
(1916) 08 CAL CK 0029
In the Calcutta High Court

Hrishi Kesh Mandal

APPELLANT

Vs

Abadhaut Mandal and Others

RESPONDENT

Date of Decision : 09-08-1916

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 438, 439

Citation : 38 Ind. Cas. 421

Hon'ble Judges : Lancelot Sanderson, C.J;Richardson, J

Bench : Division Bench

Judgement

1. In this case the Magistrate who tried the case acquitted the accused. Then the matter was brought before the District Magistrate, who investigated it, examined the evidence, and after such examination referred the matter to the High Court u/s 438 of the Criminal Procedure Code; and he came to the conclusion that the acquittal of the accused was wrong. The grounds of his opinion are summed up in two sentences towards the end of his reference: "The Magistrate has taken a grossly biased and distorted view of the case. His judgment shows that he did not honestly and impartially apply his mind to the actual evidence before him."

2. There is no doubt about the jurisdiction of this Court, either upon an application of a private individual, or when the case is referred to this Court by a learned Magistrate, that this Court can interfere by way of revision. That has been quite clearly decided in the case to which our attention has been drawn more than once recently--the case of Faujdar Thakur v. Kasi Choudhuri Ind. Cas. 186 : 19 C.W.N. 184 : 42 C. 612 : 21 C.L.J. 53 : 16 Cri LJ 122, I think the head-note correctly summarises the judgment. It runs thus, "The High Court has jurisdiction u/s 439, Criminal Procedure Code, to interfere in revision with an acquittal, but it should ordinarily exercise this jurisdiction sparingly and only where it is urgently demanded in the interests of public justice."

3. Now, it is to be remembered that where there is an acquittal the Local Government, if it is so advised and thinks right so to do, can proceed u/s 417 of the Criminal Procedure Code, which says, "The Local Government may direct the

Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High. Court," So that there is nothing to stop or prevent a decision, which involves an acquittal, being brought before the High Court in a proper case on appeal. The Legislature with respect to an appeal from an acquittal thought it advisable that it should only be done by or through the Local Government.

4. Now, in this case the District Magistrate having expressed the opinion that "the Magistrate had taken a grossly biased and distorted view of the case and did not honestly and impartially apply his mind to the actual evidence before him," this Court, in our judgment, ought not to interfere in revision unless it has satisfied itself that that opinion of the District Magistrate is a correct one. It would not be right for this Court to take the expression of opinion of the District Magistrate and to rely upon that opinion without satisfying itself, upon the evidence and upon the conduct of the proceedings generally, that the District Magistrate's opinion was right. What does that involve? That involves that this Court should go practically through the whole of the evidence from start to finish, because one of the grounds in the District Magistrate's judgment is this, he says that the prosecution case proved a consistent story without any discrepancies of importance. That is one of the main grounds, upon which he relied. How can we tell whether that opinion is right without reading the whole of the evidence given on the part of the prosecution? And the result would be that in effect we should be hearing an appeal, or at all events, hearing an application to admit an appeal at the instance of a private individual without the intervention of the Local Government: and, therefore, we are both of opinion that in this case we ought not to interfere in revision on the ground that we cannot do so without practically hearing the case as an appeal. I think it is inadvisable to lay down any general Rule unless it is absolutely necessary. We both desire to limit our judgment to this particular case endorsing and emphasizing the fact that this Court has, without doubt, jurisdiction to intervene in revision in a proper case. We do not wish to say anything that would throw the slightest doubt upon that point. All that we say is that inasmuch as we should have to investigate the whole of the facts before we could come to the conclusion whether we ought to interfere in revision, in this case, we think, we ought not to interfere and we feel no anxiety, because there is a right of appeal if the Local Government thinks it advisable so to appeal, inasmuch as the time for appealing has not yet expired. If the learned District Magistrate thinks it right, there is nothing to prevent him from placing the materials which are available to him before the Legal Remembrancer and to ask him to advise the Local Government whether there ought to be an appeal in this case. If the Local Government thinks that there ought to be an appeal the matter will come before us by way of appeal, when it will be right and proper, at the instance of the Local Government, to investigate, u/s 417 of the Criminal Procedure Code, all the facts by way of appeal.

5. For these reasons, we think we ought not to interfere by way of revision.