

(1977) 04 RAJ CK 0019
In the Rajasthan High Court
Case No : Criminal Revision No. 5 of 1975

Gramwasi Sheodanpur

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 26-04-1977

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 484

Citation : (1977) RLW 142 : (1977) WLN 210

Hon'ble Judges : K.D. Sharma, J

Bench : Single Bench

Judgement

K.D.Sharma, J.

1.This is a revision-petition filed u/s 439 of the Cr. P.C. 1898 hereinafter referred to as the old Code, by the villagers of village Sheodanpur, through Nand Ram, Panch of the Gram Panchayat, against an order of the Sessions Judge, Sri Ganganagar, dated 11th September, 1974, by which an order passed by the Sub-Divisional Magistrate, Hanumangarh, on 25th February, 1974, in proceedings u/s 133 of the old Code was set aside in revision on the ground that the villagers of Sheodanpur could not lead satisfactory evidence to show that any unlawful obstruction was caused by Roopdas in the public way. Aggrieved by this order the villagers of Sheodanpur have come up in revision to this Court.

2. I have heard Mr. Hastimal Parekh for the petitioner, Mr. R.N. Bishnoi for the non-petitioner, Roopdas and Dr. S.S. Bhandawat, Public Prosecutor, for the State. It is not necessary for me to decide this revision petition on merits because there is a glaring manifest error in the order passed by the Sessions Judge, Sri Ganganagar. The error is that the Sessions Judge did not dispose of the revision-petition before him in accordance with the provisions of the old Code. At the time when the revision-petition was filed before him by Roopdas against the order of the Sub-Divisional Magistrate, the old Code was in force. The record further reveals that immediately before the date on which the new Code of Criminal Procedure, hereinafter referred to as the new Code, came into force, the revision-

petition filed by Roopdas was pending in the court of the Sessions Judge and, therefore, it had to be decided in accordance with the provisions of the old Code. Sub-Section (2) of Section 484 of the new Code clearly provides a savings clause which requires that any appeal, application, trial, inquiry or investigation pending in a court immediately before the commencement of the new Code shall be disposed of, continued, held or made, as the case may be, in accordance with the provisions of the old Code and the provisions of the new Code shall not be applicable to such a case. It has been held by the Supreme Court in *P. Philip v. Director, Enforcement, New Delhi* (1) that the word "application used in Clause (a) of Sub-section(2) of Section 484 of the new Code includes an application-in-revision u/s 435 of the old Code. Hence, if the Sessions Judge was of the view that the order passed by Sub-Divisional Magistrate was manifestly erroneous, he was bound to make a reference to the High Court u/s 438 of the old Code, because the revision-petition was pending in his Court on the date (i.e. 1-4-74) on which the new Code came into force and it had to be disposed of in accordance with the provisions of the old Code in view of Clause (a) of Sub-section (2) of Section 484 of the new Code. In this view of the matter, the Sessions Judge Sri Ganganagar, was clearly in error in disposing of the revision petition while holding that he was competent to accept the revision-petition and set aside the order passed by the Sub-Divisional Magistrate without making a reference to the High Court u/s 438, of the old Code.

3. The revision-petition is, therefore, accepted and the order of the Sessions Judge, Sri Ganganagar, being manifestly erroneous, is set aside and the case is sent back to his court for disposal on merits in accordance with the provisions of the old Code.