
(1971) 09 GAU CK 0003

In the Gauhati High Court

Case No : Criminal Miscellaneous Application Case No. 30 of 1971

Akoijam Ranbir Singh

APPELLANT

Vs

The Government of Manipur

RESPONDENT

Date of Decision : 21-09-1971

Acts Referred:

Constitution of India, 1950 — Article 133, 134, 134 (1)

Penal Code, 1860 (IPC) — Section 109, 110, 302

Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 — Section 2

Citation : (1971) 09 GAU CK 0003

Hon'ble Judges : R.S. Bindra, J.C.

Bench : Single Bench

Advocate : K. Bapu Singh, for the Appellant; N. Ibotombi Singh, Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Bindra, J.C.

1. This is an application under sub-clause (c) of clause (1) of Article 134 of the Constitution for a certificate of fitness to appeal to the Supreme Court against the judgment dated 11th of March 1971 of this Court whereby the order of the Sessions Judge acquitting the applicant A. Ranbir Singh of the charge of murder was set aside and he was convicted and sentenced to life imprisonment u/s 302 I. P. C. The prayer for certificate is opposed by the State.

2. It is well settled that the discretionary power to grant certificate under clause (c) should be exercised sparingly since the Supreme Court is not an ordinary Court of Criminal Appeal. Speaking generally, the certificate can be granted under that clause only when there appears to be an infringement of essential principles of justice or when there is substantial question of law or principle involved. Tersely put the certificate cannot be granted unless there are some exceptional or special circumstances. Nor can the certificate be granted, it is equally well settled, when only the question raised is one of re-appraisal of

evidence. Shri Bapu Singh, the learned counsel representing the applicant, conceded that the only point which he wants to urge in the Supreme Court is respecting the appreciation of evidence. I think the applicant is clearly not entitled to get the certificate under sub-clause (c) of Article 134 (1) on that basis.

3. The alternative ground taken by Shri Bapu Singh is founded on clause (a) of Section 2 of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970. That clause provides that an appeal shall lie to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India if the High Court has on appeal reversed an order of acquittal of an accused person and sentenced him to imprisonment for life or to imprisonment for a period of not less than ten years. Undoubtedly, the applicant has a right of appeal to the Supreme Court u/s 2 of the Act since this Court had set aside the order of acquittal in his favour and has then convicted and sentenced him to life imprisonment u/s 302 I. P. C. However Section 2 of the Act gives a right of appeal to the aggrieved party to the Supreme Court without intervention of the High Court. In other words, no certificate of the High Court is required to enable a convict to file an appeal in the Supreme Court u/s 2 of the Act. The submission made by Shri Bapu Singh is that Section 2 of the Act should be taken to have been incorporated in Article 134 of the Constitution, and since the present applicant has a right of appeal to the Supreme Court in terms of that section, he is entitled to claim a certificate under clause (c) of Article 134 (1). The submission, in my opinion, has not even the semblance of plausibility. The provisions of the Act leave no room for doubt on the point that no amendment of the Constitution was envisaged by the Act. It is a normal Parliamentary legislation which was obviously placed on the statute book of the country in exercise of the power given by clause (2) of Article 134. That clause provides that the Parliament may by law confer on the Supreme Court any further powers to entertain and hear appeals from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India subject to such conditions and limitations as may be specified in such law. I feel satisfied that no part of the Act is to be considered as having been incorporated in Article 134 of the Constitution. Section 2 of the Act of 1970 is *pari passu* with Sections 109 and 110 of the Code of Civil Procedure, the former providing for right of appeal to the Supreme Court in criminal matters apart from the constitutional right of appeal given by Article 134 and the latter giving identical right of appeal in civil matters besides those vouched by Article 133. Hence. I repel the submission made by Shri Bapu Singh.

4. It appears that Shri Bapu Singh was not aware when he filed the present application that the Act of 1970 had come into force. If that fact were known to him he would have advised his client to file an appeal straightway in the Supreme Court instead of moving this Court for a certificate under clause (c) of Article 134 (1). However, for reason of ignorance on the part of the counsel about the existence of the Act and the rights of the applicant thereunder, this Court is not in a position to lend a helping hand. The applicant would be well-

advised to file an appeal to the Supreme Court accompanied by an application praying for condonation of delay in filing the same.

5. As a result, the application fails and is hereby dismissed.