

(1959) 03 AHC CK 0036
In the Allahabad High Court
Case No : S.C. Criminal Case No. 1 of 1959

Durga Prasad Khosla

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 03-03-1959

Acts Referred:

Constitution of India, 1950 — Article 134(1)
Criminal Procedure Code, 1898 (CrPC) — Section 476, 476B, 479A
Penal Code, 1860 (IPC) — Section 193

Citation : AIR 1960 All 728 : (1959) CriLJ 1374

Hon'ble Judges : A.P. Srivastava, J

Bench : Single Bench

Advocate : Mukund Lal Agarwal, for the Appellant; Asst. Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

A.P. Srivastava, J.—This is an application under Article 134 of the Constitution praying that the case be certified as a fit one for appeal to the Supreme Court.

2. It is not necessary to give the facts in great detail. It will be sufficient to mention that a complaint was filed against the applicant charging him with several offences including one u/s 193 I. P. C. Against the order filing the complaint the applicant went up in appeal to the Sessions Judge u/s 476-B of the Criminal Procedure Code. The Sessions Judge took the view that the order appealed against was wrong because Section 476 Cr. P. C., under which the complaint had been ordered to be filed had been impliedly overruled by Section 479-A of the amended Criminal Procedure Code.

He therefore allowed the appeal and set aside the complaint so far as the offence u/s 193 I. P. C., was concerned. Against that order an application in revision was filed in this Court and the question whether Section 479-A of the Criminal Procedure Code had impliedly repealed Section 476 of the Code in respect of all cases of witnesses giving or fabricating false evidence in judicial proceedings was

raised. The question was referred to a Division Bench and the Division Bench was of opinion that it should be answered in the negative. As a result of that decision the order of the Sessions Judge was set aside and the case was sent back to him for being heard on merits. It is against this last mentioned order sending the case back to the Sessions Judge for being considered on merits that the present application under Article 134(1)(c) of the Constitution has been made and it is contended that as the question is of substantial importance the case should be certified as a fit one for appeal to the Supreme Court.

3. A preliminary objection is raised on behalf of the opposite party and it is contended that no certificate can be granted as prayed because the order against which an appeal is sought to be preferred in the Supreme Court is not a final order as contemplated by Article 134. In support of the preliminary objection learned counsel for the opposite party relies on two cases of the Federal Court reported in AIR 1949 1 (Federal Court) and AIR 1949 11 (Federal Court) .

These cases, it is pointed out, had been followed subsequently in three other cases by the High Courts, viz., *Sobha Singh Vs. Jai Singh*, , *State v. I. Apprehen* AIR 1954 TC. 250 and *Radhey Shiam v. The State* AIR 1955 NUC (All) 4432. By way of analogy it is also pointed out by the learned counsel for the opposite party that the order sought to be appealed against is similar to an order against the order of remand in a civil case where the main dispute has been left for being decided by the trial Court.

It is urged that such an order would not have been a final order for the purposes of Article 133 of the Constitution or Section 109 of the Civil Procedure Code. Reference is made in this connection to the cases of AIR 1933 58 (Privy Council) and *Moolji Jaitha and Co. v. Khandesh Spinning and Weaving Mills Co. Ltd.* AIR 1950 FC 83.

4. The learned counsel for the applicant did not seriously contest the correctness of the proposition that if the case has not actually been decided by the Court but has been left for being decided by the lower Court the order cannot be said to be a final order. His contention is that so far as the application in revision filed in this Court is concerned it has been finally disposed of and therefore for the purposes of Article 134 of the Constitution the order must be held to be a final order. He relies in support of this contention on the cases of *The State of Orissa Vs. Madan Gopal Rungta*, and *Inda Devi Vs. Board of Revenue and Others*, .

5. The question therefore is whether the order of this Court allowing the application in revision was really a final order. The words "final order" have been used in Article 133 as well as Article 134 of the Constitution. They were used in Section 109 of the CPC and Section 205 of the Government of India Act, 1935 also. The term should therefore be interpreted in similar way whether it is used in connection with a civil case or a criminal case. That was the view taken in the cases of AIR 1949 1 (Federal Court) by the Federal Court where their Lordships, observed :

"The words "judgment or final order" used in Section 205(1) impart jurisdiction to the Federal Court to entertain appeals both in civil and criminal matters. As the same words give jurisdiction to the Court in both classes of cases, it will be improper to construe them in a certain way when applicable to appeals in civil matters and give them a wider meaning when considered in connection with appeals from criminal proceedings."

6. As the Privy Council observed in the case of AIR 1933 58 (Privy Council) the test of finality is whether the order "finally disposes of the rights of the parties." Where the order does not finally dispose of those rights, but leaves them "to be determined by the Courts in the ordinary way", the order is not final. That the order "went to the root of the suit, namely the Jurisdiction to entertain it", is not sufficient. The finality must be a finality in relation to the suit. If, after the order, the suit is still a live suit in which the rights of the parties have still to be determined no appeal lies against it u/s 109(a) C. P. C. The same test was applied by the Federal Court in the case of AIR 1949 1 (Federal Court) where it was observed :

"To constitute a final order it is not sufficient merely to decide an important or even a vital issue in the case, but the decision must not keep the matter alive and provide for its trial in the ordinary way."

This view was reiterated in the case of AIR 1949 11 (Federal Court) .

7. If we look at the matter, keeping the above test in mind, there can be no doubt that the order disposing of the application in revision cannot be considered to be a final order. The real dispute which arose in the case was whether the complaint for the offence u/s 193 I. P. C., was justified in the circumstances of the case and ought to have been filed. That question is yet to be decided and has been directed to be decided in the ordinary course. This Court only decided an important question of law which arose in connection with the question but in spite of that decision it is still open to the Judge to hold that the complaint should not have been filed. In that case the question which the applicant now seeks to raise before the Supreme Court will not arise at all.

8. The two cases relied upon by the learned counsel for the applicant appear to be clearly distinguishable. In the case of The State of Orissa Vs. Madan Gopal Rungta, the appeal had been filed under Article 132 of the Constitution and it appears that in this respect the provisions of that Article are not identical with those of Article 133. Moreover, in that case the Supreme Court held that the writ of mandamus which had been issued really disposed of finally the case that was before the High Court and nothing further remained to be done in respect of the matter. It was on that basis that it was held that the order appealed against was a final order. In the case of Inda Devi Vs. Board of Revenue and Others, , also that writ petition filed in this Court under Article 226 of the Constitution had been dismissed on the ground that an alternative remedy was still open and the review application filed before the Board of Revenue had not till then been

disposed of. It was therefore not a case of remand at all.

9. It therefore appears to me that the preliminary objection raised is well founded and must prevail. The present case is not really covered by Article 134 of the Constitution and it is therefore not open to this Court to certify the case to be a fit one for appeal to the Supreme Court. The application is consequently rejected.