

(2000) 02 AHC CK 0126

In the Allahabad High Court

Case No : Criminal Miscellaneous Recall Application No 45990 of 1999 in Cr.
Revision No. 227 of 1985

Hari Pandey and Ors.

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 16-02-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 320, 320(2), 397
Penal Code, 1860 (IPC) — Section 147, 149, 323, 324

Citation : (2000) 02 AHC CK 0126

Hon'ble Judges : Bhagwan Din, J

Final Decision : Dismissed

Judgement

Bhagwan Din, J.—The present applicants Hari Pandey, Mannoo Gond, Shambhu Gond and Parmatma Nand filed a criminal revision under Section 397 Cr. P.C. assailing the order of conviction dated 1221985 under Sections 147, 323, 149 and under Sections 324 and 1491.P.C. and sentencing them to six months R.I. under Section 147, three months R.I. under Section 323 read with Section 1491.P.C. and six months R.I. under Section 324 read with Section 1491.P.C. The revision came up for hearing on 137 1999. Sri G.P. Dikshit, learned Counsel appearing for revisionists did not dispute the conviction of the revisionists on merit. He however urged that a lenient view may be taken and the sentence awarded to the revisionists may be converted into sentence to fine.

2. The revisionists, thereafter, through Sri N.K. Singh moved this application for recalling the aforesaid order and praying for hearing and disposal of the revision on merit, having regard to the compromise entered into between the parties. It is submitted that before the order dated 1371999 was passed by this Court, the parties had filed a compromise in writing and that compromise was signed by the parties and verified by Sri N.K. Singh and Sri AN. Rai respectively. On the date this revision was listed for hearing the name of these two counsels were not shown in the cause list. There fore, they could not appear in the Court and bring the fact in the notice of the Court that the parties had entered into the

compromise and the revision be disposed of in view of the compromise deed.

3. It is a matter of general presumption that the learned counsel for the parties are aware of each and every material fact and the relevant documents available on record, it could not be said that Sri G.P. Dikshit while arguing the revision was not aware of the compromise deed filed by the parties. It appears that he did not elect to make the compromise deed the basis of the disposal of the revision. Therefore, instead of pressing the same, he argued the revision. Therefore, it cannot be said now that Sri G.P. Dikshit missed to bring in the notice of the Court that the parties have already entered in to compromise.

4, It may be mentioned here that the offence punishable under Section 324 read with Section 149 I.R.C. is compoundable only with the permission of the Court as provided under Section 320 (2) Cr. P.C. The parties had not moved application for such permission. Therefore, it was not taken into consideration because it was not filed with an application for permission to enter into compromise in respect with the offence punishable under Section 324 read with Section 149I.P.C.

5. In the above circumstance, the revision was decided on merit after hearing Sri G.P. Dikshit, learned counsel appearing for the revisionists.

6, In such state of circumstance no case for recalling the order dated 13/7/1999 is made out. The application is, therefore, dismissed.