2022 INSC 835

Reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION

Writ Petition (Criminal) No 143 of 2018

Sandeep alias Kala **.... Petitioner(s)**

Versus

Supreme Court of India **....Respondent(s)**

J U D G M E N T

Dr Dhananjaya Y Chandrachud, J

1 In Sessions Case 9 of 2005, four accused were put up for trial, *inter alia*, for the commission of offences punishable under Section 302 read with Section 34 of the Indian Penal Code 1860[1] and Section 25 of the Arms Act 1959. The criminal case arose out of FIR No 59 dated 15 February 2005 lodged at PS Civil Lines, Sonepat, which was committed upon the filing of the charge-sheet, for trial to the Sessions Court by an order dated 6 June 2005 of the Additional Chief Judicial Magistrate, Sonepat. The petitioner - Sandeep alias Kala was tried as the second accused. By a judgment dated 1

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Reason:

[1] "IPC"

September 2006, the Additional Sessions Judge, Sonepat held that the prosecution had established the guilt of two of the accused, Arun (A-1) and Sunil (A-3), beyond reasonable doubt and held them guilty of offences under Section 302 read with Section 34 IPC. The Additional Sessions Judge, however, acquitted the petitioner (A-2) and Ravi Kant (A-4). The Additional Sessions Judge made the following observations while acquitting the petitioner and Ravi Kant:

> "43. Thus, the plea of alibi set up by accused Ravi Kant is corroborated by the inquiry conducted by the Deputy Superintendent of police concerned and his subsequent exoneration.
>
> 44. As regards accused Sandeep, the oral testimony of witnesses produced by the accused in his defence stands corroborated by the documentary medical evidence. It can be reasonably held that accused Sandeep remained admitted in the Government Hospital, Mehrauli (Delhi) w.e.f. 12.2.2005 to 16.2.2005.
>
> Thus, in this manner, the prosecution has failed to bring home the guilt of these two accused persons namely Ravi Kant and Sandeep by not proving their presence on the date and time at the place of occurrence."

2 Besides the appeals which were filed by the co-accused, the acquittal of the petitioner was challenged by the State of Haryana in CRM No 53-MA of 2007 (O&M). The acquittal of the co-accused Ravi Kant was also challenged by the State of Haryana in CRM No 604-MA of 2007 (O&M). The appeals against the conviction of two accused as well as the appeals against the acquittal of the petitioner and Ravi Kant were heard and disposed of by a common judgment dated 2 September 2013 of a Division Bench of the High Court of Punjab and Haryana. The High Court upheld the conviction of Arun (A-1) and Sunil (A-3), while dismissing their appeals. The appeals filed by the State of Haryana against the acquittal of the petitioner and Ravi Kant were allowed and both these accused were held guilty of offences punishable under Section 302 read with

Section 34 IPC and sentenced to suffer imprisonment for life along with a fine of Rs 20,000/- each. The High Court made the following observations while examining the plea of alibi by the petitioner and Ravi Kant:

> "Before going through the plea of alibi set up by Ravi Kant and Sandeep, the evidence led by them has to be examined. The defence had examined Raj Singh whose son is said to have got married on 14.02.2005. It is their case that Ravi Kant had attended that function. But the testimony is neither convincing nor can be relied upon. The accused were unable to show that any such function was held on that da. It is their admitted case that no invitation cards were printed nor any video was prepared. Even the tent was not set up. The witnesses have come forward only because Ravi Kant's father was Sarpanch of the village. It is clear that during the course of inquiry conducted earlier, the name of the Ravi Kant had been dropped because of the influence of his father. He was given a clean chit. But subsequently, the DSP held an inquiry and submitted a challan against him. The witnesses of the defence are not reliable and their evidence is not acceptable and hence rejected.
>
> In the case of Sandeep, the Medical Officer posted at Mehrauli has created documents to show that Sandeep was admitted in the primary health centre from 12.02.2005 to 16.02.2005 . All the proceedings have been drawn up on plain papers. It is strange that no other doctor had attended to Sandeep. Sandeep was suffering from gastroenteritis for which admission is not necessary. Only oral tablets had been prescribed. The record shows that there were two - three other patients with similar complaints but they were treated as outdoor patients. No admission was given to them. Whereas in the case of Sandeep he was admitted. Surprisingly Dr. A.K. Pandey was the only doctor, who attended to him in the morning and at night during his so call admission in the govt. hospital. The falsity of the evidence is apparent from the record. The documents had been prepared. The father of the accused had sent a complaint to the Chief Minister but he did not mention in his complaint that in which hospital he was admitted. It seems that the record on plain papers was prepared with the assistance of Dr. A.K. Pandey to help the accused, which was intentionally kept back as the inquiry would have revealed the falsehood."

3 A criminal appeal was instituted before this Court by the co-accused, Ravi Kant (A-4), whose acquittal, like the petitioner, was reversed by the High Court. In the appeal

filed by Ravi Kant, notice was issued on 4 April 2014. The appeal[2] has been dismissed in a detailed judgment dated 27 March 2019. The court held

> "The prosecution case stands proved in view of the fact that Prem Singh (PW-5) and Rakesh Chaudhary (PW-11) are found to be reliable and it was a priority for them to first take the injured to the hospital at Sonepat and thereafter to Jaipur Golden Hospital, Rohini and at Rohini itself the statement has been recorded as the police had been informed. In the first police statement that has been recorded by Sunil Kumar, names of the assailants have been mentioned clearly. In fact, Ravi Kant's role has been clearly mentioned. Even if the first information report recorded subsequently is discarded, no dent is caused in the prosecution case. In the facts and circumstances of the case, we are not inclined to interfere in the judgment and order of conviction and sentence imposed by the High Court."

4 The conviction of the petitioner was called into question in Criminal Appeal Diary No 8073 of 2014. The appeal was dismissed by a three-Judge bench of this Court on 5 May 2014 in terms of the following order:

> "1. Delay in filing and refiling the appeal is condoned.
>
> 2. The Criminal Appeal, being devoid of any merit, deserves to be dismissed and is dismissed accordingly.
>
> Ordered accordingly."

5 A review petition, being Review Petition (Criminal) No 469 of 2014 in Criminal Appeal No 1135 of 2014 was filed before this Court on 2 June 2014. The same was dismissed by the three-Judge bench on 21 August 2014.

6 The conviction and sentence imposed upon the petitioner have attained finality following the dismissal of the appeal as well as the review petition.

[2] Criminal Appeal No 471 of 2014

7 The petitioner instituted the present Writ Petition under Article 32 of the Constitution seeking:

(i) a declaration that the deletion of clause (c) and clause (d) from sub-rule (1) of Rule 15 of Order XXI of the Supreme Court Rules 1966[3] by the Supreme Court (2nd Amendment) Rules 1981[4] was contrary to the law laid down by a Constitution Bench of this Court in **Sita Ram** v **State of Uttar Pradesh**;[5]

(ii) a declaration that in the absence of any guidelines in Order XX, Rule 21 of the Supreme Court Rules 2013[6] for the preliminary hearing of appeals under Section 2(a) of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act 1970,[7] the provision is unconstitutional as offending the right to life under Article 21 of the Constitution; and

(iii) a direction restraining the respondent from giving effect to Order XX, Rule 21 of the 2013 Rules.

8 The Supreme Court is impleaded as the respondent through the Secretary General. A counter affidavit has been filed. Notice was issued on 9 July 2018.

9 We have heard Mr Shivendra Singh, counsel appearing on behalf of the petitioner and Mr Vikramjit Banerjee, Additional Solicitor General,[8] counsel for the respondent.

[3] "1966 Rules"
[4] "Amendment Rules 1981"
[5] (1979) 2 SCC 656
[6] "2013 Rules"
[7] "Enlargement of Jurisdiction Act"
[8] "ASG"

10 The submission which has been articulately urged on behalf of the petitioner by Mr Shivendra Singh is that the judgment of the Constitution Bench in **Sita Ram** (supra) considered the challenge to the vires of Rule 15(1)(c) of Order XXI of the 1966 Rules in the context of the Enlargement of Jurisdiction Act. It has been submitted that while affirming the validity of Rule 15(1)(c) of Order XXI, Justice Krishna Iyer, speaking for the majority, held that while the provision is valid, this does not mean that all appeals falling within its fold should be routinely disposed of at the preliminary hearing. According to this Court, if every appeal under Article 134(1)(a) or (b) or Section 2(a) of the Enlargement of Jurisdiction Act were to be set down for preliminary hearing and summary disposal, the difference between Article 134 and Article 136, between right and leave, may be obliterated. However, the Constitution Bench did recognize that in an exceptional category of cases where there is no point at all, an appeal which falls within the purview of either Article 134(1)(a) or (b) or Section 2(a) of the Enlargement of Jurisdiction Act can be disposed of at the preliminary hearing. In this backdrop, it has been submitted that the deletion of the provisions of Rule 15(1)(c) of Order XXI by the Amendment Rules 1981 is not consistent with the judgment in **Sita Ram** (supra).

11 On the other hand, Mr Vikramjit Banerjee, ASG, submitted that the deletion of Rule 15(1)(c) and (d) of Order XXI of the 1966 Rules in 1981 does not run afoul of the judgment of the Constitution Bench in **Sita Ram** (supra). Mr Banerjee has adverted to the basis of the deletion in the amended rules of 1981, as explained in the counter affidavit. The learned Additional Solicitor General submitted that the Constitution Bench in **Sita Ram** (supra) recognized that the Court does possess the power to dismiss an appeal, which is instituted either under Article 134(1)(a) or (b) or Section 2 of the

Enlargement of Jurisdiction Act, at a preliminary hearing. It has been submitted that in terms of the decision in **Sita Ram** (supra), there is a discretion left with this Court to summarily dismiss a criminal appeal before it on an *ex parte* basis without calling for records in certain exceptional circumstances on a case-to-case basis. The ASG submitted that besides the fact that the appeal and the review filed by the petitioner have been dismissed, the appeal by the co-accused has been dealt with in a comprehensive judgment dated 27 March 2019 where the case of the prosecution based on the testimony of the eye-witnesses has been upheld while confirming the conviction which was recorded by the High Court in the case of the co-accused (Ravi Kant - A4). Moreover, it was urged that the absence of guidelines in Rule 21 of Order XX of the 2013 Rules would not make it unconstitutional as the guidelines indicated in **Sita Ram** (supra) continue to hold force.

12 Article 134 of the Constitution confers appellate jurisdiction on this Court in criminal matters. The provision is in the following terms:

> "134. Appellate jurisdiction of Supreme Court in regard to criminal matters.—
>
> (1) An appeal shall lie to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India if the High Court
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> (a) has on appeal reversed an order of acquittal of an accused person and sentenced him to death; or
>
> (b) has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death; or
>
> (c) certifies that the case is a fit one for appeal to the Supreme Court:
>
> Provided that an appeal under sub-clause (c) shall lie subject to such provisions as may be made in that behalf under clause (1)

> of Article 145 and to such conditions as the High Court may establish or require.
>
> (2) Parliament may by law confer on the Supreme Court any further power to entertain and hear appeals from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India subject to such conditions and limitations as may be specified in such law."

13 Sub-clause (a) of clause (1) of Article 134 provides for an appeal to this Court where the High Court has, on appeal, reversed an order of acquittal of an accused and sentenced him to death. Sub-clause (b) provides for an appeal to this Court where the High Court has withdrawn for trial before itself any case from a court subordinate to its authority and in the course of such a trial convicted the accused and sentenced him to death. Sub-clause (c) deals with a certification by the High Court that the case is fit for appeal to the Supreme Court. Clause (2) of Article 134 empowers Parliament by law to confer on the Supreme Court any further power to entertain and hear appeals from a judgment, final order or sentence in a criminal proceeding of a High Court subject to such conditions and limitations as may be specified in law.

14 In exercise of the jurisdiction vested in it by Article 134(2) of the Constitution, Parliament expanded the jurisdiction of this Court to entertain appeals in criminal cases by enacting the Enlargement of Jurisdiction Act. Section 2 of the statute provides as follows:

> "2. Enlarged appellate jurisdiction of Supreme Court in regard to criminal matters.—Without prejudice to the powers conferred on the Supreme Court by clause (1) of Article 134 of the Constitution, an appeal shall lie to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India if the High Court—

> (a) has on appeal reversed an order of acquittal of an accused person and sentenced him to imprisonment for, life or to imprisonment for a period of not less than ten years;
>
> (b) has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to imprisonment for life or to imprisonment for a period of not less than ten years."

15 By virtue of clause (a) of Section 2 of the Enlargement of Jurisdiction Act, an appeal lies before this Court where the High Court has, while reversing the acquittal of an accused, sentenced him to suffer imprisonment for life or to imprisonment for a period of at least ten years. Clause (b) provides for an appeal to this Court where the High Court has withdrawn for trial before itself any case and in the course of such a trial either sentenced the accused to suffer imprisonment for life or imprisonment for not less than ten years.

16 Section 379 of the Code of Criminal Procedure 1973[9] provides for an appeal to this Court where the High Court has, on appeal, reversed an order of acquittal of an accused and, while convicting him, sentenced him to death or to imprisonment for life or to imprisonment for a term of ten years or more. The Joint Select Committee by its report dated 4 December 1972 suggested the incorporation of provision to bring the position in line with the Enlargement of Jurisdiction Act. Section 379 is in the following terms:

> "379. Where the High Court has, on appeal, reversed an order of acquittal of an accused person and convicted him and sentenced him to death or to imprisonment for life or to imprisonment for a term of ten years or more, he may appeal to the Supreme Court."

[9] "CrPC"

17 Article 145 of the Constitution empowers the Supreme Court, with the approval of the President, to make Rules regulating its practice and procedure, including various matters which are spelt out thereunder. Article 145 provides as follows:

> "145. Rules of Court, etc.—(1) Subject to the provisions of any law made by Parliament, the Supreme Court may from time to time, with the approval of the President, make rules for regulating generally the practice and procedure of the Court including:
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> (a) ***
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> (*b*) rules as to the procedure for hearing appeals and other matters pertaining to appeals including the time within which appeals to the Court are to be entered;
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> (c) ***
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> (*d*) rules as to the entertainment of appeals under sub-clause (*c*) of clause (1) of Article 134;
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> (e) to (h) ***
>
> (*i*) rules providing for the summary determination of any appeal which appears to the Court to be frivolous or vexatious or brought for the purpose of delay;"

18 The Supreme Court (Amendment) Rules 1978[10] inserted an amendment into Rule 15(1)of Order XXI of the Supreme Court Rules, 1966 on 13 March 1978. Order XXI, Rule 15(1) of the Supreme Court Rules as amended in 1978 provided as follows:

> "15. (1) The petition of appeal shall be registered and numbered as soon as it is lodged. Each of the following categories of appeals, on being registered, shall be put up for hearing ex parte before the Court which may either dismiss it summarily or direct issue of notice to all necessary parties, or may make such orders, as the circumstances of the case may require, namely:
>
> (a) an appeal from any judgment, final order or sentence in a criminal proceeding of a High Court summarily dismissing the appeal or the matter, as the case may be, before it;
>
> (b) an appeal on a certificate granted by the High Court under Article 132(1) and/or 134(1)(c) of the Constitution, or under any other provision

[10] "Amendment Rules 1978"

of law if the High Court has not recorded the reasons or the grounds for granting the certificate;

(c) an appeal under sub-clause (a) or sub-clause (b) of clause (1) of Article 134 of the Constitution, or under the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 (28 of 1970) or under Section 379 of the Code of Criminal Procedure, 1973 (2 of 1974);

(d) an appeal under Section 476B of the Code of Criminal Procedure, 1898 (5 of 1898);

(e) an appeal under clause (b) of sub-section (1) of Section 19 of the Contempt of Courts Act, 1971 (70 of 1971)."

19 In **Sita Ram** (supra), the constitutional validity of Rule 15(1)(c) of Order XXI of the 1966 Rules and Section 384 CrPC was called into question.

20 Justice Krishna Iyer, speaking for a majority of three learned Judges of the Constitution Bench, upheld the validity of Rule 15(1)(c) of Order XXI of the 1966 Rules and of Section 384 of CrPC "by reading down their scope, substance and intendement". The Could held that ordinarily, save where nothing is served by a fuller hearing, "notice must go". The premise of the decision of the Constitution Bench of this Court is that if every appeal under Article 134(1)(a) and (b) or Section 2(a) of the Enlargement of Jurisdiction Act were to be set down for preliminary hearing and summary disposal, the meaningful difference between Article 134 and Article 136 may stand eroded and the intent of Parliament would be stultified. The Court held that if the punishment which was being imposed for the first time in the appeal was not a death sentence, there can be no constitutional infirmity in the disposal of the appeal at the preliminary hearing where the appeal belongs to an exceptional category in which "there is no point at all".

21 In order to appreciate the ambit of the judgment of the Constitution Bench, it would be necessary to extract the illustrative examples which are furnished in

paragraph 50 of the judgment, that is, when an appeal could be conceivably disposed of at the preliminary hearing itself:

> "50. What are those cases where a preliminary hearing is a worthwhile exercise? Without being exhaustive, we may instance some. Where the only ground urged is a point of law which has been squarely covered by a ruling of this Court to keep the appeal lingering longer is survival after death. Where the accused has pleaded guilty of murder and the High Court, on the evidence, is satisfied with the pleas and has awarded the lesser penalty, a mere appeal ex misericordia is an exercise in futility. Where a minor procedural irregularity, clearly curable under the Code, is all that the appellant has to urge, the full panoply of an appellate bearing is an act of supererogation. Where the grounds, taken at their face value, are frivolous, vexatious, malicious, wholly dilatory or blatantly mendacious, the prolongation of an appeal is a premium on abuse of the process of court. Maybe other cases can be conceived of, but we merely illustrate the functional relevance of Order 21 Rule 15(1)(c)."

22 Having said this and observed that the instances which were adverted to in paragraph 50 were illustrative and not exhaustive, the Court nonetheless held that its decision to uphold Rule 15(1)(c) of Order XXI could not be construed as a charter for the disposal of all appeals routinely on a preliminary hearing. This, the Court held, would obliterate the difference between Article 134 and Article 136, "between right and leave". Consequently, the Court held that the rule in cases of appeals under Article 134(1)(a) and (b) or Section 2(a) of the Enlargement of Jurisdiction Act was "notice, records and reasons". The exception would be a preliminary hearing on all such materials as may be placed by the appellant and brief grounds for dismissal.

23 In paragraphs 53 to 55 of the judgment, the Court has formulated the principle in the following terms:

> "53. The common embankments applicable to Order 21, Rule 15(1)(c) and Section 384 of the Code to prevent unconstitutional overflow may now be concretised, not as rigid manacles but as guidelines for safe exercise. We are hopeful that the Supreme Court will if found necessary, make- clarificatory rules in this behalf.
>
> 54. To conclude, we uphold the vires of Order 21, Rule 15(1)(c) of the Supreme Court Rules and also Section 384 of the Criminal Procedure Code but hold that in their application both the provisions shall be restricted-by certain criteria as a permissible exercise in constitutionalisation.
>
> 55. Order 21 Rule 15(1)(c) in action does not mean that all appeals falling within its fold shall be routinely disposed of, as far as possible, on a preliminary hearing. Such a course, as earlier mentioned, obliterates the difference between Articles 134 and 136, between right and leave. The rule, in cases of appeals under Article 134(1)(a) and (b) and Section 2(a) is notice, records and reasons, but the exception is preliminary hearing on all such materials as may be placed by the appellant and brief grounds for dismissal. This exceptional category is where, in all conscience, there is no point at all. In cases of real doubt the benefit of doubt goes to the appellant and notice goes to the adversary — even if the chances of allowance of the appeal be not bright. We think it proper to suggest that with a view to invest clarity and avoid ambiguity. Order 21, Rule 15(1)(c) may be suitably modified in conformity with this ruling."

24 The Constitution Bench has considered the challenge to Rule 15(1)(c) of Order XXI of the 1966 Rules from the perspective of Article 21. Procedure established by law, it is well-settled, must be fair, just and reasonable. The Enlargement of Jurisdiction Act was enacted by Parliament in pursuance of the power conferred by clause (2) of Article 134 of the Constitution. The object of Parliament in enacting the law was, *inter alia*, that where the High Court has, on appeal, reversed an acquittal and sentenced the accused to a sentence of imprisonment of life or to imprisonment for not less than ten years, a right of appeal should be made available to the Supreme Court. A parity of principle

applies where the High Court has withdrawn for trial before itself any case pending before a court subordinate to its authority and sentenced the accused to either imprisonment for life or to a term of not less than ten years. There is a doctrinal parity between the conferment of a right to appeal by Article 134(1)(a) and (b) and Sections 2(a) and (b) of the Enlargement of Jurisdiction Act, save and except for the fact that the former deals with a case where the High Court has imposed a sentence of death, while, the latter deals with a situation where the High Court has, while reversing an order of acquittal, imposed a sentence of either imprisonment for life or for a term of not less than ten years.

25 Article 136 of the Constitution deals with the power of this Court to grant special leave to appeal. The Constitution Bench in **Sita Ram** (supra) has noted the distinction between the right of appeal which is provided by Article 134, on the one hand, and Section 2 of the Enlargement of Jurisdiction Act, on the other, while distinguishing this, from the special leave provisions which are embodied in Article 136. The Constitution Bench has cautioned that if all appeals were to be heard and disposed of routinely on a preliminary hearing, the distinction between the right of appeal and the grant of leave would stand obliterated contrary to the intent of Constitution makers and of Parliament, while formulating the Enlargement of Jurisdiction Act. It is from this perspective that in **Sita Ram** (supra), the Constitution Bench has observed that the rule in cases which are governed by Article 134(1)(a) and (b) or Section 2 of the Enlargement of Jurisdiction Act is “notice, records and reasons”. The dismissal of an appeal at a preliminary hearing is by way of an exception. The exceptional situations which the Court contemplated,

without being exhaustive, have been elucidated in paragraph 50 of the judgment of the Constitution Bench.

26 The judgment of the Constitution Bench lays down the invariable principle that where the Constitution, on the one hand, as in the case of Article 134(1)(a) and (b) and Parliament, on the other hand, as in the case of Section 2 of the Enlargement of Jurisdiction Act, confer a right of appeal, a meaningful substantive content must be imported to the conferment of that right of the accused. The Court, as the Constitution Bench held, may undoubtedly have the power to dispose of the appeal at a preliminary hearing, but, this again is in the nature of an exception. It is in the nature of an exception because the conferment of a right of an appeal is intended to facilitate and protect the right under Article 21 of the Constitution. The Constitution Bench emphasized that the right of appeal under Article 134 is "a part of the procedure established by law for the protection of life and personal liberty". Consequently, not only would a notice have to be issued, but the Court would be well advised to go through the record and indicate reasons for its decision. In paragraphs 28 to 31 of the judgment, the Court observed that the right of appeal in criminal cases is protected under Article 21 of the Constitution and that no provision, that renders this right illusory, can interfere with the mandate of Article 21:

> "28. It is just as well that we remind ourselves of a value-setter here. Life and liberty have been the cynosure of special constitutional attention in Article 21, the fuller implications whereof have been unravelled in Maneka Gandhi case. When we read the signification of the right of appeal under Article 134 we must remember that it is a part of the procedure established by law for the protection of life and personal liberty. Surely, law, in this setting, is a pregnant expression. Bhagwati, J., in Maneka

Gandhi stated the position emphatically and since then this Court has followed that prescription and even developed it in humane directions, a striking example of which is the recent judgment in Presidential Reference No. 1 of 1978. "Is the prescription of some sort of procedure enough or must the procedure comply with any particular requirements?" asks Bhagwati, J., (SCC p. 281, para 5) in the leading opinion, and answers: (SCC p. 281, para 5 and p. 284, para 7)

> "Obviously, the procedure cannot be arbitrary, unfair or unreasonable.... The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence and the procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Article 14. It must be 'right and just and fair' and not arbitrary, fanciful or oppressive; otherwise, it would be no procedure at all and the requirement of Article 21 would not be satisfied.

Holding that natural justice was part of Indian Constitutional jurisprudence the learned Judge quoted Lord Morris of Borthy—Gest in Wiseman v. Borneman [1971 AC 297 : (1961) 3 All ER 275] :

> "... that the conception of natural justice should at all stages guide those who discharge judicial functions is not merely an acceptable but is an essential part of the philosophy of the law."

Bhagwati, J., brought out the essence of the concept of natural justice as part of reasonable procedure when he observed: (SCC p. 291)

> "The core of it must, however, remain, namely, that the person affected must have a reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise. That is why Tucker, L.J., emphasised in Russel v. Duke of Norfolk [(1949) 1 All ER 109] that 'whatever standard of natural justice is adopted, one essential is that the person concerned should have a reasonable opportunity of presenting his case'. What opportunity may be regarded as reasonable would necessarily

> depend on the practical necessities of the situation. It may be a sophisticated full-fledged hearing or it may be a hearing which is very brief and minimal."

One of us (Krishna Iyer, J.) emphasised the fundamental fairness required by Article 21 in every law that abridges life or liberty: (SCC p. 337, para 81)

> 'Procedure established by law', with its lethal potentiality, will reduce life and liberty to a precarious plaything if we do not ex necessitate import into those weighty words an adjectival rule of law, civilised in its soul, fair in its heart and fixing those imperatives of procedural protection absent which the processual tail will wag the substantive head.... An enacted apparition is a constitutional illusion. Processual justice is writ patently on Article 21."

29. **We have set out the sweep of Article 21 because the rule framed by this Court, namely. Order 21, Rule 15(1)(c), cannot transcend this obligation, nor indeed can Section 384 of the Code**. On the contrary, as Bhagwati, J., has observed in Maneka Gandhi case (SCC p. 314):

> "It is a basic constitutional assumption underlying every statutory grant of power that the authority on which the power is conferred should act constitutionally and not in violation of any fundamental rights."

30. We have made these general remarks to set the interpretative tone when translating the sense of the expression "appeal shall lie to the Supreme Court". **Nothing which will render this right illusory or its fortune chancy can square with the mandate of Article 21. What applies to the right of appeal under Section 2(a) of the Enlargement Act must apply to an appeal under Article 134(1)(a) and (b) and, therefore, it is wiser to be assumed of what comports with reasonableness and fairplay in cases covered by the latter category**.

31. When an accused is acquitted by the trial court, the initial presumption of innocence in his favour is reinforced by the factum of acquittal. If this reinforced innocence is not only reversed in appeal but the extreme penalty of death is imposed on him by the High Court, it stands to reason

> that it requires thorough examination by the Supreme Court. A similar reasoning applies to cases falling under Article 134(1)(b). When the High Court trying a case sentences a man to death a higher court must examine the merits to satisfy that a human life shall not be haltered without an appellate review. The next step is whether a hearing that is to be extended or the review that has to be made by the Supreme Court in such circumstances can be narrowed down to a consideration, in a summary fashion, of the necessarily limited record then available before the Court and total dismissal of the appeal if on such a prima facie examination nothing flawsome is brought out by the appellant to the satisfaction of the Court. **A single right of appeal is more or less a universal requirement of the guarantee of life and liberty rooted in the conception that men are fallible, that Judges are men and that making assurance doubly sure, before irrevocable deprivation of life or liberty comes to pass, a full-scale re-examination of the facts and the law is made an integral part of fundamental fairness or procedure.**"
>
> **(emphasis supplied)**

27 Rule 15(1)(c) of Order XXI of Rules 1966, *inter alia*, provided that an appeal under Article 134(1)(a) or (b) or under the Enlargement of Jurisdiction Act or Section 379 of CrPC could be placed for *ex parte* hearing before the Court and which the Court may either dismiss summarily or direct the issuance of notice to all necessary parties. The Rule also contemplated that the Court may make such orders as the circumstances of the case may require. The decision of the Constitution Bench regarded a summary dismissal without the issuance of notice as an exception, the ordinary rule being 'notice, record and reasons'. The Constitution Bench, after having laid down the principles of law, observed that in order to invest clarity and to avoid ambiguity, Order XXI, Rule 15(1)(c) may be suitably modified in conformity with the judgement. The purpose of the Constitution Bench in doing so was to bring greater clarity to the provisions of Rule 15(1)(c) by ensuring that the power which would confer was duly channelized in conformity with the principles embodied in Article 21. In fact, that is the perspective from

which the Court observed that it was hopeful that the Supreme Court would, if found necessary, make clarificatory rules in this behalf and that Order XXI, Rule 15(1)(c) may be suitably modified in conformity with the ruling. The clarity which it sought in the provisions of the rule was in order to streamline the power of a summary dismissal without the issuance of a notice.

28 After the decision of the Constitution Bench in **Sita Ram** (supra), the provisions contained in Rule 15(1)(c) of Order XXI were deleted on 21 May 1981 by the Amendment Rules 1981.

29 In the counter affidavit, which has been filed in these proceedings by the Registrar (Judicial) of the Supreme Court, the basis for the deletion has been sought to be explained. A note was put up by the then Registrar (Judicial) of the Supreme Court on 22 June 1979 submitting that the decision in **Sita Ram** (supra) basically enunciated three criteria:

> "(i) Ordinarily the records shall be sent for and are available. Counsel's assistance apart, the Court itself must apply its mind. (Page 21)
>
> (ii) The appeal shall not be dismissed summarily or after a mere preliminary hearing even with the records on hand but only after notice and debate at the Bar. (Page 21)
>
> (iii) The reasons for decision be given. (Page 23)"

30 Having set out the above criteria, the note of the Registrar states:

> "The above three criteria taken as a whole, could only mean that an appeal can be listed for so-called preliminary hearing only after the records are called for and the respondent is given notice there of which amounts to final hearing and not a preliminary hearing, which is usually ex parte on the papers filed by the appellant. Since the rule has been held to be intra vires,

> the appeals under Article 134(1)(a) & (b) may be listed for preliminary hearing as they are being done now but the Judges hearing the matter may apply the above criteria and call for the records and order notice to the Respondent and pass suitable orders after perusing the records and hearing the respondent. If the appeal is admitted, the paper-book of the appeal will be prepared subsequently."

31 Following the above note of the Registrar (Judicial), a Committee of three Judges was set up by the then Chief Justice of India to consider the matter and examine whether the amendments proposed by the office were in order. The minutes of the meeting of the Committee of Judges recorded the following view:

> "A meeting of the Committee consisting of the Hon'ble Mr. Justice V.D. Tulzapurkar, Hon'ble Mr. Justice D.A. Desai and the Hon'ble Mr. Justice E.S. Venkataramiah, was held in the Chamber of the Hon'ble Mr. Justice V.D. Tulzapurkar on Wednesday the 25th July 1979 at 1:30 P.M. in order to consider the amendments to the Supreme Court Rules suggested in the note of the Registrar dated 22.06.1979, pursuant to the Constitution (44th Amendment) Act, 1978, etc. The Committee unanimously recommended that the proposed amendments to the Rules should not be made. It was further of the opinion that the Full Court should consider the question whether the majority view in Sita Ram's case (Criminal Appeal No.264 of 1978 decided on 24.01.1978) should be reflected in the Rules by adding the following proviso to clause (c) of rule 15(1) of Order XXI of the Supreme Court Rules:-
>
> "Provided that before summarily dismissing such appeal, the records of the case shall be called for and the appellant be heard."

32 Following the report of the Committee, the amendment was placed before a meeting of the Full Court on 6 August 1979, when the following decision was recorded:

> "As regards clause (c) of rule 15(1), which provides for the ex parte hearing of an appeal under sub-clause (a) or sub-clause (b) of clause (1) of Art.134 of the Constitution or under the Supreme Court (Enlargement of Criminal

> Appellate Jurisdiction) Act, 1970 (28 of 1970) or under section 379 of the Code of Criminal Procedure, 1973 (2 of 1974), after discussion, it was decided that the aforesaid clause shall be deleted."

33 From the above narration, what emerges is that the primary reason for deleting the provisions of Rule 15(1)(c) of Order XXI was that the sub-rule, as it was framed, envisaged that certain categories of appeals would be put up for hearing *ex parte* when it was open to the Court to either dismiss summarily or, as the case may be, direct the issuance of notice. In view of the decision of the Constitution Bench that the issuance of a notice must follow, the Full Court decided to delete Rule 15(1)(c) of Order XXI (we are not concerned in these proceedings with the other amendments which were made). The Full Court possibly contemplated that the judgment of the Constitution Bench in **Sita Ram** (supra) contained sufficient guidance in regard to the procedure to be followed in the case of appeals arising under Article 134(1)(a) or (b) or Section 2 of the Enlargement of Jurisdiction Act.

34 The 1966 Rules have since given way to the 2013 Rules which were published in the Gazette of India on 29 May 2014 and came into force on 19 August 2014. Order XX contains provisions with respect to the procedure for preliminary hearing of certain categories of criminal appeals before this Court. Rule 5(1) of Order XX contains the following provision:

> "5.(1) The petition of appeal shall be registered and numbered as soon as it is found to be in order. Each of the following categories of appeals, on being registered, shall be put for hearing ex parte before the Court, which may either dismiss it summarily or direct issue of notice to all necessary parties, or may make such orders, as the circumstances of the case may require, namely:

> (a) an appeal from any judgment, final order or sentence in a criminal proceeding of a High Court summarily dismissing the appeal or the matter, as the case may be, before it;
>
> (b) an appeal on a certificate granted by the High Court under Article 134-A of the Constitution being a certificate of the nature referred to in clause (1) of Article 132 or sub-clause (c) of clause (1) of Article 134 of the Constitution or under any other provision of law if the High Court has not recorded the reasons or the grounds for granting the certificate;
>
> (c) an appeal under clause (b) of sub-section (1) of Section 19 of the Contempt of Courts Act, 1971 (70 of 1971)."

35 Rule 5(1) of Order XX indicates the categories of appeals which, on being registered, shall be put up for hearing *ex parte*. The category of appeals specified in clauses (a), (b) and (c) does not cover appeals falling under Article 134(1)(a) or (b) or Section 2 of the Enlargement of Jurisdiction Act. Hence and even otherwise as a matter of precept, the principles which have been laid down by the Constitution Bench in **Sita Ram** (supra) must govern the procedure to be followed while disposing of appeals under Article 134(1)(a) or (b) or Section 2 of the Enlargement of Jurisdiction Act. Ordinarily in all such appeals, notice must be issued. The issuance of notice would facilitate a proper examination by the Court of the dimensions of the appeal with the assistance of both the sides on whether the judgment of the High Court, which is the subject matter of the appeal, would warrant further consideration. While disposing of the appeal, it is only appropriate and proper that the Court must record reasons. The recording of reasons, in a matter where the accused has a constitutional or statutory right of appeal against the conviction, lends assurance to the judicial process. The liberty of the accused is fundamentally impacted by the outcome of the appeal. The recording of reasons lays confidence to the process that a statutory appeal which

impinges upon the liberty of the accused has been considered judiciously. Our insistence on recording of reasons emanates from the principles of natural justice and fairness in decision-making, which serve the precept that justice must not only be done, but must also appear to be done.

36 The decision of the Constitution Bench in **Sita Ram** (supra) has enunciated the following principles which it would be worthwhile to recapitulate:

(i) An appeal falling within the ambit of Article 134(1)(a) or (b) or Section 2 of the Enlargement of Jurisdiction Act should ordinarily not be disposed of at a preliminary hearing without the issuance of notice to the opposite party and calling for the record;

(ii) A hearing should be afforded in presence of both parties and with records on hand; and

(iii) Reasons should be indicated while disposing of the appeal.

37 With the deletion of Rule 15(1)(c) of Order XXI of the 1966 Rules, appeals falling within the ambit of Article 134(1)(a) or (b) or under the Enlargement of Jurisdiction Act were specifically taken out of the purview of appeals which would be put up for *ex parte* hearing upon registration and which the Court may either dismiss summarily or direct the issuance of notice to the parties. The object and intendment of the deletion was to ensure that such appeals are not disposed of summarily *ex parte* without the issuance of a notice. The deletion must be so construed as to give effect to the fundamental postulate underlying the judgment of the Constitution Bench in **Sita Ram** (supra). The deletion of a provision in the 2013 Rules akin to Rule 15(1)(c) of Order XXI of the 1966

Rules should not be interpreted to confer an uncharted discretion to dismiss an appeal of that description summarily at an *ex parte* hearing without the issuance of a notice. To the contrary, the deletion of the provision, as the material in the counter affidavit indicates, was in order to fulfil the mandate of the decision of the Constitution Bench. The principles propounded in **Sita Ram** (supra) continue to hold effect and guide preliminary hearing of certain categories of criminal appeals under Order XX, including Order XX, Rule 21 of the 2013 Rules. The principle enunciated by the Constitution Bench that reasons should be recorded while dismissing appeals falling within the ambit of the above provisions has not been introduced by way of an amendment to the Rules since it is expected that on the judicial side, the Court would follow the principles which have been enunciated by the Constitution Bench.

38 In the present case, the acquittal of the petitioner of the charge of committing offences punishable under Section 302 read with Section 34 of the IPC was reversed by the High Court and he was sentenced to suffer imprisonment for life. The appeal, under Section 2(a) of the Enlargement of Jurisdiction Act read with Section 379 CrPC, which was filed by the present petitioner was listed before this Court for a preliminary hearing on 5 May 2014 and was dismissed *in limine*. The judgment of this Court dismissing the appeal does not evidently furnish reasons. The difficulty in granting any relief to the petitioner in these proceedings is that an appeal having been dismissed on the judicial side and a review having been since dismissed against that judgment, it would not be open for this Court while exercising jurisdiction under Article 32 of the Constitution to issue any contrary direction. The petitioner would be at liberty to pursue the remedies available in law. The view which we have taken would, it is hoped, set at

rest the modalities to be followed while entertaining appeals under Article 134(1)(a) or (b) or Section 2 of the Enlargement of Jurisdiction Act. Before concluding, we may note that we have not made any specific finding in regard to the consequence of the dismissal of the appeal by the co-accused (A4) by a reasoned judgment dated 27 March 2019 on the remedies available to the petitioner in law.

39 The petition is accordingly disposed of.

40 Pending application, if any, stands disposed of.

…….J.
[Dr Dhananjaya Y Chandrachud]

…….J.
[A S Bopanna]

New Delhi;
August 16, 2022
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