention in deciding the case)} of the two smaller [2 judges'] benches judgments, contrary to the laws laid down by the larger [7 judges', 5 judges' and 3 judges'] benches Supreme Court judgements, which were placed before the Hon'ble judge."

Apart from relying upon the several judgments in the written notes of arguments, he has also relied upon the decisions in **W.H. King Vs. Emperor reported in AIR 1950,**

Bombay, 380, T.A. Bashiruddin Vs. State of Mysore reported in AIR 1952 Karnataka 88, Muhammad Nawaz Vs. Emperor reported in (1942) 44 BOMLR 8, K.S. Nirmalkumarsinhji vs. Saurashtra reported in 1953 Criminal Law Journal 1531. These judgments were placed in addition to the judgments he has relied upon in the written notes of arguments which are as follows:

- 1. Dr Subramanian Swamy Vs. Director CBI & Anr. (2014) 8 SCC 682;**
- 2. Madhao & Anr. Vs. State of Maharashtra & Anr. (2013) 5 SCC 615;**
- 3. Anil Kumar & Ors. Vs. M.K. Ayappa & Anr. (2013) SCC 705 ;**
- 4 L Narayana Swamy Vs. State of Karnataka & Ors. (2016) 9 SCC 598);**
- 5 A R Antulay VS. R S Nayak AIR 1988 S 1531;**
- 6 Iqbal Singh Marwah & Anr. Vs. Meenakshi Marwah & Anr. (AIR 2005 SC 2119);**
- 7 Manju Surana Vs. Sunil Arora (2018 DGLS (SC) 224;**
- 8 K.G. Premshanker Vs. Inspector of Police & Anr. (2002) 8 SCC 87;**

It is the submission of the petitioner that it is not only substantial question of law of constitutional importance which would compel the High Court to issue a certificate but a substantial question of law itself is sufficient for invoking the powers of the High Court for issuing a certificate for granting

Leave to Appeal before the Hon'ble Supreme Court.

Per contra, learned Advocate General appearing for the State has drawn the attention of this Court distinguishing the submission of the petitioner in person in respect of the interpretations relating to Articles 132, 133 and 134 of the Constitution of India. According to the Learned Advocate General if the Court has interpreted the law as it is and even if a question is involved it is not the High Court to grant certificate and for that the provisions of Article 136 of the Constitution of India can be invoked, the petitioner by no chance is remediless at this stage after the High Court has pronounced its judgment. Reliance has been placed on **Baladin & Ors. Vs. State of Uttar Pradesh reported in AIR 1956 SC 181** and attention of the court has been drawn to paragraphs 15, 17 and 18 which are as follows:

“15. Article 134(1) (a) and (b) lay down two conditions which confer a right of appeal to this Court. That in itself indicates that normally there is no right of appeal in any other type of case. The only exception is (c) where a right is conferred (“an appeal shall lie”) if the High Court “certifies” that the case is a fit one for appeal. Now the word “certifies” is a strong word. It indicates that the High Court must bring its mind to bear on the question and, as in all case a of judicial orders and certificates, the reasons for the order must be

apparent on the face of the order itself. The Supreme Court must be in a position to know first that the High Court has applied its mind to the matter and not acted mechanically and, secondly, exactly what the High Court's difficulty is and exactly what question of outstanding difficulty or importance the High Court feels this Court ought to settle. It is not enough to say "leave to appeal is given" and no more because an appeal is not allowed in the ordinary way when conditions (a) and (b) are not satisfied. Accordingly merely to say that leave is given and no more is tantamount to saying that the High Court will usurp the functions of the Constitution-makers and allow the whole case to be opened up despite the fact that the Constitution has specifically limited the normal right of appeal to sub-articles (a) and (b) and has left (c) to meet extraordinary cases.

17. In fairness to the learned Judges we have been at pains to see whether there are matters which would have afforded them justification for granting a certificate under sub-article (c). Four grounds were put forward before us on behalf of the appellants three of which are pure grounds of fact. Now it is clear that a certificate cannot be granted under sub-article (c) if the High Court is in doubt about the

facts. If there is doubt in the minds of the learned Judges about the facts, their duty is to acquit. They cannot convict and then issue a certificate because they cannot make up their minds about the facts.

18. The fourth ground taken before us involves a question of law but it is clear that that was not present to the minds of the learned Judges because they do not even discuss it or advert to it. We are therefore constrained to hold that the appeal does not lie under sub-article (c). But that still leaves us a discretion to examine whether this is a fit case for us to exercise our special powers under Article 136(1) and that we now proceed to do.”

I have considered the judgment of the Hon’ble Supreme Court in **State of Bihar Vs. Bhagirath Sharma & Anr. reported in (1973) 2 SCC 257**. The words certificate in Article 134(1)(c) of the Constitution of India has been interpreted as follows:

“The word “certify” in this Article, as often observed by this Court, is a strong word postulating the exercise of judicial discretion in determining if the question requiring decision by this Court involves a matter of principle or a substantial question of law of great general importance. Such certificate is not to be given as a matter of course on the mere ground that the impugned decision is considered to be erroneous.

There must be exceptional or special circumstances like infringement of essential principles of justice or some difficult question of law of great public or private importance. It is not to be granted so as to convert this Court into an ordinary court of further appeal.”

Having regard to the various principles of law as set out by either of the parties to the litigation, I am of the opinion that this is not a fit case for granting certificate to the petitioner for preferring an appeal before the Hon’ble Supreme Court.

Accordingly, CRAN 1 of 2022 is dismissed.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Tirthankar Ghosh, J.)