
(1961) 12 BOM CK 0006

In the Bombay High Court

Case No : Criminal Application No. 1646 of 1961

Shriprakash Shivram Potdar

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 21-12-1961

Acts Referred:

Corners Act, 1871 — Section 29

Citation : AIR 1962 Bom 252 : (1962) 64 BOMLR 339 : (1962) ILR (Bom) 409

Hon'ble Judges : Tambe, J; Chandrachud, J

Bench : Division Bench

Advocate : V.D. Mengad and D.R. Gadgil, for the Appellant; C.C. Vaidya, Asstt. Government Pleader, for the Respondent

Judgement

Chandrachud, J.—This is one of those cases in which a verdict would shock the conscience of the public. A child aged 2 fell down from an apartment on the 4th floor of a building situated on Netaji Subash Road. The tragedy occurred on the 14th of October, 1961, at about 10-30 a.m. When the father had gone to his office, the maid was in the bathroom and the mother was reading a news-paper in the drawing room. Presumably, the child crawled to the balcony, got on a chair, and lost her balance. On hearing the noise, the mother looked out only to find that the child was lying motionless on the pavement below. In these circumstances we are unable to appreciate how and on what basis the Coroners' Jury came to the conclusion that the mother must be held guilty of negligence. To permit the seeds of a prosecution to be sown on these facts, seems to us to be a perversion of justice, and if we have the power, we must grant the relief prayed for by the petitioner. The verdict of the Coroner's jury seems to us to be based on no evidence at all, and it would be unfair to the mother, to permit that verdict to stand.

2. The learned Assistant Government Pleader who appears on behalf of the State, contends that a Coroner's Court is not one of those Courts which are established in the hierarchy of Courts under the Criminal Procedure Code, and he

argues that we have no jurisdiction to quash the verdict returned by the jurors of the Coroner's Court. On the other hand, Mr. Mengade who appears on behalf of the petitioner, contends that this Court has got jurisdiction to control the deliberations before the Coroner and in proper cases this Court must exercise its jurisdiction either to amend or quash the verdict or the inquisition.

3. Turning to the provisions of the Coroner's Act, 1871, section 29 provides that:

No inquisition found upon or by any inquest shall be quashed for any technical defect.

In any case of technical defect a Judge of the High Court may, if he thinks fit order the inquisition to be amended, and the same shall forthwith be amended accordingly.

On a plain reading of this section it would appear that the circumstances in which the High Court can quash the verdict or the inquisition, have not been clearly or fully set out in the section. What is provided is that an inquisition cannot be quashed for a technical defect. The provision that an inquisition cannot be quashed for a mere technical defect must, however, carry with it the implication that the High Court has the power to quash an inquisition, but the intention of the Legislature was that the power possessed by the High Court to quash an inquisition should only be exercised in cases in which the inquisition suffers from a substantial as distinguished from a technical defect. If the verdict of the Coroner's Jury is assailed on a technical plea, the second part of section 29 of the Coroner's Act, provides that rather than quash a verdict, the High Court may amend the verdict so as to cure the inquisition of all technical infirmities. In a word, therefore, the first part of section 29 implies that the High Court has the power to quash an inquisition, the power being circumscribed so as to be exercised to cure substantial defects and the second part of the Section confers on the High Court the power to amend an inquisition so as to remove the technical defects from which the inquisition suffers.

4. If any authority were required for the proposition that the High Court does possess such a power, one would be found in a judgment reported in *In Re: Umar Sobani*, . In that case the question which arose before the Coroner was whether a certain person had died on account of poisoning. The Coroner's Jury returned a somewhat non-committal verdict, because, all that it held was that the death was caused on account of opium poisoning but that in the absence of reliable date, it was impossible to say whether the opium was self-administered or whether it was administered by an outside agency, or was taken by the deceased accidentally. After the jury returned its verdict the Coroner, disagreeing with the verdict, made a reference to this Court, and one of the preliminary questions which arose on the reference was whether the Coroner has powers analogous to the powers conferred on Sessions Judges by Section 307 of the Criminal Procedure Code. This court held that the Coroner has no power to make a reference, but both Mr. Justice Shah and Mr. Justice Fewest took the view that it would be open

to an aggrieved party to make an application to this Court asking that the verdict of the jury or the inquisition should be suitably amended or quashed. Having held that on a proper application being made in that behalf, the jurisdiction of the High Court could be invoked either for amending or quashing the inquisition, the learned Judges set out to ascertain whether on the facts and circumstances of the case before them there was any justification for quashing the verdict; and eventually the conclusion which they reached was that since the question before them was one of appreciation of evidence it was not proper to quash the verdict of the jury. There is yet another reason and that reason is that the jury by its verdict did not record any conclusion which would affect the petitioner who had made the application for quashing the verdict. As we have stated earlier, the verdict of the jury was non-committal and one part of that verdict expressly stated that in the absence of adequate evidence, the jury was unable to come to any definite conclusion as to the cause of death.

5. In the case before us, the question is not one of appreciation of evidence, for, the learned Assistant Government Pleader has fairly conceded that there is no evidence showing that the mother was guilty of any negligence. The only material which was put before the Coroner's Jury, was the statements which were made by the father of the child, then by the mother of the child and lastly by Sub-Inspector Kadam who investigated into the death of the child. If anything, these statements show that there was no negligence on the part of the mother whatsoever, and indeed none of these statements contains even a faint suggestion that the mother had contributed to the death of her child by any negligence on her part. In our opinion, there is no evidence or data whatsoever, which would justify the conclusion to which the Coroner's Jury has come, and for that reason we must allow this application and exercise our jurisdiction under the first part of section 29 of the Coroner's Act, 1871 by directing that the verdict of the Jury and the inquisition do stand partially quashed.

6. We, therefore, order the last part of the verdict, viz., "That the fall was due to the negligence of the mother," will stand quashed.

7. Order accordingly.