

## SHIVAJI NARAYAN BACHHAV

v.

## STATE OF MAHARASHTRA

August 18, 1983

[O. CHINNAPPA REDDY AND E. S. VENKATARAMIAH, JJ.]

*Special Leave to appeal—Grant of in cases where the High Court summarily rejects the appeal against conviction and sentence in limine—Order XXI of the Supreme Court Rules read with Article 136 of the Constitution—Exercising such a power to dismiss an appeal in limine under Section 384 of the Criminal Procedure Code by the High Court, would tantamount to denial of right of appeal.*

The petitioner was convicted for the offence u/s 302 I.P.C. and sentenced to life imprisonment by the Sessions Judge. The appeal preferred by him was dismissed by the High Court of Bombay *in limine*. Hence the appeal by special leave.

*Allowing the petition and directing the High Court to admit the appeal and deal with it according to law, the court*

**HELD :** An appellate Court has the undoubted power to dismiss an appeal *in limine*, as provided under section 384 of the Code of Criminal Procedure. But, it is a power which must be exercised sparingly and, with great circumspection, more so in a case where the conviction is for murder and the sentence is one of imprisonment for life, which are serious enough matters for the High Court to warrant admission of the appeal and fair and independent consideration of the evidence by the High Court. Summary rejection of the appeal with the laconic expression, "dismissed" is a drastic step in such cases.

[653 C-E]

To so reject an appeal is to practically deny the right of appeal. Except in certain cases when an accused person has pleaded guilty and in petty cases, every person convicted of an offence has a right of appeal under the Code; an appeal may be both against conviction and on facts and law. A convicted person is entitled to ask an appellate Court to reappraise the evidence and come to its own conclusion. Therefore, it is necessary to make a speaking order, while dismissing a criminal appeal. [653 E-F]

*Mustaq Hussain v. State of Bombay*, [1953] S.C.R. 809; *Ramayya v. State of Bombay*, A.I.R. 1955 S.C. 287; *Vishwanath Shankar Beldar v. State of Maharashtra*, [1969] 3 S.C.C. 883; *Siddanna Appa Rao v. State of Maharashtra*, A.I.R. 1970 S.C. 977; *Narayan Nathu Naik v. State of Maharashtra*, A.I.R. 1971 S.C. 1656; *Govinda Kadutji Kadam v. State of Maharashtra*, A.I.R. 1970 S.C. 1033; *Shaik Mohamed Ali v. State of Maharashtra*, A.I.R. 1973 S.C. 43;

A *K. K. Jain v. State of Maharashtra*, A.I.R. 1973 S.C. 243; *Jeewan Prakash v. State of Maharashtra*, A.I.R. 1973 S.C. 278; *Mustaq Ahmed v. State of Maharashtra*, A.I.R. 1973 S.C. 1122; *Krishna Vithu Suroshe v. State of Maharashtra*, A.I.R. 1974 S.C. 274; *Sampata Tatyada Shinde v. State of Maharashtra*, A.I.R. 1974 S.C. 791; and *Dagadu v. State of Maharashtra*, 1981 CrI. L.J. 724; reiterated.

B CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 386 of 1983.

From the Judgment and Order dated the 23rd June, 1981 of the High Court of Bombay in CrI. Appeal No. 1138 and 1144 of 1980.

C *S. N. Jha*, *Amicus Curiae* for the Appellant.

*M. N. Shroff* for the Respondent.

D The Order of the Court was delivered by

CHINNAPPA REDDY, J. Special Leave Granted.

E The appeal of the accused to the High Court was dismissed summarily with the one word 'dismissed', placing this Court in a most embarrassing position in dealing with the special leave petition under Art. 136 of the Constitution. Such summary rejection of appeals by the High Court has been disapproved by this Court more than thirty years ago in *Mushtaq Hussain v. State of Bombay*<sup>(1)</sup> and thereafter, over the years, in a series of cases from the same High Court: *Ramayya v. State of Bombay*<sup>(2)</sup>, *Vishwanath Shankar Beldar v. State of Maharashtra*<sup>(3)</sup>, *Siddanna Appa Rao v. State of Maharashtra*<sup>(4)</sup>, *Narayan Nathu Naik v. State of Maharashtra*<sup>(5)</sup>, *Govinda Kadutji Kadam v. State of Maharashtra*<sup>(6)</sup>, *Shaik Mohamed Ali v. State of Maharashtra*<sup>(7)</sup>, *K. K. Jain v. State of Maharashtra*<sup>(8)</sup>, *Jeewan*

G (1) [1953] S.C.R. 809.

(2) A.I.R. 1955 S.C. 287.

(3) [1969] 3 S.C.C. 883.

(4) A.I.R. 1970 S.C. 977.

(5) A.I.R. 1971 S.C. 1656.

(6) A.I.R. 1970 S.C. 1033.

(7) A.I.R. 1973 S.C. 43.

(8) A.I.R. 1973 S.C. 243.

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*Prakash v. State of Maharashtra*<sup>(1)</sup>, *Mushtaq Ahmed v. State of Maharashtra*<sup>(2)</sup>, *Krishna Vithu Suroshe v. State of Maharashtra*<sup>(3)</sup>, *Sampata Tatyada Shinde v. State of Maharashtra*<sup>(4)</sup>, *Dagadu v. State of Maharashtra*<sup>(5)</sup>. We are pained, and not a little perturbed, that despite the long series of judgments all arising from cases from the same High Court, the High Court has not chosen to correct itself and continues in the error of its ways. Except in certain cases when an accused person has pleaded guilty and in petty cases, every person convicted of an offence has a right of appeal under the Criminal Procedure Code. An appeal may be both against conviction and sentence and on facts and law. A convicted person is entitled to ask an appellate Court to reappraise the evidence and come to its own conclusion. An appellate Court has the undoubted power to dismiss an appeal in limine. Section 384 of the Criminal Procedure Code provides for it. But, it is a power which must be exercised sparingly and with great circumspection. One would think a conviction for murder and a sentence of imprisonment for life, as in the case before us, were serious enough matters for the High Court to warrant 'admission' of the appeal and fair and independent consideration of the evidence by the High Court. Summary rejection of the appeal with the laconic expression 'dismissed' seems to be a drastic step in such cases. To so reject an appeal is to practically deny the right of appeal. We cannot also overemphasise the importance of the High Court making a speaking order when dismissing a Criminal Appeal in limine. "The requirement of recording reasons for summary dismissal, however concise, serves to ensure proper functioning of the judicial process". There must be some indication that the High Court addressed itself to the questions at issue and had the record before it. In the present case there is not even an indication whether the record had been called for and whether it was before the Court. We have little option but to set aside the order of the High Court. The High Court may now 'admit' the appeal and deal with it according to law.

S.R.

*Petition allowed.*

(1) A.I.R. 1973 S.C. 278.

(2) A.I.R. 1973 S.C. 1122.

(3) A.I.R. 1974 S.C. 274.

(4) A.I.R. 1974 S.C. 791.

(5) [1981] CrL. L.J. 724.