
(1989) 10 KL CK 0006
In the High Court Of Kerala
Case No : Criminal R.P. No. 199 of 1989

C. Gopinathan

APPELLANT

Vs

Krishnan Ayyappan and Others

RESPONDENT

Date of Decision : 10-10-1989

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 325, 360, 372, 374, 374(3)(a)
Penal Code, 1860 (IPC) — Section 498A

Citation : (1989) 2 KLJ 618

Hon'ble Judges : K.T. Thomas, J

Bench : Single Bench

Advocate : Pirappancode V. Sreedharan Nair, S.P. Aravindakshan Pillai, K.G. Anil Babu and Pirappancode V.S. Sudheer, for the Appellant; N. Nandakumara Menon and Public Prosecutor Smt. Chincy Gopalkumar, for the Respondent

Judgement

K.T. Thomas, J.—A question of law of some importance has been raised in this revision. The question is this: Will an appeal lie against the sentence passed by the trial Magistrate in a case where the accused were convicted by the High Court? The backdrop of the said question consists of the following facts: Santhi, daughter of the petitioner, was given in marriage to the first respondent (Ayyappan) on 16-11-1983. The matrimonial life of Santhi might have been far from satisfactory as she ended her life by jumping into a well on 2-4-1985. The police charge sheeted a case against the first respondent and his mother Valli Amma (second respondent) for the offence u/s 498A of the Indian Penal Code. The trial Magistrate found the two respondents not guilty and acquitted them. The order of acquittal was challenged in this Court by the State through an appeal and by the petitioner through a revision. This Court set aside the order of acquittal and convicted both the respondents for the offence, as per judgment dated 28-10-1988. However, this Court sent back the case to the trial court with a direction to pass sentence in accordance with law. The trial Magistrate after hearing both sides, sentenced the respondents to undergo rigorous imprisonment for three years each. Respondents filed a criminal appeal before the Sessions

Court and prayed for suspension of the sentence during the pendency of the appeal. The Public Prosecutor raised the preliminary objection in the Sessions Court regarding maintainability of the appeal. Learned Sessions Judge overruled the preliminary objection as per the impugned order

Sri. Pirappancode V. S. Sudheer, learned counsel for the petitioner, contended that no appeal is maintainable in law unless there is express provision, either in the Code of Criminal Procedure (for short the Code) or in any other law, entitling a person to file appeal against a particular order, judgment or proceeding. The said principle, no doubt, is given statutory recognition by including Section. 372 in the Code which contains a general ban that no appeal shall lie from any judgment or order of a criminal court "except as provided for by this Code or by any other law for the time being". Learned Sessions Judge sought support from Section 374 (3) (a) of the Code for his conclusion in favour of maintainability of the appeal. Sri. Nandakumara Menon, learned counsel for the respondents, made an endeavour to keep the appeal maintainable on the same reasoning which the learned Sessions Judge adopted. In order to analyse the scope of Clause (b), the whole section has to be read. Section 374 reads thus: (1) Any person convicted on a trial held by a High Court in its extraordinary original criminal jurisdiction may appeal to the Supreme Court.

(2) Any person convicted on a trial held by a Sessions Judge or an Additional Sessions Judge or on a trial held by any other court in which a sentence of imprisonment for more than seven years (has been passed against any other person convicted at the same trial) may appeal to the High Court.

(3) Save as otherwise provided in Sub-sec. (2), any person,--

(a) convicted on a trial held by a Metropolitan Magistrate or Assistant Sessions Judge or Magistrate of the first class, or of the second class, or

(b) sentenced u/s 325, or

(c) in respect of whom an order has been made or a sentence has been passed u/s 360 by any Magistrate, may appeal to the Court of Session".

Sub sections (1) and (2) are not helpful in this case since the trial was held by a magistrate of first class. According to the learned counsel, the test of appealability is not as to which court has passed the conviction or sentence, but in which court the trial has been held in the case. The weakness of the said contention is easy of discernment. If the test is only with reference to the forum where the trial was held, it would lead to the preposterous consequence that an appeal then could be filed in the Court of Session against a conviction ordered by the High Court in a trial held by the Magistrate.

2. Sections 375 and 377 are the only provisions in the Code which permit appeals against sentence alone. The former is restricted to cases in which the accused is convicted on a plea of guilty and the latter is restricted to cases in which the State directs the Public Prosecutor to appeal to the High Court against

the sentence on the ground of insufficiency. Merely because appeal is provided against sentence in certain cases, Court cannot support appealability by implication in other cases where sentence alone is required to be challenged. A right of appeal is not a natural or inherent right and hence it must be referable to express provisions in a statute. A Constitution Bench of the Supreme Court has observed thus: "An appeal is a creature of statute and there can be no inherent right of appeal from any judgment or determination unless an appeal is expressly provided for by the law itself" (*Durga Shankar Mehta Vs. Thakur Raghuraj Singh and Others*,). In view of the general ban contained in Section 372, it is an idle exercise in trying to trace out appeal power by implication in the absence of express provision. Learned Sessions Judge referred to Section 386(b) (iii) of the Code which confers power on the appellate court to alter the, nature or the extent of the sentence without altering the finding. The said provision deals with the powers of the appellate court and not any right to prefer appeal. In *Rabari Ghela Jadav Vs. The State of Bombay*, . the Supreme Court considered a case where the High Court directed that an appeal shall be heard only on the point of sentence, in a case where appeal would lie against both the conviction and sentence. Their Lordships held that while an appellate court has power to dismiss an appeal summarily, it has no power to direct that the appeal shall be heard only on the point of sentence, though the appellate court after hearing the appeal has the power to reduce the sentence. Learned counsel for the petitioner cited the decision in *Joshi Reddy Vs. State of Hyderabad*, where the Division Bench of the Hyderabad High Court considered the appealability of a judgment in which the sentence was kept in abeyance by the trial court. According to the learned Judges, the fact that the accused was not really undergoing the sentence is of no consideration in holding whether the appeal is maintainable or not. Though the said decision has no direct bearing on the question involved here, it has one advantage in finding support to the position that an appeal can be maintained against a conviction without challenging the sentence. But there is no authority to support the other position that an appeal can be filed against a sentence (except as provided in Sections 375 and 377) when the conviction part remains non-appealable. For the above reasons, I hold that the appeal filed by the accused in the Sessions Court is not maintainable. Sri. Nandakumara Menon lastly contended that it is open to the Sessions Court to convert the appeal into, a revision when the appeal is found not maintainable. Learned counsel invited my attention to the decision of this Court in *State of Kerala v. Achutha Panicker* (1975 KLT 703) wherein it was held that an appeal in a proper case can be treated as a revision. It is open to the respondents to file an application in the Sessions Court for converting the appeal into a revision and the Sessions Judge can pass appropriate orders thereon.

Criminal revision petition is disposed of in the above terms.