

(1955) 07 GAU CK 0006

In the Gauhati High Court

Case No : Supreme Court Appeal No. 1 of 1955

River Steam Navigation Co. Ltd. and Another

APPELLANT

Vs

Shyam Sundar Tea Co. Ltd.

RESPONDENT

Date of Decision : 15-07-1955

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 109
Constitution of India, 1950 — Article 133, 133(1)

Citation : (1955) 07 GAU CK 0006

Hon'ble Judges : Sarjoo Prosad, C.J; Ram Labhaya, J

Bench : Division Bench

Advocate : A.C. Chatterjee and J.C. Sen, for the Appellant; S.K. Ghose and K.P. Bhattacharjee, for the Respondent

Judgement

Ram Labhaya, J.—This is a petition by defendants for leave to appeal to the Supreme Court from the judgment and decree of this Court dated 15-6-1954 mainly under Article 133(1)(c) of the Constitution of India.

2. The facts of the case need not be stated here. They have been set forth at great length in the judgments of this Court. The main point in controversy in the case was, whether the defendants were operating as common carriers between Dillibari Ghat and Desangmukh, From Desangmukh downwards they were admittedly common carriers. Desangmukh was one of their advertised termini.

The case of the plaintiff was that the consignment was delivered at Dillibari for carriage to Calcutta. The defendants received the consignment at Dillibari Ghat through their boatmen for carriage to Desangmukh by boat and therefrom by steamer to Calcutta. There was a forwarding note sent along with the consignment; on the basis of the forwarding note, there was booking of the consignment at Desangmukh for carriage to Calcutta.

The booking through this forwarding note was an important stage in the transport of the consignment, its effect had an important bearing on the main

question in controversy. Defendants had denied all responsibility for transport between Dillibari and Desangmukh, but on facts found it became necessary to discover whether when transporting tea from Dillibari to Desangmukh they could be regarded as common carriers. The conclusion reached was that their operations were subject to the obligations of common carriers.

3. On behalf of the petitioners, it is urged before us that it is a case which is fit one for appeal to their Lordships of the Supreme Court under Article 133(1)(c) of the Constitution of India. The learned Counsel for the petitioner conceded that the case does not satisfy the requirements of Clause (1)(a) of Article 133 of the Constitution Clause 1(b) of Article 133 also is not applicable.

It has not been shown here that the Decree sought to be appealed from involves directly or indirectly some claim or question respecting property which is not less than rupees twenty thousand in value. The consignment which was lost was admittedly below rupees twenty thousand in value. It was in these circumstances argued that the case would fall under Clause (1)(c) of Article 133 considering that the question that arose in the case was not purely a question of fact and was also a question of great public and private importance.

If the defendants are common carriers from Desangmukh to Dillibari Ghat they will be under certain statutory obligation to their constituents, who have goods transported to Desangmukh for carriage to Calcutta through the defendants. These constituents are the Tea Gardens in the neighbouring areas Since tea is being transported by means of country crafts in this region accidents can occur again and any one of the constituents of the defendants including the plaintiffs may be affected.

The question can easily arise in the future considering the evident risks of navigation. It is urged that the issue relates to the status of the defendants and therefore it has a great public importance as affecting their relations with the constituents who utilise their transport system for carriage of their consignments.

4. There is considerable force in this argument A perusal of the two judgments alone would indicate that the main question was not found to be an easy one. It could not be regarded as a pure question of fact. It had some legal facets. There was no direct authority covering the facts of this case. The question also has undoubtedly great public and private importance. The decision in the case determines the status of the defendants qua their constituents.

The accidents like the one which resulted in the loss of consignment by the sinking of a country craft in Brahmaputra can happen at any time. The same question may easily arise between the defendants on one side and the plaintiffs or other constituents of the defendants. The question therefore is both of great public and private importance. There was no clear authority bearing on the circumstances found in the case.

In these circumstances even if it is found that the questions arising in the case

were primarily those of facts, it cannot be said that there was no question of law involved in the case, or that the question was so simple that it may not be regarded as of such importance as to justify a grant of leave under Clause (c) of Article 133 of the Constitution of India.

It may also be observed that so far as Clause (c) of Article 133 of the Constitution of India is concerned, it does not require that there must of necessity be questions of law before leave to appeal may be allowed under this clause. A question of general importance may be one of fact and if it can be found to be of general importance, it would fall within the purview of Clause (c) of Article 133 and afford ample justification for allowing leave.

The question at issue is of great private importance to the parties. Its public importance is undoubted. Therefore, we need not try to discover a substantial question of law in allowing leave under Clause (c) of Article 133 of the Constitution of India. Under Clause (c) the discretion of the Court is very wide. It is for the Court deciding the case to certify that the case is a fit one for appeal. The Code has designedly not placed any restrictions in express terms on the powers of the Court in this regard. No attempt may therefore be made to limit it by qualifying principles of a general character. The discretion has no doubt to be exercised according to sound and recognized judicial principles. The application of such principles if any has also to depend on the facts and circumstances of each case.

Mr. Ghose has not referred us to any authority in support of the contention that leave under Clause (1)(c) can be allowed only in cases where there is a question of law or a substantial question of law involved in the case. The obvious general or public importance of the case is enough for granting leave.

5. Mr. Ghose has also argued that the value of the subject-matter of the suit being below Rs. 20,000/-, the petitioner could not ask for leave to appeal under Clause (1)(c) which he argues is limited in its application to cases, where the value of the subject-matter cannot be ascertained in money. Mr. Ghose has referred us to--"Baradakahta v. Surondrachandra" AIR 1953 Assam 21 (A), a decision of this Court in support of his contention.

He also relied on cases referred to therein and particularly on "Radhakrishna Aiyar v. Swaminatha Aiyar" AIR 1921 PC 25 (B) In some of these decisions it has been observed that for leave to appeal under Clause (c) of Section 109, Civil P.C. the question should be of great public importance and that its subject-matter should not admit of pecuniary valuation. In AIR 1953 Assam 21 (A), this Court did not lay down any such rule.

The conclusion reached was that the question in dispute was not of any great public importance and had no other exceptional circumstances justifying leave under Clause (1)(c). Decisions which seem to support Mr. Ghose's contention are illustrative in character. They may not be interpreted as limiting the powers or the discretion of the Court with which it is invested. As observed by Spens, C.J.

in-- AIR 1944 23 (Federal Court)

the question of grant of leave to appeal to His Majesty in Council must be dealt with on the facts and circumstances of each case. It is neither possible nor desirable to crystallise the rules relating to the exercise of the Court's discretion in the matter.

This contention also cannot prevail.

6. In our opinion the petitioner has succeeded in making out a case for leave under Article 133(1)(c) of the Constitution of India and we direct that a certificate that the case is a fit one for appeal to the Supreme Court under Article 133(1)(c) of the Constitution of India shall issue. We make no order as to costs.

Sarjoo Prosad, C.J.

7. I agree.