

IA

ITEM NO.103

COURT NO.10

SECTION I

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO(s). 1274 OF 1999

ASRAF & ORS

Appellant (s)

VERSUS

STATE OF M.P.

Respondent(s)

(With office report)

Date: 13/04/2005 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.P. SINGH

HON'BLE MR. JUSTICE S.B. SINHA

For Appellant(s)

Mr. Anis Ahmed Khan, Adv.

For Respondent(s)

Ms. Vibha Datta Makhija, Adv.

UPON hearing counsel the Court made the following

O R D E R

Counsel for the appellants prays for four weeks' time to file supplementary paper book

to be prepared by the Appellants in accordance with the Supreme Court Rules.

Put up after four weeks.

Criminal Appeal No.1274 of 1999

This appeal has been preferred by the appellants who were acquitted by the trial court

but were convicted by the High Court in appeal. This appeal has been placed before us for hearing.

Since the appeal is under Section 379 of the Code of Criminal Procedure read with Section 2(1)(a) of

the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970, the appellants are

entitled to urge before us all questions of law and fact which arise in the appeal.
It is therefore,

2

necessary for the Court, before disposing of this appeal, to peruse the evidence on record and the

findings recorded by the courts below.

Though this appeal has been placed before us for hearing, apart from the petition of

appeal, judgment of the trial court and the judgment of the High Court, there is no other material

placed before us. Neither the High Court appeal paper book has been included in the appeal record

nor have the advocates of the parties filed additional documents from the record. The result is that

we are called upon to decide this appeal merely on the basis of the judgments of the High Court and

the trial court, without reference to the evidence on record and other documents as may be

considered relevant.

Under the Supreme Court Rules, 1966 in appeal by special leave, appeal record

normally consists of the petition of appeal and the paper book of the court below, if available. If the

record of the court below is not available, parties are required to file from the record of the case such

additional documents as are considered necessary. Obviously, therefore, if the appeal record of the

court below is not available, advocates of the parties concerned are required to file the necessary

documents from the record, on the basis of which this Court may decide the appeal. Needless to say

that additional documents that the parties are required to file must be such documents as are

necessary for consideration of the Court in deciding the appeal.

Unfortunately, a practice has developed in this Court whereby the appeals are set down

for hearing without the appeal record, that is to say, there is no paper book available to the Judges,

apart from the special leave petition paper book which may not include the evidence, etc. and may

include only the judgments of the High Court and the trial court. We are also informed that parties

are given notice to file additional documents from the record where appeal paper book of the court

below is not available. However, if they fail to file additional documents from the record, meaning

thereby the supplementary paper book, the appeal is set down for hearing. We fail to understand

how this Court is expected to dispose of criminal appeals involving questions of fact and law without

the evidence being placed before the Court. We also fail to understand how this practice has

developed in the Registry to place such appeals for hearing without necessary record. We notice

that not even summons for non-prosecution is issued to the appellant calling upon him to show cause

why the appeal be not dismissed for non-prosecution for default in preparation of supplementary

3

paper book. We have several cases like this before us and in all cases the concerned advocates plead

guilty and pray for further time to take instructions and file supplementary paper book. Result is

that large number of such matters have to be adjourned, and advocates whose cases are further

down in the list are not prepared to argue the appeals.

We, therefore, direct the Registrar General of this Court to inquire into the matter and

explain why criminal appeals, where the appeal record of the court below is not available and the

advocates have also not taken steps to file supplementary record, are set down for hearing. He

shall also inquire and find out how this mal-practice of placing these criminal appeals for hearing

without paper book has developed in this Registry and why defaulting parties are not issued

summons for non-prosecution for failure to file supplementary record.

We expect the Registrar General to submit his report before us within two weeks

(Sheetal Dhingra)
wan)

Court Master

(Vijay Dhanwan)

Court Master