

(1886) 09 CAL CK 0002
In the Calcutta High Court
In Re: F.W. Gibbons

Date of Decision : 04-09-1886

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 306, 369

Citation : (1887) ILR (Cal) 42

Hon'ble Judges : W. Comer Petheram, C.J.; Wilson, J; Mitter, J; Macpherson, J; Grant, J

Bench : Full Bench

Judgement

W. Comer Petheram, C.J.—I quite agree with the remark of Mr. Evans that this is a matter of very grave importance, and it was because I thought that it was a matter of very grave importance and not because I had any doubt about the law, that I constituted this Bench for the purpose of hearing it argued, and I was all the more led to do so by the fact that I was told that a Division Bench of this Court had expressed a doubt as to whether there was not a power inherent in the Court itself to review a judgment of a Division Bench in a criminal case; and when I say, to review a judgment of a Division Bench, I mean, to review a judgment of a Division Bench by itself, because, in my opinion, every Division Bench constitutes a Court in itself for the purpose of its judgment, and every judgment of a Division Bench is a judgment of the Court; and speaking for myself, and (as to this I wish to guard myself, from expressing any opinion but my own) I do not think any difference exists between one Bench, and another so that it must be constituted of the same Judges to review a judgment of the Court, supposing it to be a judgment which is subject to review.

2. Speaking for myself, and, indeed, in this matter. I think for the whole of the Judges constituting this Bench, I have no doubt whatever that, in cases of this kind, no power of review resides in the Court or in any Bench of the Court. This is an opinion which I have expressed before in the High Court at Allahabad *Queen-Empress v. Durga Charn* 7 A. 672. and it is an opinion which has been expressed in the High Court at Bombay *Queen-Empress v. Fox* 10 B. 176 and in opposition to which, so far as I know, there is no reported case to be found.

3. The question arises under various sections of the Code of Criminal Procedure, and the first section that applies to the matter is Section 306.

4. Section 306 provides that where an accused person has been acquitted or convicted by a jury, the Judge shall either record judgment of acquittal or pass sentence on him according to law.

5. So far as that section is concerned, unless there was another section If that qualified it, that acquittal or conviction stands, in my opinion, exactly on the same footing as an acquittal or conviction by the verdict of a jury in England, and is final as to the guilt or innocence of the accused, so far as Courts of Justice are concerned.

6. Then, following upon that, comes Section 307, and that section provides that, where the Sessions Judge disagrees with the verdict of the jury, he may, if he thinks fit, submit the case to the High Court with his reasons for so disagreeing, and the High Court is then invested with this power in dealing with the case; the High Court "may convict or acquit the accused of any offence of which the jury could have convicted him upon the charge framed and placed before it; and, if it convicts him, may pass such sentence as might have been passed by the Court of Sessions."

7. So that, as it seems to me, the effect of Section 307 read with Section 306 is to say that if the Judge who tries the case is dissatisfied with the verdict and the High Court, upon a consideration of the whole case, accepts his view, they may substitute their verdict for the verdict of the jury, and upon that being done, may pass sentence upon him; hut there is nothing whatever in these two sections to place the judgment and verdict of the High Court, under the circumstances, in any different position from that in which the verdict of the jury and the judgment of the Court would have bean if it had been accepted by the Judge and he had passed sentence accordingly ; and the verdict, judgment and sentence, u/s 306, would, under such circumstances, have been final.

8. That being so, the question then arises, whether this state of things is varied by any of the following sections; and whether those sections give, either a power of appealing from the Division Bench which heard the matter to some other Bench of this Court, or give the Court itself, or the Bench constituted in the same way, a power of revision.

9. The first section which is relied upon is Section 369. Section 369 states that "no Court, other than a High Court, when it has signed its judgment, shall alter or review the same, except as provided in Section 395 or to correct a clerical error."

10. In my opinion the effect of the words "other than a High Court" is precisely the same as if in place of them the legislature had at the end of the section added these words, "this section does not apply to the High Court." There is no substantive enactment in that section with reference to the High Court, and all it

does is to reserve the powers which existed in the High Court before, so that they are in no degree taken away. "What the powers of the High Court were before, it is unnecessary to consider, but whatever they were, they were reserved and they were in the same position after this section was passed as they had been in before ; and inasmuch as it is not shown to us that, before the passing of this section, any power of revision existed in the High Court, that section did not, in my opinion, create any such power, and therefore it appears that this section does not help the applicant.

11. I should say that in the judgment of Sir Barnes Peacock in this Court, which was upon the law which was in existence before, he expressly decides that, as the law then stood, no such power to review existed; and therefore that shows clearly that no such power as that existed before, and that, taken along with the construction which we have put upon the section, that it did not create any such power, shows clearly that no power of review exists in this Court, so far as that section is concerned.

12. The only other section relied upon is Section 439. That section opens in this way: "In the case of any proceeding the record of which has been called for by itself, or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may," et cetera. In my opinion, the first four lines of that section show, beyond all possibility of doubt, that the record which is referred to in that section is the record of some Court other than that of the High Court, because it is obvious that what is meant is, the record of the case which has been called up and brought before the High Court, and not the record of the case which is in the High Court itself, and which it therefore has in its possession and has no need to call for.

13. Under these circumstances, I think that neither Section 369 nor Section 439 helps the case on which the present application has been made, and that it must therefore fall back on the condition of things created by Sections 306 and 307, and, as I have said before, the verdict and judgment of a Division Bench of this Court, coupled with the sentence, are, in my opinion, absolutely final. As soon as they have been pronounced and signed by the Judges, this Court is *functus officio*, and neither the Court itself nor any Bench of it, has any power to revise that decision or interfere with it in any way.

Mitter, J.

14. I am of the same opinion. I desire only to add that the last part of Section 439 was enacted in order to meet a case of this kind. Section 266 says : "In this chapter, except in Section 307, the expression High Court means a High Court of Judicature established or to be established under the 24th and 25th Victoria, Chapter 104, and includes the Chief Court of the Punjab, and such other Courts as the Governor-General in Council, may, by notification in the Gazette of India, declare to be High Courts for the purposes of this chapter."

15. The last part of this section empowers the Governor-General in Council to

extend the procedure laid down by this chapter to the trials of cases before any Court subordinate to this Court. That is the real effect of it. It may happen that a Court subordinate to this Court may make an entry u/s 273 ; the procedure laid down in Chapter XXIII of the Code having been extended to the trial of cases before that Court. The last part of Section 439 lays down that in that case this Court, although possessing revisional power over the said Court in all other respects, would not have the power of reversing or interfering with any order passed by that Court u/s 273.

16. As regards the question whether this Court as constituted has any jurisdiction to entertain this application, I express no opinion.

Wilson, J.

17. I am entirely of the same opinion on the main question. There is only one point on which I desire to add anything. The point is not really one of any practical importance, because the Court, as now constituted, does contain both the learned Judges whose judgment we have been asked to review, and therefore the decision of this Court, as at present constituted, will, by reason of their presence, be a valid and efficacious decision; but I have myself very grave doubt whether it does not derive the whole of its efficacy from the fact of those two Judges being present.

18. I entertain considerable doubt whether, assuming that such an application as this is one that could be entertained in law, any Division Bench of this Court could entertain it with respect to a judgment of another Division Bench, and I think the view taken by Sir Richard Garth in the case of Abdul Sobhan 8 C. 63 tends strongly to confirm this doubt. I only say this by way of safeguard, because, as I said before, the Bench being constituted as at present, the point is not really of any practical importance.

Macpherson, J.

19. I concur with the Chief Justice.

Grant, J.

20. I concur with the learned Chief Justice.