
(1998) 05 AHC CK 0073
In the Allahabad High Court
Case No : Criminal Appeal No. 1566 of 1998

Akbar Ali

APPELLANT

Vs

State of U.P.& Ors. `

RESPONDENT

Date of Decision : 15-05-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397

Citation : (1998) 05 AHC CK 0073

Hon'ble Judges : N.S.Gupta, J

Final Decision : Disposed Of

Judgement

N.S. Gupta, J.—Heard Sri S.N. Tripathi, learned counsel for the applicant and A.G.A. for State.

2. By means of this petition under Section 482, Cr PC the petitioner has prayed for quashing the order dated 10398, passed by District Judge, Gorakhpur whereby the revision preferred by the petitioner Akbar Ali was dismissed. The impugned order passed by the learned District Judge reads as follows:

"10398 : Called out repeatedly.

None appears for the revisionsl Akbar Ali. I myself perused the impugned order whereby the accused have been acquitted, after appreciation of evidence on merit. There appears to be no material illegality or irregularity for which any interference may be called for with the order impugned, The applicant Akbar Ali does not appear to have any legal right to file this revision.

Hence the revision is dismissed in limine."

3. The main grievance of the learned counsel for the applicant is that the petitioner had a right to prefer revision before the Court of Sessions because the provisions of Section 397 (3), Cr PC lays down that if an application under this section is moved by any person either to the High Court or to the Court of Sessions no further application by the same person shall be entertained by either

of them.

4. The contention of the petitioner is that the petitioner Akbar Ali was the injured of the case, the, therefore, had a legal right to prefer the revision. Thus, the observation, of the court below that petitioner was having no legal right for filing revision was uncalled for. Although the impugned order passed by learned Sessions Judge shows that he had passed the said order after perusing the order of the learned Magistrate, yet it appears that the record of the case was never called for and was never examined by the learned Sessions Judge and, therefore, the learned Sessions Judge failed to properly comply with the provisions of Section 397, Cr PC since the impugned order passed by the learned Sessions Judge right at the stage of admission and that too without perusal of the record and, further holding therein that the petitioner Akbar Ali was not having legal right to file this revision was uncalled for. I direct that the impugned order passed by the learned Sessions Judge be quashed. It is directed that the learned Sessions Judge shall call for the record of the case and after affording an opportunity of being heard to the parties and after perusing the record of the case shall pass proper orders into the case according to law.

5. With these observations the petition is finally disposed of. Petition disposed of.