
(2010) 10 AP CK 0067

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 5987 of 2009

G. Basawaraj

APPELLANT

Vs

The State of A.P. and N. Laxmi Reddy

RESPONDENT

Date of Decision : 21-10-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 372, 378, 378(4), 482
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2011) 8 RCR(Criminal) 1674

Hon'ble Judges : Samudrala Govindarajulu, J

Bench : Single Bench

Advocate : P. Shiv Kumar, for the Appellant; M. Achutha Reddy, for the Respondent

Judgement

Samudrala Govindarajulu, J.—These two criminal petitions are filed by the accused questioning filing of Criminal Appeal Nos. 12 of 2009 and 13 of 2009 on the file of III Additional Sessions Judge (Fast Track Court) at Gadwal, Mahabubnagar District u/s 378 Code of Criminal Procedure filed by the complainant against two judgments dated 31.10.2008 passed by the Additional Judicial Magistrate of the First Class, Alampur in C.C. Nos. 28 of 2007 and 77 of 2007 respectively recording acquittal of the accused/Petitioner.

2. The only contention put forward by the Petitioner's counsel is that as against judgment recoding acquittal of the accused, remedy of the complainant is to file appeal to the High Court u/s 378(4) Code of Criminal Procedure and that the High Court has to grant leave to file appeal against acquittal even if the complainant approached the High Court before admission of the appeal against acquittal. On the other hand, counsel for the 2nd Respondent/complainant pointed out that as per recent amendment to Section 372 Code of Criminal Procedure introducing new proviso to that Section, a victim is competent to file appeal to the Sessions Court against acquittal recorded, by the Magistrate.

3. Section 372 Code of Criminal Procedure reads as follows:

No appeals shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by other law for the time being in force.

provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court

4. The 2nd Respondent/complainant filed complaints before the Magistrate alleging two offences against the Petitioner/accused punishable u/s 138 of the Negotiable Instruments Act on the ground that two cheques said to have been drawn by the accused in favour of the complainant were dishonoured by the banker when presented for encashment. After full trial, the Magistrate dismissed both the complaints and recorded acquittal of the accused in both the cases. As against the said orders of acquittal, the complainant filed two appeals before the Sessions Court. No doubt, u/s 378 Code of Criminal Procedure. appeal lies against order of acquittal only to the High Court and not to the Sessions Court. It is well settled principle of law that mentioning of wrong provision of law is no ground for rejection of appropriate relief claimed by a party. The 2nd Respondent/complainant should have invoked Proviso to Section 372 Code of Criminal Procedure in the appeals filed by him before the Sessions Court, instead of Section 378 Code of Criminal Procedure. Failure to mention correct provision of law by the 2nd Respondent/complainant in the appeals filed by him before the III Additional Sessions Judge (Fast Track Court), Gadwal cannot be a ground to refuse relief to him therein or to quash those two appeals by this Court in these petitions in exercise of power u/s 482 Code of Criminal Procedure.

5. No doubt, prior to amendment to Section 372 Code of Criminal Procedure which took place in the year 2009 and which came into force on 31.12.2009 the only remedy available either to the State in a case registered upon police report or to a complainant in a case registered upon his complaint, is to invoke Section 378(4) Code of Criminal Procedure and to approach the High Court with an appeal together with a petition for leave to file such an appeal against an order recorded by the trial court acquitting the accused. The said position is totally changed after Proviso to Section 372 Code of Criminal Procedure came into force. Therefore, Abdu Ram v. State 2002(1) Crimes 76 of the Delhi High Court has no relevance after the above said amendment incorporating Proviso to Section 372 Code of Criminal Procedure.

6. The Petitioners contended that Section 378(4) Code of Criminal Procedure is a Special Provision and it overrides general provision contained in Section 372 Code of Criminal Procedure. No doubt, prior to amendment, Section 372 Code of Criminal Procedure was only a general provision relating to appeals with reference to Section 378(4) Code of Criminal Procedure which incorporates a special provision as to filing of appeal against order of acquittal. After the amendment to Section 372 Code of Criminal Procedure by which the proviso was incorporated therein, Section 372 Code of Criminal Procedure ceased to be a

general provision as a whole. The proviso to Section 372 Code of Criminal Procedure makes inroads to original general provision contained in Section 372 Code of Criminal Procedure. After introduction of the said proviso, the field became enlarged clothing a victim also with right to file an appeal apart from the State or the complainant as the case may be. The words "Victim" and "complainant" are not synonymous. At times, a complainant may include a victim and vice versa, but not always. Thus, under the recent amendment of the year 2008, the Parliament thought it fit to confer the right to file appeal on the victim also apart from the State or the complainant. Further, jurisdiction was conferred not only to the High Court but also to the Sessions Court for entertaining such appeal of the victim against order of acquittal, by introducing the words "such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court" contained in the Proviso to Section 272 Code of Criminal Procedure. The maxim *Generalia specialibus non derogant* has no application herein.

7. In *State through Central Bureau of Investigation Vs. Parmeshwaran Subramani and Another*, it was observed by the Supreme court:

19. In a plethora of cases, it has been stated that where the language is clear, the intention of the legislature is to be gathered from the language used. It is not the duty of the court either to enlarge the scope of legislation or the intention of the legislature, when the language of the provision is plain. The court cannot rewrite the legislation for the reason that it had no power to legislate. The court cannot add words to a statute or read words into it which are not there. The court cannot, on an assumption that there is a defect or an omission in the words used by the legislature, correct or make up assumed deficiency, when the words are clear and unambiguous. Courts have to decide what the law is and not what it should be. The courts adopt a construction which will carry out the obvious intention of the legislature but cannot set at naught legislative judgment because such course would be subversive of constitutional harmony.

8. In *Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others*, the Supreme Court reiterated rule as to harmonious construction in the following terms:

20. We consider that the above approach made by the High Court is totally fallacious and is vitiated by its failure to follow the well-established doctrine of interpretation, that, the provisions contained in a statutory enactment or in rules/regulations framed thereunder have to be so construed as to be in harmony with each other and that where under a specific section or rule a particular subject has received special treatment, such special provision will exclude the applicability of any general provision which might otherwise cover the said topic.

9. In *Ashoka Marketing Ltd. and another Vs. Punjab National Bank and others*, the Supreme Court construed that the Maxims, *leges posteriores priores contrarias abrogant* is an exception to the maxim *Generalia specialibus non*

derogant in the following terms:

On such principle of statutory interpretation which is applied to be is contained in the latin maxims, *leges posteriores priores contrarias abrogant* (later laws abrogate earlier contrary laws). This principle is subject to the exception embodied in the maxim; *generalias specialibus non derogant* (a general provision does not derogate from a special one). This means that where the literal meaning of the general enactment covers enactment covers a situation for which specific provision is made by Anr. enactment contained in an earlier Act, it is presumed that the situation was intended to continue to be dealt with by the specific provision rather than the later general one (Benion: Statutory Interpretation pp. 433-34)

10. State of Gujarat Vs. Salimbhai Abdulgaffar Shaikh and Others, of the Supreme Court has no application in considering provisions of the same enactment which stood before and after amendment. In that case, the question before the Supreme Court was on provisions relating to grant of bail and anticipatory bail under general law contained in the Code of Criminal Procedure, 1973 visa-vis the said provisions contained in the special enactment viz., Prevention of Terrorism Act (POTA).

11. While interpreting provisions of Central Excise and Salt Act and Central Excise Rules, the Supreme Court in Collector of Central Excise, Jaipur v. Raghuvar (India) Limited AIR 2000 SC 2027 observed:

The above conclusion of ours is itself sufficient to answer the question in favour of the Revenue and against the manufacturer, even dehors the applicability or otherwise of the principle of construction - *Generalia specialibus non derogant*, since they do not operate on the same field or cover the same area, to be reconciled in order to advert any clash or inconsistency.
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The question as to the relative nature of the provisions general or special has to be determined, as observed earlier, with reference to the area and extent of their application either generally in all circumstances or specially in particular situations and not on the ground that one is a mere provision in the Act and the other is a provision in the Rule. We are not also concerned in this case with any challenge to the inconsistency of a rule with any statutory provision in the Act.

12. Thus, while interpreting any statutory provision, first and foremost cardinal principle of interpretation is plain and simple reading of language employed in that provision. In case the said provision is in conflict with any other provision in the same statute or is in conflict with any provision contained in any other statute, then it is duty of the Court to construe those two provisions in any harmonious fashion and to give effect to both the provisions. It is only if the two provisions are clashing or conflicting with each other and are irreconcilable, then

the Court has to resort to other rules of interpretation of statutes to resolve the clash or controversy or inconsistency and to consider which of the two provisions would override the other. In the case on hand, on plain, simple and proper reading of language employed in Section 378(4) Code of Criminal Procedure and proviso to Section 372 Code of Criminal Procedure. this Court is of the opinion that there is no clash or conflict or inconsistency between the two provisions. On harmonious reading of both the provisions, it is evident that pre-existing provision in Section 378(4) Code of Criminal Procedure provides for filing appeal against acquittal by the State or by the complainant to the High Court with leave of the High Court. Whereas the amended Section 372 Code of Criminal Procedure provides for appeal against acquittal to the victim of the offence to the Court to which an appeal ordinarily lies against the order of conviction of that Court. Against any order of conviction passed by a Magistrate, appeal lies to the Sessions Court. In case an order of conviction is passed by an Assistant Sessions Court, then appeal lies either to the Sessions Court or to the High Court depending upon the quantum of sentence of imprisonment awarded by that court. In case a conviction is recorded by a Sessions Court or Additional Sessions Court, then appeal lies to the High Court. Thus, a victim irrespective of the fact whether he is complainant or not, has been conferred the right to file appeal against an order recording acquittal by the trial court, either to the Sessions Court or to the High Court as the case may be. In case, the victim is also the complainant in a case instituted by way of a private complaint, then such person has got two options to file appeal against an order of acquittal recorded by the trial court, either to the High Court u/s 378(4) Code of Criminal Procedure or to the Sessions Court/High Court under proviso to Section 372 Code of Criminal Procedure. It is open to that person who is a victim as well as a complainant to choose one of the two remedies available in law and to approach an appellate court of his choice depending on the trial court which recorded order of acquittal. This Court is of further opinion that intention of the Parliament in introducing the proviso to Section 372 Code of Criminal Procedure by way of the amending Act 5 of 2009 is to supplement to the then existing remedies and to confer appellate jurisdiction to Sessions Courts also apart from the High Court against an order of acquittal recorded by the trial court. Thus, on harmonious reading of Section 378(4) Code of Criminal Procedure and proviso to Section 372 Code of Criminal Procedure. this Court finds that both the provisions can be given effect to simultaneously and that both the provisions can operate in the field at one and the same time and that there is no conflict or clash or inconsistency between those two provisions. In that view of the matter, entertaining of two appeals by the III Additional Sessions Court (Fast Track Court) at Gadwal, Mahabubnagar District against two orders of acquittal recorded by the Additional Judicial Magistrate of the First Class, Alampur in two cases instituted by the 2nd Respondent/complainant upon two private complaints alleging two offences punishable u/s 138 of the Negotiable Instruments Act, are maintainable before that Court in Gadwal. I do not find any merits in these two criminal petitions.

13. In case the criminal appeals are not maintainable before the Sessions Court, in such an event proceedings in those criminal appeals are not liable to be quashed; but the proper course to be adopted in such a case would be to return the appeal memoranda to the Appellant for presentation to proper Court having jurisdiction i.e., the High Court. The other course open to this Court in these petitions would be to transfer the pending appeals from the Additional Sessions Court to this Court for disposal according to law.

14. Since both the appeals in the lower Court were presented in November, 2008 prior to Code of Criminal Procedure (Amendment) Act, 2008 (Act No. 5 of 2009) came into force on 31.12.2009, both the appeals are not maintainable before the Sessions Court.

15. In the result, the Criminal Appeal Nos. 12 of 2009 and 13 of 2009 are transferred from the III Additional Sessions Judge (Fast Track Court) at Gadwal, Mahaboobnagar District to this Court. After receipt of records, the Registry is directed to post the two appeals for admission before the appropriate bench.