
(1967) 04 DEL CK 0022
In the Delhi High Court

Datta Ram and Others

APPELLANT

Vs

The Union of India (UOI)

RESPONDENT

Date of Decision : 06-04-1967

Acts Referred:

Citation : (1967) 04 DEL CK 0022

Hon'ble Judges : K.S. Hedge, C.J

Bench : Single Bench

Judgement

K.S. Hegde, C.J.—In this application the applicants pray for a certificate under clause 10 of the Letters Patent Constituting the High Court of Judicature at Lahore, with a view to file an appeal against the decision of S.B Capoor J. in Regular Second Appeal No. 72-D of 1953. The said decision was rendered on September 27, 1966. It does not appear that the applicants moved the learned Judge for a certificate under Clause 10 at the time the judgment was delivered.

2. The Delhi High Court came into being on October, 31, 1966. On October 5, 1966 the present application was filed. This application was pending before the Circuit Bench of the Punjab High Court on the day the Delhi High Court came into existence, The learned Chief Justice of the High Court of Punjab certified this case as one of the cases to be transferred to the Delhi High Court u/s 12 of the Delhi High Court Act, 1966. Therefore, this application stood transferred to this Court. Now the question is whether the certificate prayed for by the applicants, can be granted by any of the Judges of this High Court. As mentioned earlier, the said regular second appeal had been decided by S.B. Capoor J. He continues to be a Judge of the High Court of Punjab and Haryana.

3. Clause 10 of the Letters Patent referred to earlier, very specifically says that an appeal shall lie to the High Court, where the Judge, who passed the judgment, declares that the case is a fit one for appeal. Only the Judge, who passed the judgment in this case, can grant the necessary certificate and no one else. The Judge, who passed the judgment in the present case, has not granted the applicants that certificate. It is not open to any other Judge to grant a

certificate, under Clause 10. This view receives support from the decision of the Gujarat High Court in *Mehta Amritlal Gokuldas v. The State of Bombay* AIR 1966 Guj 87.

4. Mr. Chawla, learned counsel for the applicants, contended that in view of Section 10 of the Delhi High Court Act, a Judge of this High Court has jurisdiction to grant the certificate, prayed for. His argument in this regard proceeded, thus-

A statutory transfer of certain cases took place from the High Court of Punjab to the High Court of Delhi in view of the provisions contained in Section 12 of the Delhi High Court Act, all the transferee Court has all the functions as well as jurisdiction of the Court from which those cases stood transferred. This, in our judgment, is not a correct interpretation of Section 12. No case or proceedings stood statutorily transferred to this Court from the Punjab High Court. Only such cases as were certified, in accordance with the provisions of Section 12, by the Chief Justice of the High Court of Punjab, were transferred to this Court. But in giving the certificate, that Chief Justice had to consider not only the place of accrual of the cause of action, but also the other attending circumstances. One of the circumstances that he could have taken into consideration is the fact that a certificate under Clause 10 can be granted only by the Judge, who passed the Judgment. That apart, the power to grant a certificate under Clause 10 of the Letters Patent is not of the High Court but that of the Judge, who passed the judgment. Therefore, I am unable to agree with Mr. Chawla that Section 12 of the Delhi High Court Act had in any manner amended, modified or altered the requirements of Clause 10 of the Letters Patent of the Lahore High Court.

5. For the reasons mentioned above, the certificate, prayed for, is refused. It is not necessary in this application to decide whether the applicants can move the concerned Judge for a certificate now.

6. No costs.