

A

MANGU AND ANR.

v.

STATE OF RAJASTHAN

November 6, 1975

B

[M. H. BEG AND P. K. GOSWAMI, JJ.]

Supreme Court Rules, 1950—0.21, r.2—0.47, v.1.—Scope of.

C

Rule 2 of Order 21 of the Supreme Court Rules states that where an appeal lies to the Supreme Court on a certificate issued by the High Court, no application to the Court for special leave to appeal shall be entertained unless the High Court concerned has first been moved and it has refused to grant the certificate. Rule 1 of Order 47, however, confers powers on the Court to dispense with any of the requirements of the Rules and to pass appropriate orders in exercise of its inherent powers.

D

The appellants moved the High Court for a certificate under Art. 134(1)(c) of the Constitution but later withdrew it. The High Court rejected the application as withdrawn. The appellants then moved this Court stating that the High Court rejected their application on "merits" but not "as being out of time" and obtained *ex parte* special leave.

Dismissing the appeal and revoking the leave to appeal,

HELD : (1) The requirement of r. 2 of O.21 has not been complied with. Withdrawal of the application by the appellants showed that they abandoned the idea of moving the Supreme Court. [325D]

E

(2) Rule 2 of Order 21 is by itself mandatory. The fact that its compliance may be excused by the Court in appropriate cases does not affect the mandatory character of the Rule. This is a case which does not merit invoking the inherent powers of the Court for dispensing with the requirements of the Rules, particularly so when the appellants had made a definitely wrong statement in the special leave application with regard to their earlier application for leave in the High Court. [325G; 326A]

F

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 135 of 1971.

Appeal by Special Leave from the Judgment and Order dated the 25th March 1971 of the Rajasthan High Court at Jodhpur in S. B. Criminal Appeal No. 159 of 1970.

B. R. L. Iyengar for E. C. Agarwala for the appellants.

G

S. M. Jain for Respondent.

The Judgment of the Court was delivered by

H

GOSWAMI, J. The two appellants along with four others were convicted by the Sessions Judge, Bhilwara, under sections 147, 452/149 and 325/149 I.P.C. and sentenced to imprisonment and fine. The High Court on appeal acquitted four of them and maintained the conviction and sentence of the two appellants who were involved with several others. The appellants moved an application for a certificate praying for leave to appeal to this Court under article 134(1)(c) of

the Constitution. Later on the leave application was withdrawn and on May 12, 1971, the High Court rejected the application as withdrawn. The appellants later obtained *ex-parte* special leave on May 25, 1971. It was mentioned in para 5 of the special leave petition that their application for leave in the High Court was rejected "on merits, but not as being out of time".

A preliminary objection has been raised on behalf of the respondent that the special leave granted in this case should be revoked as the appellants failed to comply with the requirements of rule 2 of order 21 of the Supreme Court Rules inasmuch as there was no order of the High Court refusing to grant the certificate.

Under order 21, rule 2 "where an appeal lies to the Court on a certificate issued by the High Court no application to the Court for special leave to appeal shall be entertained unless the High Court concerned has first been moved and it has refused to grant the certificate." Since the application for leave was withdrawn by the appellants it could not be said that the High Court at all considered the matter and then refused to grant the certificate. Withdrawal of the application by the appellants would go to show that they had abandoned the idea of moving the supreme Court against the judgment. The requirement of rule 2 has not, therefore, been complied with.

It is, however, submitted by Mr. Iyengar that order 47 of the Supreme Court Rules confers power on this Court to dispense with any of the requirements of these Rules and to pass appropriate orders in exercise of inherent powers. Rule 1 of order 47 provides that—

"the Court may, for sufficient cause shown, excuse the parties from compliance with any of the requirements of these rules, and may give such directions in matters of practice and procedure as it may consider just and expedient".

Rule 6 says that—

"nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court."

Rule 2 of order 47, however, requires an application to be made in the manner provided therein.

Rule 2 of order 21 is, by itself, mandatory. The fact that its compliance may be excused by the Court in appropriate cases does not affect the mandatory character of the rule.

There is no application by the appellants showing sufficient cause for exempting them from compliance with the requirement of the rule. We are informed that an opportunity had been earlier given by the Court for making an appropriate application even at this stage. Even this opportunity was not availed of by the appellants.

A We are, therefore, of the opinion that this is a case which does not merit invoking of our inherent powers for dispensing with the requirements of the Rules particularly so when the appellants had made a definitely wrong statement in the special leave application with regard to their earlier application for leave in the High Court.

B Mr. Iyengar then submits that a perusal of the judgment of the High Court would clearly show that this is a fit case where we should intervene in the interest of justice by *suo motu* excusing the technical lapse of any procedure. Reluctantly enough we allowed counsel to take us through the judgment of the High Court and we find that it is an appeal only for reappreciating the evidence and does not disclose any manifest grave error of law or miscarriage of justice.

C This is, therefore, a fit case in which the preliminary objection should prevail. We order that the special leave to appeal which was granted to the appellants be revoked. The appellants shall now surrender to their bail bonds and serve the remaining period of their sentence.

P.B.R.

Appeal dismissed.