

(2000) 05 MP CK 0022

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 145/99

Ashok and Another

APPELLANT

Vs

Ramsewak and Others

RESPONDENT

Date of Decision : 10-05-2000

Acts Referred:

Arms Act, 1959 — Section 30
Criminal Procedure Code, 1973 (CrPC) — Section 401(3)
Penal Code, 1860 (IPC) — Section 201, 307, 324, 326, 34

Citation : (2000) 2 MPHT 393 : (2000) 2 MPJR 393 : (2001) 1 MPLJ 329

Hon'ble Judges : Maithli Sharan, J

Bench : Single Bench

Advocate : Rakesh Saxena, for the Appellant; J.P. Mishra, for Non-petitioner Nos. 1 to 4 and Aijaz Gouri, Panel Lawyer for Non-petitioner No. 5-State, for the Appearing Parties

Final Decision : Dismissed

Judgement

Maithli Sharan, J.

The brief relevant facts of the case leading to the filing of this revision petition are thus : The petitioners lodged the first information report against the non-petitioners No. 1 to 4 for the offences under Sections 307 and 324/34, I.P.C., concerning the incident that took place on 29-1-88. The Police conducted investigation in the case and thereafter charge-sheet was filed in the Court of the concerning Magistrate wherefrom the case was committed to the Court of Session. On the basis of the prima facie facts and evidence available on record the learned Sessions Judge came to the conclusion that no offence u/s 307, I.P.C., was made out and, therefore, he remanded the case to the Court of the Chief Judicial Magistrate for the trial of the non-petitioners No. 1 to 4 for the offences under Sections 326, 324 & 201, read with Section 34, I.P.C. and Section 30 of the Arms Act. The prosecution adduced evidence in the Court of the learned trial Magistrate against the non-petitioners. The learned trial Magistrate,

on the evidence adduced before him, came to the conclusion that no offence was made out against the non-petitioners and, therefore, he acquitted them.

Admittedly, the State did not choose to file appeal against the judgment of acquittal passed by the learned trial Magistrate. The petitioners herein have filed this criminal revision petition against the aforesaid judgment of acquittal dated 29-1-99 in Cr. Case No. 80/88 passed by the learned Judicial Magistrate, First Class, Sewda.

Learned counsel for the non-petitioners have raised a preliminary objection that the petitioners, who are private parties, have no locus standi to move this Court by filing this criminal revision because the aggrieved party was the State who has not chosen to prefer appeal against the order of acquittal. I am of the view that though there is no bar as such for the private parties to prefer a revision petition under these circumstances, but the jurisdiction in this regard has got to be exercised only in exceptional cases where it appears that there has been some miscarriage of justice on account of a manifest error on a point of law committed by the learned trial Court. This approach gets more strengthened by the provision engrafted under Sub-section (3) of Section 401 of the Code of Criminal Procedure forbidding a High Court from converting a finding of acquittal into one of conviction. Thus, it falls upon this Court to see that the finding of acquittal is not converted into a finding of conviction indirectly by passing an order of remand directing for retrial of the case, when it itself is forbidden to convert a finding of acquittal into a finding of conviction.

My above view finds support by the view taken by Hon"ble the Apex Court in a case reported in K. Chinnaswamy Reddy Vs. State of Andhra Pradesh, , wherein it has been held as follows :--

"It is true that it is open to a High Court in revision to set aside an order of acquittal even at the instance of private parties, though the State may not have thought fit to appeal; but this jurisdiction should in our opinion be exercised by the High Court only in exceptional cases, when there is some glaring defect in the procedure or there is a manifest error on a point of law and consequently there has been a flagrant miscarriage of justice."

Now, in the light of the above law laid down by Hon"ble the Supreme Court it has to be seen, in the instant case, as to whether the impugned judgment passed by the learned trial Court suffers with some glaring defect in the procedure or there has occurred some manifest error on a point of law giving rise to flagrant miscarriage of justice. Looking to the impugned judgment it is very much apparent that the learned trial Court has well appreciated and discussed the prosecution evidence in detail in paras 10 to 13, and thus, the judgment is a well balanced and reasoned one. Learned counsel could not point out any glaring defect in procedure or any manifest error on a point of law and, thus, it could not be said that any miscarriage of justice had occurred in the case. In such a situation, the instant case of acquittal could not be branded as an exceptional

case empowering the petitioners to file this revision petition.

In view of the above discussion, this criminal revision petition is not worth to be admitted for hearing and, therefore, it is dismissed in limine.