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PANDURANG & ORS.
v.
STATE OF MAHARASHTRA

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SEPTEMBER 30, 1986

[M.P. THAKKAR AND K.N. SINGH, JJ.]

C *Bombay High Court Appellate Side Rules, 1960—Rule 1 and Rule 2-II(e)—Division Bench empowered to hear appeal—Appeal heard and disposed of by Single Judge—Judgment—Whether non-existent and a nullity.*

D The appeal of the State against the order of acquittal of the appellants of an offence under s. 7(1) read with ss. 16 and 17 of the Prevention of Food Adulteration Act 1954, punishable with a sentence of imprisonment exceeding two years, was heard and decided by a Single Judge, though under Rule 1 read with Rule 2-H (e) of the Bombay High Court Appellate Side Rules 1960 such an appeal was required to be heard by a Division Bench.

E The Single Judge allowed the appeal, held the appellants guilty and set aside the order of acquittal.

Allowing the appeal of the accused-appellants, on the question “whether the decision of a Single Judge in a matter required to be decided by a Division Bench was a nullity,”

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HELD: 1.1 When a matter required to be decided by a Division Bench of the High Court is decided by a Single Judge, the judgment would be a nullity, the matter having been heard by a Court which had no competence to hear the matter, it being a matter of total lack of jurisdiction. [1006C-D]

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1.2 In the instant case, the accused-appellants were entitled to be heard under Rule 1 read with Rule 2-II(e) of the Bombay High Court Appellate Side Rules 1960, by at least two Judges constituting a Division Bench and had a right to claim a verdict as regards their guilt or innocence at the hands of two Judges. This right cannot be taken away except by amending the rules. So long as, the rules are in operation it

would be arbitrary and discriminatory to deny them this right regardless of whether it is done by reason of negligence or otherwise. Negligence can neither be invoked as an alibi nor can cure the infirmity or illegality, so as to rob the accused of his right under the rules. What can be done only by at least two Judges cannot be done by one Judge. [1007A-C]

2. Even a 'right' decision by a 'wrong' forum is no decision. It is non-existent in the eye of law. And hence a nullity. The impugned judgment is no judgment in the eye of law. It is set aside and appeal remanded to High Court for hearing by a Division Bench. [1007C-D]

State of Madhya Pradesh v. Dewadas & Ors., [1982] 3 S.C.R. page 81 relied upon.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 516 of 1986

From the Judgment and Order dated 13.6.1986 of the Bombay High Court in Crl. A. No. 90 of 1983.

M.C. Bhandare and Miss C.K. Sucharita for the Appellants.

A.S. Bhasme and A.M. Khamwilkar for the Respondent.

The Judgment of the Court was delivered by

THAKKAR, J. 'Right', or 'wrong', 'guilty' or 'not guilty', is not the question. Whether the learned Single Judge had the 'right' to hear and decide the appeal and hold that the appellants were guilty whilst setting aside their acquittal by the Judgment under appeal¹ is the question which has surfaced in the context of a judgment rendered by a learned Single Judge which according to the relevant rules of the High Court was required to be heard and decided by a Division Bench.

The State of Maharashtra (respondent herein) preferred an appeal to the High Court of Bombay in order to challenge the order of acquittal rendered by the lower Court in favour of the present appellants. The acquittal was in respect of an offence under Section 7(1) read with Sections 16 and 17 of the Prevention of Food Adulteration

1. Criminal Appeal No. 90 of 1983 decided by the High Court of Bombay (Aurangabad Bench) on June 13, 1986 resulting in the present appeal by special leave.

A Act 1954. The offence was punishable with a sentence of imprisonment exceeding two years.² The appeal was, therefore, required to be heard by a Division Bench of the High Court and not by a learned Single Judge.

B Such is the problem that has arisen in the context of Rule 1 read with Rule 2-II(e) of the Bombay High Court Appellate Side Rules, 1960.³ What then is the consequence? Is the order of conviction and sentence recorded by the learned Single Judge who allowed the appeal merely irregular or void?

C When a matter required to be decided by a Division Bench of the High Court is decided by a learned Single Judge, the judgment would be a nullity, the matter having been heard by a Court which had no competence to hear the matter, it being a matter of total lack of juris-

2. Sec. 16 of the Prevention of Food Adulteration Act, 1954:

D 16. PENALTIES: "Subject to the provisions he shall, in addition to the penalty to which he may be liable under the provisions of Section 6, be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years, and with fine which shall not be less than one thousand rupees:"

E 3. Rule 1: "The Civil and Criminal jurisdiction of the Court, on the Appellate Side, shall, except in cases where it is otherwise provided for by these rules, be exercised by Division Bench consisting of two or more Judges."

Rule 2 II(e): "Save as otherwise expressly provided by these 2 rules, a Single Judge may dispose of the following matters:

F II "Appeals against convictions in which only a sentence of fine has been awarded or in which the sentence of imprisonment awarded does not exceed five years with or without fine, appeals against acquittals wherein the offence with which the accused was charged is one punishable on conviction with a sentence of fine only or with a sentence of imprisonment not exceeding two years or with such imprisonment and fine, and appeals under Section 377 of the Code of Criminal Procedure, revision applications and Court notices for enhancement of sentence for offences punishable on conviction with sentence of imprisonment not exceeding two years or with such imprisonment and fine."

G (e) Applications for leave to appeal under Section 378(4) of the Code of Criminal Procedure against acquittals wherein the offence with which the accused was charged is one punishable on conviction with a sentence of fine only or with a sentence of imprisonment not exceeding two years or with such imprisonment and fine."

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diction. The accused was entitled to be heard by at least two learned Judges constituting a Division Bench and had a right to claim a verdict as regards his guilt or innocence at the hands of the two learned Judges. This right cannot be taken away except by amending the rules. So long as the rules are in operation it would be arbitrary and discriminatory to deny him this right regardless of whether it is done by reason of negligence or otherwise. Deliberately, it cannot be done. Negligence can neither be invoked as an alibi, nor can cure the infirmity or illegality, so as to rob the accused of his right under the rules. What can be done only by atleast two learned Judges cannot be done by one learned Judge. Even if the decision is right on merits, it is by a forum which is lacking in competence with regard to the subject matter. Even a 'right' decision by a 'wrong' forum is no decision. It is non-existent in the eye of law. And hence a nullity. The Judgment under appeal is therefore no judgment in the eye of law. This Court in 1982(3) S.C.R. page 81 (*State of Madhya Pradesh v. Dewadas & Ors.*) has taken a view which reinforces our view. We, therefore, allow the appeal, set aside the order passed by the learned Single Judge, and send the matter back to the High Court for being placed before a Division Bench of the High Court, which will afford reasonable opportunity of hearing to both the sides and dispose it of in accordance with law, expeditiously. We wish to add that the Registry of the High Court was expected to have realized the true position and ought not to have created a situation which resulted in waste of court time, once for hearing the appeal, and next time, to consider the effect of the rules. No Court can afford this luxury with the mountain of arrears which every Court is carrying these days.

M.L.A.

Appeal allowed.