
(1969) 09 AHC CK 0012
In the Allahabad High Court
Case No : Criminal Revision No. 787 of 1966

Chhotey and Others

APPELLANT

Vs

Ram Prasad and Another

RESPONDENT

Date of Decision : 18-09-1969

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 209, 439, 561A

Citation : AIR 1970 All 380 : (1969) 39 AWR 790 : (1970) CriLJ 948

Hon'ble Judges : B.D. Gupta, J

Bench : Single Bench

Advocate : J.N. Chaturvedi and Jagdish Singh, for the Appellant; R.P. Goel and S.N. Mulla, for the Respondent

Final Decision : Dismissed

Judgement

B.D. Gupta, J.—One Kam Prasad filed a complaint against ten persons who are arrayed as the applicants in Criminal Revision No. 787 of 1966. In the complaint it was alleged that these ten persons had committed offences punishable under Sections 147 148 307/149 and 302/149, I. P. C. As some of the offences alleged were exclusively triable by a Court of Session the Additional District Magistrate proceeded to enquire into the matter and recorded evidence led by the parties and, by order dated the 24th of February, 1966, he discharged all the ten persons. Against the aforesaid order the complainant approached the learned Sessions Judge in revision. By order dated the 27th of April, 1966, the learned Sessions Judge set aside the order of the Additional District Magistrate and directed the Magistrate to commit the case to the Sessions. Against the order of the learned Sessions Judge the ten accused persons approached this Court praying for an order of this Court setting aside the order passed by the learned Sessions Judge and restoring that passed by the learned Additional District Magistrate.

Only two parties were arrayed as opposite parties in the memo of revision. Opposite party No. 1 was Ram Prasad, the complainant, whereas the second

opposite-party was the State. The above revision was admitted and registered as Criminal Revision No. 787 of 1966 and further proceedings were directed to remain stayed. There is no controversy that in the aforesaid revision Mr. S. N. Mulla, Bar-at-Law, practising as an Advocate in this Court, put in his appearance on behalf of the complainant Ram Prasad sometime early in October, 1966. The revision was listed in the Cause List for the 22nd of October, 1967, before Hon. Rajeshwari Prasad, J., but the name of Mr. S. N. Mulla was not shown in the Cause List as appearing in the case. The case was again listed in the Cause list for the 23rd of November, 1967, as a part-heard case. In that Cause List also the name of Mr. S. N. Mulla was not shown. The case was again listed in the Cause List for the 24th of November, 1967, for judgment, but again the Cause List did not show the name of Mr. S. N. Mulla. By order dated the 24th of November, 1967, Hon. Rajeshwari Prasad, J. allowed the revision, set aside the order passed by the learned Sessions Judge and affirmed that passed by the learned Additional District Magistrate.

Thereafter, on the 7th of February, 1968, an application, u/s 561-A, Criminal p. C., was moved on behalf of the complainant Ram Prasad setting forward the aforesaid facts together with the grievance that, in the circumstances, the decision of the revision had been arrived at without any opportunity to Mr. S. N. Mulla to be heard in support of the order passed by the learned Sessions Judge. All the ten applicants in Criminal Revision No. 787 of 1966 were arrayed, in this application, as opposite-parties and the application was registered as Criminal Miscellaneous Case No. 292 of 1968. By order dated the 13th of December, 1968, Hon. Rajeshwari Prasad, J. allowed the application, set aside the order passed by him on the 24th of November, 1967, and directed Criminal Revision No. 787 of 1966 to be listed again for hearing in due course. On the 29th of August, 1969, an application was moved on behalf of the ten accused persons who are the applicants in Criminal Revision No. 787 of 1966, praying that it may be held that the order passed by Hon. Rajeshwari Prasad, J. on the 24th of November, 1967, had become final and that the order dated the 13th of December, 1968, mentioned above was a nullity. Thus, I have before me Criminal Revision No. 787 of 1966 and the above application made on the 29th of August, 1969. I have heard learned counsel for the parties in regard to the application made on the 29th of August, 1969, as also in regard to the merits of Criminal Revision No. 787 of 1966. I proceed, in the first instance, to deal with the application made on the 29th of August, 1969.

2. It has been urged in support of the aforesaid application that since the order of Hon. Rajeshwari Prasad, J. dated the 24th of November, 1967, had been passed after considering the merits of the matter, it was not open to the learned Judge to set aside the decision contained in that order by reason merely of the circumstance that counsel for the complainant had no opportunity to be heard on account of the omission of his name from the Cause List. I find myself unable to accept this contention. The age-long procedure followed in this Court has been that a cause list is prepared for each day. That list contains the list of cases

which may be heard by different benches of the Court as also the hour at which and the room in which the bench shall sit. The cause list so prepared is printed and distributed to all members of the Bar who subscribe to it as also to Judges, Readers of each court-room, etc. It contains the reference of each case on the list together with the names of learned counsel appearing for the parties. The list printed as above is distributed early in the morning and it is with the aid of that list that learned counsel learn of the cases on the cause list of the Court in which they are appearing.

As already observed, there is no controversy that in regard to Criminal Revision No. 787 of 1966 the name of Mr. S. N. Mulla, who had put in appearance on behalf of the complainant Ram Prasad was not printed in the cause list for either of the dates on which the case was listed for hearing and taken up by the Court, and it has not been suggested that Mr. Mulla had information about the case being on the cause list through any other medium. There is no controversy that non-appearance of Mr. Mulla at the hearing of the revision was the result of the omission of Mr. Mulla's name from the cause lists for the relevant dates.

3. Section 561-A of the Code of Criminal Procedure contains statutory recognition of the power of this Court to make such orders as may be necessary, *inter alia*, "to prevent abuse of the process of any Court or otherwise to secure the ends of justice". The procedure that has obtained in this Court in exercising its jurisdiction has been the procedure described earlier and, though it may very well be that no provision of law has been infringed by deciding a criminal revision without hearing learned counsel, the hearing and decision of a revision without an opportunity having been afforded to learned counsel, who has put in appearance, by reason merely of inadvertence on the part of the Press in the matter of printing names of learned counsel appearing for the cases shown in the cause list, is calculated to encourage abuse of the procedure that has obtained in this Court. I have no doubt that, in the circumstances of this case, Hon. Rajeshwari Prasad, J. had ample power, u/s 561-A, Cr. P. C., to pass an order providing for a decision of the revision after a re-hearing of the case. Reference may be made to the opinion recorded by a Full Bench of this Court in the case of *Raj Narain v. State*, AIR 1959 All 315.

4. The first contention of learned counsel must, therefore, fail and the application made on the 29th of August, 1969, praying that it must be held that the order of Hon. Rajeshwari Prasad, J. dated the 13th of December, 1968, was a nullity, must be dismissed.

5. As regards the merits of the revision itself, having perused the order dated the 24th of February, 1966, passed by the learned Additional District Magistrate, and the order dated the 27th of April, 1966, passed by the learned Sessions Judge, I am satisfied that the view taken by the learned Sessions Judge was perfectly correct. It does not appear desirable to discuss the merits of the matter for that might prejudice the case of either party at the trial which is due to commence in pursuance of the direction of the learned Sessions Judge.

Suffice it to say that the order passed by the learned Additional District Magistrate makes it clear that he seems to have overlooked the fact that he was not functioning as a court of trial but merely as a court enquiring into allegations of commission of offences exclusively triable by a court of Session. In the course of such an enquiry, though the Magistrate does not act merely as a post office, it is not his function to weigh pros and cons of the evidence before him and discharge the accused on the ground merely that the evidence led by the prosecution appeared to be unreliable or partial. In such an enquiry the learned Magistrate has only to find out whether there is evidence which, if believed, would establish a prima facie case. Reference may be made to the decisions of the Supreme Court in the case of Bipat Gope Vs. State of Bihar, and in the case of K.P. Raghavan and Another Vs. M.H. Abbas and Another,

6. The order passed by the learned Sessions Judge dated the 27th of April, 1966, is well supported and does not suffer from any error and this revision must fail.

7. Accordingly the revision is dismissed and the direction staying further proceedings is vacated.

8. Let the record be now immediately sent down to the court concerned to enable it to proceed with the case.