

(2003) 11 RAJ CK 0010
In the Rajasthan High Court
Case No : Criminal Revision No. 511 of 2001

Bhagwati Lal Sharma

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 06-11-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 401
Penal Code, 1860 (IPC) — Section 269, 274, 336, 420, 467

Citation : (2004) CriLJ 752 : (2004) 2 RLW 1006 : (2004) 1 WLC 555

Hon'ble Judges : H.R. Panwar, J

Bench : Single Bench

Advocate : P.N. Mohnani, for the Appellant; R.K. Soni, Public Prosecutor and Sandeep Mehta, for Non-petitioner No. 2, for the Appearing Parties

Final Decision : Dismissed

Judgement

H.R. Panwar, J.—This revision petition u/s 397 read with Section 401 of the Code of Criminal Procedure, 1973, has been filed against the judgment and order dated 27-7-2001 passed by the Additional Chief Judicial Magistrate, Shahpura in Criminal Regular Case No. 292/1995, by which the accused/non- petitioner No. 2 has been acquitted of the offences under Sections 269, 274, 336, 467 and 420 of the Indian Penal Code.

2. I have heard learned counsel for the petitioner, learned Public Prosecutor for the State and the learned counsel for the accused/non-petitioner No. 2. I have also gone through the impugned judgment and perused the record.

3. The facts and circumstances giving rise to this criminal revision are that an FIR was lodged by the petitioner-complainant on 25-4-1995 with the Police Station, Shahpura to the effect that the wife of the petitioner fell ill and she was admitted to the Government Hospital, Shahpura. The doctor prescribed certain medicines, injections and glucose, which he purchased from Oswal Medical Store, Shahpura. The glucose bottle of expiry date? was given by changing the expiry date 1/95 to 7/95. After investigation, the police filed challan before the learned

trial court. After trial, the trial court acquitted the accused/non-petitioner No. 2 of all the aforesaid charges on the grounds that neither the original bill nor the report of the handwriting expert had been produced and the Batch number of the glucose bottle did not tally with the Batch number of the bill. Hence this revision petition.

4. It has been contended by the learned counsel for the petitioner-complainant that the learned trial court has not appreciated the oral testimony of the complainant and his witnesses Radha Kishna Sharma in right perspective; when there was direct evidence, it was not necessary to submit the report of the handwriting expert because there was direct circumstantial evidence corroborating the fact of changing the expiry date from 1/95 to 7/95; the bill book was seized on 10-5-95 and accused/non-petitioner No. 2 had enough opportunity of forging it; the glucose bottle of expiry date would have resulted in serious complications and even death if timely stoppage of glucose drip was not there and as such the offender of such serious offences should not be let free on some technical grounds.

5. Learned counsel for the accused/non-petitioner No. 2 supported the impugned judgment by stressing that the accused/non-petitioner is innocent and he had not committed the offences alleged against him and was rightly acquitted by the trial court.

6. I have carefully gone through the impugned judgment passed by the learned trial court. The learned trial court has appreciated the evidence in detail and a reasoned order has been passed acquitting the accused/non-petitioner No. 2 of all the offences. The learned trial court considered each and every contentions elaborately and ultimately passed the order of acquittal by giving the benefit of doubt to the accused/non-petitioner No. 2.

7. In *Bansi Lal and Ors. v. Laxman Singh (1)*, the Hon"ble Supreme Court held as under:-

"The mere circumstance that a finding of fact recorded by the trial court may in the opinion of the High Court be wrong, will not justify the setting aside the order of acquittal and directing a retrial of the accused The dominant justification of the order of acquittal recorded by the trial court is the view it took of the evidence of the two eye witnesses. Having carefully gone through the records of the case we are satisfied that it was a possible view and it cannot be characterised as illegal or perverse. It may well be that the learned Single Judge of the High Court was not inclined to agree with the said view on the basis of his independent scrutiny and appreciation of the evidence adduced in the case but that would not furnish any justification for interference in revision with the order of acquittal passed by the learned Additional Sessions Judge. Even in an appeal the appellate court would not have been justified in interfering with an acquittal merely because it was inclined to differ from the findings of fact reached by the trial court on the appreciation of the evidence. The revisional power of the High

Court is much more restricted in its scope. We accordingly hold that the High Court has clearly transgressed the limits of its revisional jurisdiction u/s 439(4) of Cr.P.C. in setting aside the order of acquittal passed by the Additional Sessions Judge and directing a retrial of the case."

8. In Mahendra Pratap Singh v. Sarju Singh (2), the Hon"ble Apex Court held as under:-

"In fact on reading the judgment of the High Court it is apparent to us that the learned Judge has re-weighed the evidence from his own point of view and reached inferences contrary to those of the Sessions Judge on almost every point. This we do not conceive to be his duty in dealing in revision with an acquittal when Government has not chosen to file an appeal against it. In other words, the learned Judge in the High Court has not attended to the rules laid down by this Court and has acted in breach of them."

9. In Khetra Basis Samal and Anr. v. The State of Orissa etc. (3), placing reliance on its earlier judgment in D. Stephens v. Nosibolla (4), the Hon"ble Supreme Court held as under:-

"The revisional jurisdiction conferred on the High Court u/s 439 of the Code of Criminal Procedure is not to be lightly exercised, when it is invoked by a private complaint against an order of acquittal, against which the Government has a right of appeal u/s 417. It could be exercised only in exceptional cases where the interests of public justice require interference for the correction of a manifest illegality, or the prevention of a gross miscarriage of justice. This jurisdiction is not ordinarily invoked or used merely because the lower court has taken a wrong view of the law or . misappreciated the evidence on record."

10. In Kaptan Singh and Ors. v. State of M.P. and Anr. (5), the Apex Court held that the revisional power of High Court, while sitting in judgment over an order of acquittal, should not be exercised unless there exists a manifest illegality or there is grave miscarriage of justice.

11. In Harihar Chakravarty v. The State of West Bengal (6), the Supreme Court held that revisional jurisdiction of the High Court is not to be lightly exercised when it is invoked by a private complainant.

12. In Akalu Ahir and Ors. v. Ramdeo Ram (7), the Akpex Court observed as under:-

"This Court, however, by way of illustration, indicated the following categories of cases which would justify the High Court in interfering with a finding of acquittal in revision.

(i) Where the trial court has no jurisdiction to try the case, but has still acquitted the accused;

(ii) Where the trial court has wrongly, shut out evidence which the prosecution wished to produce;

(iii) Where the appellate court has wrongly held the evidence which was admitted by the trial court to be inadmissible;

(iv) Where the material evidence has been overlooked only (either) by the trial court or by the appellate court; and

(v) Where the acquittal is based on the compounding of the offence which is invalid under the law.

These categories were, however, merely illustrative and it was clarified that other cases of similar nature can also be properly held to be of exceptional nature where the High Court can justifiably interfere with the order of the acquittal."

13. The Apex Court further observed as under:-

"No doubt, the appraisal of evidence by the trial judge in the case in hand is not perfect or free from flaw and a court of appeal may well have felt justified in disagreeing with its conclusion, but from this it does not follow that on revision by a private complainant, the High Court is entitled to reappraise the evidence for itself as if it is acting as a court of appeal and then order a retrial. It is unfortunate that a serious offence inspired by rivalry and jealousy in the matter of election to the office of village Mukhia, should go unpunished. But that can scarcely be a valid ground for ignoring or for not strictly following the law as enunciated by this Court."

14. In *Vimal Singh v. Khurnan Singh and Anr.* (8), the Hon"ble Supreme Court held as under:-

"Coming to the ambit of power of the High Court u/s 401 of the Code, the High Court in its revisional power does not ordinarily interfere with judgments of acquittal passed by the trial court unless there has been manifest error of law or procedure. The interference with the order of acquittal passed by the trial court is limited only to exceptional cases when it is found that the order under revision suffers from glaring illegality or has caused miscarriage of justice or when it is found that the trial court has no jurisdiction to try the case or where the trial court has illegally shut out the evidence which otherwise ought to have been considered or where the material evidence which clinches the issue has been overlooked. These are the instances where the High Court would be justified in interfering with the order of acquittal. Sub-section (3) of Section 401 mandates that the High Court shall not convert a finding of acquittal into one of conviction. Thus, the High Court would not be justified in substituting an order of acquittal into one conviction even if it is convinced that the accused deserves conviction. No doubt, the High Court in exercise of its revisional power can set aside an order of acquittal if it comes within the ambit of exceptional cases enumerated above but it cannot convert an order of acquittal into an order of conviction. The only course left to the High Court left to the High Court in such exceptional cases is to order retrial."

15. Same view had been taken by the Hon"ble Supreme Court in *Logendra Nath*

Jha and Ors. v. Polailal Biswas (9), K. Chinnaswamy Reddy v. State of A.P. (10), Mahendra Pratap Singh v. Sarju Singh (11), Pakalapathi Narayana Gajapathi Raju and Ors. v. Bonapalli Peda Appadu and Ors. (12), and Ayodhya Dube and Ors. v. Ram Sumer Singh (13).

16. A Three Judges Bench of the Hon^{ble} Supreme Court, in Thankappan Nadar and Ors. v. Gopala Krishnan and Anr. (14), reiterated the same view and held that it is not permissible for the High Court to re-appreciate evidence where there was no manifest error of law or procedure when there was no question of evidence on clinching issue having been overlooked.

17. In the instant case, the State has not filed any appeal against the impugned judgment and order of acquittal passed by the court below and, therefore, the instant revision is examined in the light of the settled principles of law. I have carefully gone through the statement of witnesses produced by the prosecution and appreciated by the learned trial court. A perusal of the impugned judgment and order reveals that the learned court below has considered the entire evidence, found material contradictions and discrepancies in the statement of the witnesses. Thus, in view of the aforesaid settled legal proposition and the facts of the case, the order of acquittal passed by the trial Court cannot be said to be unmerited. There is no manifest illegality or miscarriage of justice. Hence order impugned does not require any interference. I find no illegality, irregularity or perversity in the impugned judgment warranting interference under the limited revisional jurisdiction.

18. Consequently, the revision fails and is hereby dismissed.