
(1971) 01 P&H CK 0018

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 19 SCT of 1971

Sucha Singh Bassi

APPELLANT

Vs

The State of Haryana

RESPONDENT

Date of Decision : 29-01-1971

Acts Referred:

Constitution of India, 1950 — Article 133, 133(1), 134(1), 136
Criminal Procedure Code, 1898 (CrPC) — Section 374
Evidence Act, 1872 — Section 10
Penal Code, 1860 (IPC) — Section 120B, 302, 34
Police Rules — Rule 22.5

Citation : (1971) 2 ILR (P&H) 86

Hon'ble Judges : R.S. Sarkaria, J; Prem Chand Pandit, J; Gurdev Singh, J

Bench : Full Bench

Advocate : K.S. Kwatra, for Advocate General, for the Appellant;

Final Decision : Dismissed

Judgement

1. This order will dispose of three petitions (No. 19, 20 and 21 Set. of 1971) under Article 134(1) (c) of the Constitution of India seeking certificate for appeal to the Supreme Court against our judgment and order, dated 21st September, 1970; whereby we confirmed the sentences of death imposed upon the Petitioners Sucha Singh; Baldev Singh and Nahar Singh by the trial Court and dismissed their appeals against their conviction for various offences under Sections 120-B, 302, 302/34 of the Indian Penal Code etc.

2. Shri Partap Singh Kairon; an ex-Chief Minister of Punjab, was murdered on 6th February, 1965, alongwith three other persons who were travelling with him in the same car. The investigation led to the prosecution of the three Petitioners Sucha Singh, Baldev Singh and Nahar Singh, and on trial by the learned Additional Sessions Judge, Rohtak; all of them were convicted under Sections 120-B, 302 and 302/34 etc., of the Indian Penal Code and sentenced to death besides imprisonment awarded for minor offences. The appeals preferred by the three convicts against the order of the trial Court, dated 6th June, 1969,

alongwith the reference u/s 374 of the Code of Criminal Procedure for confirmation of the sentences of death passed on them were entrusted for hearing to this Special Bench. In accordance with the majority decision, their appeals were dismissed and sentences of death awarded to the three Petitioners were confirmed on 21st September, 1970. The Petitioners have now approached us to certify the case as fit for appeal to the Supreme Court under Article 134(1) (c) of the Constitution of India, urging:

- (1) that the case is of great public importance,
- (2) that it involves consideration of substantial and difficult questions of law,
- (3) that even among the Members of this Bench there has been divergence of opinion leading to conflicting conclusions on questions of fact and law,
- (4) that according to the minority judgment no offence whatsoever had been proved against any of the Petitioners and there is nothing to prove their complicity in the crime, and
- (5) that some of the numerous questions of law that arose in the course of the trial and at the hearing of the appeals in this Court require authoritative pronouncement by their Lordships of the Supreme Court.

3. According to the Rules of this Court, appeals against conviction for murder and reference u/s 374 of the Code of Criminal Procedure for confirmation of the sentence of death are heard by a Division Bench consisting of two Judges. This Special Bench of three Judges was, however, constituted by our Lord the Chief Justice for hearing the Petitioners' appeals and reference for confirmation of the sentences of death passed on them. Though one of us came to the conclusion that the prosecution had failed to prove the complicity of any of the three Petitioners in the crime and thus all of them were entitled to acquittal on all the charges, the majority judgment agreed with the findings of the trial Court and not only affirmed the conviction of the three Petitioners on all the charges but also confirmed the sentence of death awarded to them.

4. Certificate for appeal to the Supreme Court is sought under Article 134(1) (c) of the Constitution, and what we have to consider is whether the case is a fit one for appeal to the Supreme Court. In *Sunder Singh Vs. State of Uttar Pradesh*, , their Lordships ruled that the grant of a certificate under Article 134 (1) (c) is not a matter of course, but the power has to be exercised after considering what difficult questions of law or principle were involved in the case which should require the further consideration of the Supreme Court, and if the case as decided by the High Court on the face of it did not involve any such questions, then apparently there was no justification for the High Court to certify that the case is a fit one for appeal to the Supreme Court. Speaking for the Court, Sinha J, after referring to the earlier decisions of the Court, observed:

Ordinarily in a case which does not involve a substantial question of law or principle in an affirming judgment, the High Court would not be justified in

granting a certificate under sub-article (c) of Article 134(1) of the Constitution.

5. In *Baladin and Others Vs. State of Uttar Pradesh*, while, dealing with the same provision of the Constitution, it was observed:

Now the word "Certifies" is a strong word. It indicates that the High Court must bring its mind to bear on the question and, as in all cases of judicial orders and certificates, the reasons for the order must be apparent on the face of the order itself. The Supreme Court must be in a position to know first that the High Court has applied its mind to the matter and not acted mechanically and secondly, exactly what question of outstanding difficulty or importance the High Court feels this Court ought to settle.

6. Again in *Sidheswar Ganguly Vs. The State of West Bengal*, , *Sinha J.*, emphasising the use of the word "certifies" in Clause (c) of Article 134(1) said:

"Certifying" is a strong word and, therefore, it has been repeatedly pointed out that a High Court is in error in granting a certificate on a mere question of fact, and that the High Court is not justified in passing on an appeal for determination by this Court when there are no complexities of law involved in the case requiring an authoritative interpretation by this Court.

7. The scope of the powers of the High Court under Article 134(l)(c) again came up for consideration before the Supreme Court in *Babu and Others Vs. State of Uttar Pradesh*, . While taking note of the fact that this clause does not state the condition necessary for the grant of certificate, *Hidayatullah, J.*, (as he then was), delivering the judgment of the Court, made the following observations:

It can only safely be said that under Article 134(l)(c) this Court has not been made an ordinary Court of Criminal Appeal and the High Court should not by the certificates attempt to create a jurisdiction which was not intended. The High Courts should, therefore, exercise their discretion sparingly and with care. The certificate should not be granted to afford another hearing on facts unless there is some error of a fundamental character such as occurred in *Nar Singh and Another Vs. The State of Uttar Pradesh*, .

There is no doubt whatever that Sub-clause (c) does not confer an unlimited jurisdiction on the High Courts. The power gives a discretion, but discretion must always be exercised on some judicial principles. A similar clause in Article 133, which allows appeals in civil cases has been consistently interpreted as including only those cases which involve a question of general public importance. That test need not necessarily be applied to a criminal case, but it is clear that mere questions of fact should not be referred for decision. The Constitution does not contemplate a criminal jurisdiction for this Court except in those two cases covered by Clauses (a) and (b) which provide for appeals as of right. The High Court before it certifies the case must be satisfied that it involves some substantial question of law or principle. In a criminal appeal the High Court can consider the case on law and fact, and if the High Court entertains doubt about

the guilt of the accused or the sufficiency of the evidence, it can always give the benefit to the accused there and then. It is not necessary that the High Court should first convict him and then grant him a certificate so that this Court, if it thought fit, reverse the decision. It is thus obvious that only a case involving something more than mere appreciation of evidence is contemplated by the Constitution for the grant of a certificate. What that may be will depend on the circumstances of the case, but the High Court should be slow to certify cases. The High Court should not overlook that there is a further remedy by way of special leave which may be invoked in cases where the certificate is refused.

8. Recently in *State of Assam Vs. Abdul Noor and Others*, , it was again emphasised that the power under Sub-clause (c) of Article 134(1) is to be exercised on judicial principles and the jurisdiction under that provision is not that of an ordinary Court of criminal appeal, and Ray J., said:

It is manifest that before granting a certificate under subclause (c) the High Court must be satisfied that it involves some substantial question of law or principle. The certificate itself should give an indication what substantial question of law or principle is involved in the appeal to bring it within the scope of Article 134(1)(c). Where this Court has found that the certificate is not in compliance with the requirements of Article 134(1)(c), it has declined to accept the certificate.

9. Clause (c) of Article 134(1) of the Constitution is similarly worded as Clause (c) of Article 133(1). There are a number of decided cases under the latter clause in which it has been considered in what circumstances the certificate as to fitness for appeal to the Supreme Court should be granted, and it has been held that where a case is of great public importances and the questions of law involved are of outstanding difficulty, leave should be granted.

10. The Petitioners' learned Counsel have urged that both these tests are satisfied in the present case as the case is of public importance and many difficult questions of law, on which there has been divergence of opinion among the members of this Bench, arise in" the case which require authoritative pronouncement by their Lordships of the Supreme Court. In support of the argument that the case is of public importance, reliance is placed on the fact that departing from the normal practice the appeals of the convicts were heard by a Special Bench of three Judges instead of a Division Bench consisting of two, that one of the victims of the crime was an ex-Chief Minister of Punjab a prominent public man, that the entire Punjab Police was concerned in the investigation of the case, and that the case had aroused considerable Public interest. None of these facts, in our opinion make the case of Public importance. We are here concerned with the guilt or innocence of the Petitioners. The fact that they are alleged to have committed the murder of an important public man and the case had caused sensation and aroused public interest does not lead to the conclusion that matters of public importance arise for consideration by the Supreme Court. So far as the findings of fact are concerned they are based on the evidence adduced in the case, and the question of law had to be settled in accordance with

the judicial decisions which had been duly considered by us while dealing with the appeals of the Petitioners.

11. The substantial questions of law which arise for decision in this case according to the Petitioners' learned Counsel relate to the interpretation of Rule 22.5 of the Police Rules, the admissibility of approver's evidence u/s 10 of the Evidence Act, the right of an approver to seek legal assistance when he is in the witness-box, the presumption arising from the non-production of the Roznamcha and other material documents relating to the investigation of the case and the propriety of confirmation of the sentence of death when a long time had elapsed since the commission of the crime. None of these and other questions which arose before us while dealing with the Petitioners' appeals are bereft of authority and on most of them we have authoritative pronouncements of their Lordships of the Supreme Court themselves. Even though there has been divergence of opinion among us on various questions of law and fact and some of them present some difficulty, the fact remains that there is no such question of law which can be considered to be of outstanding difficulty or public importance.

12. The question of the propriety of the death sentence awarded to the Petitioners again does not involve decision on any question of principle. In the judgment of the majority confirming the sentences of death passed on the Petitioners reasons have been given and the question whether in a particular case sentence of death should or should not be awarded ultimately depends upon the facts of the case and this does not require any reference to the Supreme Court.

13. The fact that the decision of this Court has not been unanimous and according to the minority judgment the Petitioners were not proved to be guilty of any offence by itself does not justify the grant of the certificate under Article 134(l)(c). Not a single case has been brought to our notice by any of the Petitioners' counsel in which certificate under Article 134(1)(c) has been granted because of the difference of opinion among the members of the Bench hearing the case. On the other hand, it has been held in several cases including *Mst. Gulab Bai and Another Vs. Mt. Manphool Bai*, , that even the existence of divergence of opinion among the High Courts is not by itself a sufficient ground for grant of a certificate under Sub-clause (c) of Article 133(1) where the question involved is not one of general importance.

14. On behalf of the Petitioners it is argued that the question of fitness for leave to appeal under Clause (c) both of Articles 133(1) and 134(1) has no connection with a substantial question of law being involved and the jurisdiction of the High Court is discretionary and very wide. Support for this contention is sought from some observations contained in AIR 1944 23 (Federal Court) . That it is a discretionary jurisdiction vesting in the High Court admits of no doubt as in *Nar Singh's case* AIR 1954 S.C. 547, Bose J., observed:

In the case of Clause (c) both of Article 133(1) and Article 134(1), the only

condition is the discretion of the High Court, but the discretion is a judicial one and must be judicially exercised along with well-established lines which govern these matters.

15. Though the Courts have considered it neither possible nor desirable to crystalize the rules relating to the High Court's jurisdiction in the matter, the leading authorities of the Supreme Court, to which a reference has been made earlier, however, leave no doubt that this discretion has to be exercised sparingly bearing in mind the warning that the Supreme Court has not been constituted as an ordinary Court of appeal, and the High Court should not usurp the functions of the Constitution makers and allow the whole case to be opened up despite the fact that the Constitution has specifically limited the right of appeal to sub-articles (a) and (b) leaving Clause (c) of Article 134(1) to meet extraordinary cases. However difficult questions of fact involved in the case may be, it cannot be certified as fit for appeal. A certificate will also not be issued merely because some questions of law arise for consideration, but as laid down in *Baladin and Others Vs. State of Uttar Pradesh*, , the question involved must be of outstanding difficulty to justify the grant of the certificate.

16. It is true that there has been divergence of opinion among us on various questions of law and fact arising in the case and they are of considerable importance to the Petitioners, who stand sentenced to death. In view of the pronouncement of their Lordships of the Supreme Court, that the discretion has to be exercised on sound judicial principles and sparingly, not on questions of fact, but where questions of law of outstanding difficulty arise, we do not find it possible to grant the certificate asked for especially when no exceptional or special circumstances exist. If there are exceptional circumstances which warrant the consideration of the case by the Supreme Court, the Petitioners are not without a remedy as they can invoke the jurisdiction of the Supreme Court under Article 136 of the Constitution. We accordingly, dismiss all the three petitions.

P.C. Pandit, J.

17. I agree.

R.S. Sarkaria, J.

18. I agree.