(1959) 08 AHC CK 0015

Allahabad High Court

Case No: Government Appeal No''s. 1564 and 1565 to 1571 of 1957

State		APPELLANT
	Vs	
Tribeni Sharma		RESPONDENT

Date of Decision: Aug. 5, 1959

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 413, 480, 486, 486(1), 486(2)

Citation: AIR 1960 All 214 : (1960) CriLJ 435

Hon'ble Judges: S.N. Dwivedi, J; D.P. Uniyal, J

Bench: Division Bench

Advocate: Government Advocate, for the Appellant; Z.H. Kazmi, for the Respondent

Final Decision: Dismissed

Judgement

S.N. Dwivedi, J.
These are eight appeals filed by the State against the orders of acquittal which arise out of facts more or less similar and may be disposed of by a common judgment.

2. The prosecution case against the respondents was that on the 1st May 1957 they shouted in loud tones in the presence of Sri K. N. Ray, a Magistrate of the 1st Class at Gorakhpur when he was sitting in his court-room. The learned Magistrate took summary proceedings against the respondents u/s 480 Cr. P. C. (hereinafter called the Code) and recorded their statements. He thought that their statements amounted to a plea of guilty, and on that view he sentenced them to a fine of Rs. 30/- each for contempt of his court. In default of payment of fine each of the respondents was sentenced to simple imprisonment for 10 days.

3. The respondents went in appeal to the Sessions Judge against their convictions and sentences. District Government Counsel raised a preliminary objection before him against the maintainability of the appeals. It was urged that, in view of the provisions of Section 486(2) read with Section 413 of the Code, no appeal lay inasmuch as the sentence of fine was below Rs. 50/-. The learned Sessions Judge

overruled this objection. He also held that the record of the case did not disclose the nature and the stage of the judicial proceedings which the learned Magistrate was conducting when he was interrupted by the respondents, and that he had failed to observe the mandatory provision of Section 481 (2) of the Code. Accordingly he allowed the appeals and acquitted the respondents.

4. The State has preferred these appeals against the orders of the learned Sessions Judge acquitting the respondents. It was argued on its behalf that there was no right of appeal to the Court of Session against a sentence of fine not exceeding Rs. 50/-, if passed by a Magistrate of the first class, in view of the provisions of Section 413 of the Code. It was also contended that the learned Sessions Judge had wrongly held that the record of the case did not disclose the nature and stage of the judicial proceedings before the Magistrate.

5. The principal question that falls to be determined in these appeals is whether an appeal lay to the Sessions Judge against the order of the learned Magistrate. The argument for the State was developed thus. Sub-section (2) of Section 486 provides that the provisions of Chapter XXXI of the Code shall, so far as they are applicable, apply to appeals under Sub-section (1) of that section. Chapter XXXI which comprises Sections 404 and 413 makes provision for appeals, revisions and references. Section 404 lays down that no appeal shall lie from any judgment or order of the Criminal Court except as provided for by the Code or by any other law for the time being in force.

Section 413, so far as it is material for the purposes of this case, declares that there shall be no appeal by a convicted person in a case in which a Magistrate of the first class passes a sentence of fine not exceeding Rs. 50/- only. Thus Section 413 controls the ambit of Sub-section (1) of Section 486 in view of the provisions of its Sub-section (2), and it will interdict an appeal from the order of a Magistrate of the first class where he has imposed a sentence of fine not exceeding Rs. 50/- only in a conviction u/s 480.

6. It was contended by learned counsel that the effect of the expression "so far as they are applicable" occurring in Sub-section (2) of Section 486 is as it were to incorporate Section 413 as a proviso to Sub-section (1) of that section. Consequently, although the enacting part of Sub-section (1) confers an unrestricted right of appeal even against a sentence of fine of less than Rs. 50/-, that right is taken away when such sentence is passed by a Magistrate of the 1st Class. That, according to his argument is unmistakably the result of the expression "so far as they are applicable" occurring in Sub-section (2) of Section 486.

He seeks to support his argument by a decision of the Calcutta High Court reported in Bhowani Mohan Joarder Vs. Emperor, . That decision undoubtedly lends support to his contention. But, with great respect to the learned Judges who decided that case, we have not been able to persuade ourselves to fall in with their opinion. On a

careful examination of the relevant provisions of the Code we are of opinion that the expression "so far as they are applicable" occurring in Sub-section (2) of Section 486 does not cut down the extent of the right of appeal conferred by Sub-section (1) of that section against a sentence of fine passed by a Magistrate of the first class u/s 480.

In our opinion an appeal lies to the Court of Session against the order of a Magistrate of the first class even when the sentence of fine imposed by him is less than Rs. 50/-. We shall now proceed to state our reasons for the view we are taking.

7. Section 486, so far as it is material, is expressed in these terms :

(1) "Any person sentenced by any Court u/s 480 or Section 485 or Section 485-A may, notwithstanding anything hereinbefore contained, appeal to the Court to which decrees or orders made in such Court are ordinarily appealable.

(2) The provisions of Chapter XXXI shall, so far as they are applicable, apply to appeals under this section, and the Appellate Court may alter or reverse the finding, or reduce or reverse the sentence appealed against".

The words "notwithstanding anything hereinbefore contained" used in Sub-section (1) clearly indicate that the right of appeal conferred by this sub-section is not controlled by any earlier provision of the Code. The right of appeal against an order of a criminal court is not circumscribed by any condition as to the quantum of fine contained in any provision in the earlier part of the Code. The effect of the non obstinate clause is to limit the sweep of the provisions of Section 413 to Chapter XXXI only.

8. The words "so far as they are applicable" may at the first sight appear to attract the applicability of Section 413 to appeals under Sub-section (1) of Section 486, but for a variety of reasons we think that they do not have that effect. When an enactment confers a right of appeal, as Sub-section (1) of Section 486 does, it becomes necessary to provide for three ancillary matters. The enactment should institute an appellate authority; it should provide for the procedure in appeal, and it should, further, define the powers of the appellate authority.

It will be seen that Sub-section (1) of Section 486 not only confers the right of appeal but also creates the forum of appeal. The latter part of this sub-section directs that an appeal lies to the court to which decrees or orders made in such court are ordinarily appealable. Similarly, the second segment of Sub-section (2) of this section, defines the powers of the appellate court by providing that the court of appeal may alter or reverse the finding, or reduce or reverse the sentence appealed against.

In contrast to Section 423, which defines the powers of the appellate court in appeals under Chapter XXXI, the appellate court, in exercise of its powers under Sub-section (2) of Section 486, cannot order a retrial. The first segment of

Sub-section (2) of Section 486 is sandwiched between the second part of Sub-section (1), which creates the appellate authority and the second segment of Sub-section (2), which defines its powers. In this setting and context, we think that it is designed to provide for the remaining matter concerning appeals, namely, the procedure in appeal. We are unable to find any provision in Chapter XXXV of the Code, providing for the procedure in appeals under Sub-section (1) of Section 486, and, in our opinion, the first limb of Sub-section (2) of this section is the only provision which deals with this matter.

The effect of the words "so far as they are applicable", is only this that the procedural provisions of Chapter XXXI are not bodily lifted to Chapter XXXV, but they shall apply to it subject to such modifications as may be necessary in hearing an appeal under Sub-section (1).

9. Our interpretation is further reinforced by the opening words of Section 413, which is as follows :

"Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person in cases in which a High Court passes a sentence of imprisonment not exceeding six months only or of fine not exceeding two hundred rupees only or in which a Court of Session passes a sentence of imprisonment not exceeding one month only or in which a Court of Session or District Magistrate or other Magistrate of the first class passes a sentence of fine not exceeding rupees fifty only.

Explanation : -- There is no appeal from a sentence of imprisonment passed by such Court or Magistrate in default of payment of fine when no substantive sentence of imprisonment has also been passed."

The words "notwithstanding anything hereinbefore contained" enable this section to override the earlier provisions of the Code. Had it been the intention of the Legislature that it should also prevail over a later provision of the Code, which Section 486 is, then it would not have used the word "hereinbefore" in the non obstinate clause, with which Section 413 opens. In that case the non obstinate clause would have been worded in some such manner as "notwithstanding anything contained in this Code". The non obstinate clause of Section 413 unambiguously shows that it cannot be construed to extend its grip over the provision of Sub-section (1) of Section 486.

10. The construction given by the Calcutta High Court to Sub-section (2) of Section 486 would also result in serious anomalies. For instance, if a Sessions Judge sentences a person u/s 480 to a fine not exceeding Rs. 50/-, no appeal will lie according to the decision of the Calcutta High Court. It may happen that the Sessions Judge may also be the District Judge. If he, as the District Judge, sentences a person u/s 480 to a fine not exceeding Rs. 50/-, an appeal will no doubt lie against his decision. Similarly, an officer may happen to be both a Magistrate of the first class as well as an Assistant Collector exercising the powers of a revenue court.

When he, acting as a Magistrate of the first class, sentences a person to a fine not exceeding Rs. 50/-, no appeal will lie; but when, he, acting as an Assistant Collector, sentences a person to a similar fine, an appeal will lie against his order. The attention of the learned Judges of the Calcutta High Court was invited to this aspect of the matter and they were pleased to observe :

"The question is whether the terms of Clause (1) are to prevail over those of Clause (2) or vice versa. On the whole, the matter is not free from difficulty but we are of opinion that there is no reason to cut down the plain meaning of the terms of Clause (2) though the result of failure to do so may in some respects be anomalous."

11. Now it is well-settled that an interpretation, which results in anomalies, should be avoided unless the text is susceptible of that interpretation alone, vide Secretary of State for India Vs. Fakir Mohammad Mandal and Others, , Bahadur Chand v. Mt. Daulat AIR 1944 Lah 369 and N.T. Veluswami Thevar Vs. G. Raja Nainar and Others, . Where the text is clear and the anomalous interpretation is irresistible, the court has to accept it leaving it to the Legislature to remove the anomalies. But what may apparently be clear and compelling may not appear to be so on a closer and more careful scrutiny in the light of the scheme and context of the enactment sought to be interpreted. The anomalies indicated above would disappear, if Section 486 is examined, as we have done, in the light of its scheme and setting.

12. The next point to be considered is whether the learned Sessions Judge was right in holding that the record did not disclose the nature and stage of the proceedings before the Magistrate at the moment when he was disturbed by the shouts of the respondents. We have ourselves examined the record of the case, but we have not been able to find anything therein to show that the learned Magistrate was actually conducting some judicial proceedings when he was disturbed. The mere circumstance that he was sitting in his court-room would not show that he was performing any judicial function at the time.

It is too well-known that Magistrates in this State also perform some non-judicial duties. It cannot, therefore, be presumed that the learned Magistrate, who was sitting in his court-room, was engaged in some judicial proceedings when he was disturbed. The learned Sessions Judge, in our opinion, was right in holding that the learned Magistrate had failed to comply with the mandatory provisions of Section 481 (2) of the Code.

13. For the reasons given above, we dismiss these appeals.