

DHONDIBA GUNDU POMAJE & ORS. A

v.

THE STATE OF MAHARASHTRA

September 17, 1974

[P. JAGANMOHAN REDDY AND P. K. GOSWAMI, JJ.]

*Practice and Procedure—Criminal appeal to High Court—Summary dismissal by High Court—Duty to give reasons.* B

Inasmuch as under the Constitution any person aggrieved by an order of the High Court can petition to the Supreme Court under Art. 136 for special leave, it is necessary, having regard to the long series of decisions beginning with [1953] S.C.R. 809, which discourage the practice of dismissal by the one word 'dismissed', that the High Court should give some reasons why no arguable case is made out on a perusal of the appeal petition and the judgment of the lower court. In the absence of reasons, this Court can hold the dismissal to be justified or allow the appeal only after sending for the records, getting the paper books prepared, hearing the parties and appreciating the evidence. This process involves the Supreme Court being burdened with such appeals and doing what the High Court should do. Further during such avoidable delay the conviction person entertains a doubt about his conviction and suffers anxiety. [66H-67D] C

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 325 of 1974. D

Appeal by Special Leave from the Judgment and Order dated the 8th April, 1974 of the Bombay High Court in CrI. Appeal No. 305 of 1974.

*Sharad Manchar, B. P. Maheshwari and Suresh Sethi*, for the appellants. E

*S. B. Wad and M. N. Shroff*, for the respondent.

The Judgment of the Court was delivered by

JAGANMOHAN REDDY, J.—We have just now admitted the special leave petition and after the appeal was registered heard the learned Advocates for the parties. This is yet another case in which a criminal first appeal against a conviction has been dismissed summarily under Section 421 of the Criminal Procedure Code. We have heard both sides. Mr. Wad for the State has strenuously contended that the High Court has power to dismiss summarily and has cited several decisions, but in all these cases there is nothing to the contrary to justify a view different from the one we are taking in this case. It is submitted that the dismissal was so summary that even the record was not called for. No doubt, Section 421, Criminal Procedure Code does vest a power in the High Court to dismiss an appeal summarily but it can do so only on a perusal of the petition and the copy of the judgment. Inasmuch as under our Constitution any person aggrieved by an order of the High Court can petition to this Court under Article 136 for special leave, it is not only necessary but having regard to the long series of decisions beginning as far back as 1953 (see 1953 SCR 809) onwards which discourages this practice of dismissal by one word 'dismissed', the High Court should at least have given some reasons F

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A why no arguable case is made out on a perusal of those documents. Since we are not in a position to ascertain and it is contended before us that arguable points do arise in this case in support of which the statement made in special leave petition has been read to us, we are not in a position to say that an arguable case does not arise. We would have been able to do so even if we had the slightest inkling

B in the order of the High Court. In the absence of any reasons what has been happening in many cases is that special leave is admitted, and after hearing the appeal if this Court has come to the conclusion that the conviction is valid, it has held that the dismissal by the High Court is justified. But this method, in our view, reverses the process and imposes unnecessary burden on this Court. What should have been done by the High Court, is now being done by this Court. It

C is only after sending for the records, getting the paper books prepared, hearing both parties in the appeal and after appreciation of the evidence that it may be held that in some cases the dismissal, in fact, was ultimately justified. In many cases the appeals were even allowed.

D Long avoidable delay thus ensues during which the person convicted entertains a doubt about his conviction and has to suffer the anxiety caused thereby.

E We do hope and trust that the series of decisions over this long period disapproving of the practice of summarily dismissing by one word will be taken note of and this Court will not be ultimately burdened with such appeals arising out of summary dismissals which is really the function of the High Court at the first instance.

The appeal is accordingly allowed. The order of the High Court is set aside. The appeal is remanded to the High Court for hearing for admission and disposal in accordance with law and in the light of the directions made hereinabove.

V.P.S.

*Appeal allowed.*