
(2011) 12 AHC CK 0368
In the Allahabad High Court
Case No : Criminal Appeal No. 580 of 1982

Dinesh

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 20-12-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 386

Citation : (2011) 12 AHC CK 0368

Hon'ble Judges : Dharnidhar Jha, J;Ashok Srivastava, J

Bench : Division Bench

Judgement

1. The appeal was called out for hearing. Out attention was drawn to order passed on 1.8.2007 as also to that passed on 22.1.2010 by which direction was given for ascertaining as to whether P.W. 2 Vinod Kumar was alive or not. The purpose for issuing the direction appears the loss or removal of deposition sheet of P.W. 2 which evidence was considered by the learned trial judge for rendering the impugned judgment. Sri G.S. Chaturvedi, learned Senior Advocate, appearing on behalf of the solitary appellant Dinesh has drawn our attention towards the judgment in the case of State of U.P. Vs. Abhai Raj Singh and Another, and has submitted that the court should set aside the judgment of conviction and remit the case for re-trial as per provisions of Section 386 of Criminal Procedure Code.

2. We have considered the judgment cited before us. We find that the situation which was obtained in the appeal before the Supreme Court in the case of Abhai Raj Singh and another (supra) is completely different from as obtained before us. In Abhai Raj Singh's case the records of the trial court were reported destroyed in fire and as such those were not available. This Court had passed an order of acquittal while hearing the Criminal Appeal Nos. 1962 and 1970 of 1979. The Supreme Court has set aside the judgment of acquittal passed by this Court and after analysing the provisions of Section 386 of Cr.P.C. has directed the re-trial so as to reconstructing the record. Here is not the question of destruction of the

record, rather the case relates to disappearance or may be removal from record of one deposition of P.W. 2. It is concluded from the report submitted by the Sessions Judge, Jalaun that P.W. 2 is now dead as such his examination could not be possible. But, he was examined and his evidence was considered, is apparently clear from the impugned judgment. It appears to us fit that a direction may be issued for reconstructing the lower court records after consulting the counsel for the parties who were appearing before the trial court.

3. We, as such, keep the appeal pending and direct the transmission of the lower court records to the learned Sessions Judge, Jalaun at Orai so that deposition of P.W. 2 may be re-constructed. The learned Sessions Judge who appears to have passed the impugned judgment, will reconstruct the record and submit the same within four months from the date the lower court record and the copy of the present order are received by him. Thereafter he shall transmit the record to this Court.

4. As soon as the lower court records are received back after reconstructing the lower court record in the light of the present order, the appeal shall be listed under the same heading.