courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 16/09/2026

(1972) 11 P&H CK 0005

In the Punjab And Haryana At Chandigarh

Case No : Criminal Revision No. 446 of 1971

Inderjit Singh — APPELLANT

Vs

Ch. Bansi Lal Chief Minister, Haryana Chandigarh — RESPONDENT

Date of Decision : 10-11-1972

Acts Referred:
Criminal Procedure Code, 1898 (CrPC) — Section 435, 439

Citation : (1972) 11 P&H CK 0005

Hon'ble Judges : H.R. Sodhi, J

Bench : Single Bench

Advocate : Sukhdev Khanna with Mr. S.K. Sharma, for the Appellant; J.N. Kaushal and Mr. D.S. Lamba, for the Respondent

Final Decision : Dismissed

Judgement

H.R. Sodhi, J.—This is a criminal revision preferred u/s 435/439, Code of Criminal Procedure, hereinafter referred to as the Code, seeking to revise the order dated 21st August, 1970, passed by the Chief Judical Magistrate, Gurgaon, who after considering the statement of the complainant and the evidence of the witnesses produced by him, dismissed the complaint of the petitioner u/s 203 of the Code, as in his opinion, there was no sufficient ground for proceeding with it. The Complaint was instituted u/s 500, Indian Penal Code, against Ch. Bansi Lal, Chief Minister, Hayana State, Reporter and Editor, Hindustan Times, Delhi, and Reporter and Editor, Daily Partap, Delhi. The alleged defamatory statement was said to have been made by the Chief Minister respondent in a public meeting on 8th March, 1970, held at Rao Tula Ram Park, Rewari, wherein it is stated to have been asserted by him that Rao Birender Singh who was once the Chief Minister of Haryana and a political opponent of Ch. Bansi Lal, is the grandson of Rao Tula Ram, ex-Ruler of Rewari, who was a traitor and a Thug Ch. Bansi Lal was alleged to have presided over the aforesaid meeting claimed to have been attended by about twenty thousand people The whole burden of the complaint was that the imputation of such defamatory remarks against the deceased grandfather of Rao

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/inderjit-singh-appellant-hash-ch-...

Birender Singh was intended to lower his successor-in-interest Rao Birender Singh in the estimate of the people so that the number of followers of Rao Birender Singh dwindles. The speech appears to have been published in the Hindustan Times, Delhi and the Daily Partap Delhi and that is why the Editors and Reporters of those newspapers were also impleaded as respondents The complainant is Shri Inderjit Singh, a college student and son of the said Rao Birender Singh. The complaint was filed on 6th April, 1979. The Trail Magistrate, on a consideration of the substance of the complaint and the evidence recorded u/s 202 of the Code, took the view that the Chief Minister in his speech was trying to inform the public about the achievements of his Government and that it was his duty as Chief Minister to do so as the electorate are the real sovereign in a democratic Government and that if in his appraisal of the development work going on in the State and the succeess achieved by him, he (Ch. Bansi Lal) criticised a certain historical character like Rao Tula Ram and attempted to project his views on the public life of that person, he might have overstepped the correct appraisal, but it could not be said that his speech was wholly unrelated to his public fluty. In this view of the matter the trial Magistrate thought that sanction u/s 197 of the Code, was necessary and that the Court was not competent to take cognisance of the alleged offence except with the previous sanction of the State Government.

2. The petitioner obtained a certified copy of the order of the trial Magistrate on 28th September, 1970, and moved the Additional Sessions Judge for a recommendation being made to the High Court that the order of the trial Magistrate be reversed and further inquiry into the complaint ordered. The Additional Sessions Judge concurred with the view point of the trial Magistrate and further observed that apart from the question of sanction u/s 197 of the Code, the complaint was liable to be dismissed on the short ground that it had not been filed by an aggrieved person as contemplated in section 198. This provision of law enjoins that no Court shall take cognisance of the offence of defamation except on the complaint of the person aggrieved by such an offence In the opinion of the Additional Sessions Judge, the aggrieved person really was Rao Birender Singh and not the complainant as it was Rao Birender Singh who was the political opponent of Ch. Bansi Lal and it was he against whom that speech was directed and it was he alone who could have possibly directly or indirectly suffered in his own reputation because of the imputation made against his deceased grandfather The complainant was held not to have been able to show how derogatory remarks against Rao Tula Ram resulted in loss of formers reputation. The Additional Sessions Judge thus found that the Magistrate had not misdirected himself in any way as to the scope of inquiry required to be made u/ s 202 of the Code and that the proceedings did not suffer from any irregularity or impropriety which could justify recommendation being made to the High Court for reversing the order of the trial Court. In his opinion, it was not a fit case where, acting u/s 436 of the Code, he should direct a further inquiry into the complaint as no miscarriage of justice had been caused. The petitioner then

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/inderjit-singh-appellant-hash-ch-…

came to this Court in a revision petition. The order of the Additional Sessions Judge dismissing the petition before him was passed on 4th February, 1971, and the petitioner obtained a copy of the order on 4th March, 1971. He fild the present revision petition in this Court on 5th May, 1971.

3. In the grounds for revision, the main attack is against the order of the trial Magistrate though mention is made trial the Additional Sessions Judge had wrongly dismissed the revision. The petition was admitted to hearing by the Motion Bench on 7th June, 1971 and it is in these circumstances that the same is before me today fur final disposal.

4. Mr. J.N. Kaushal, appearing for respondent 1, has raised a preliminary objection that the revision petition is barred by time and must, therefore, be dismissed. He has in this connection invited my attention to Article 131 of the Limitation Act, 1963 (Act No. 36 of 1963), which is in the following terms:

Description of application Period of limitation Time from which period begins to run

131 To any court for the exercise of its powers of revision under the Code of Civil Procedure, 1908, or the Code of Criminal Procedure, 1898. Ninety days. The date of the order or sentence sought to be revised.

5. This Limitation Act, came into force on 9th November, 1963, and hither to before there was no statutory period prescribed for a revision petition though the practice of this Court has been to normally entertain such a petition only if it were filed within ninety days of the passing of the impugned order. In computing the period of limitation, time requisite for obtaining a copy of the order sought to be revised was always excluded. Section 435 of the Code confers concurrent jurisdiction on the High Court, or the Sessions Judge or the Chief Judicial Magistrate to call for and examine the record of any proceeding before any inferior criminal Court within the local limits of its or his jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order. The High Court-Sessions Judge or the Chief Judicial Magistrate, as the case may be, after examining the record sent for u/s 435 or otherwise, have a power to direct the Subordinate Magistrate to make further inquiry into a complaint dismissed u/s 203. The Sessions Judge or the Chief Judicial Magistrate may, if he thinks fit, on examining the record u/s 435 or otherwise, submit a report to the High Court that any order of the Subordinate inferior Court be reversed or altered. The High Court u/s 439 may in its discretion exercise any of the powers conferred on a Court of appeal in regard to any proceeding the record of which has been called for by itself or which has been reported to it for orders or which otherwise comes to its knowledge. A persual of all these provisions of law leaves no room for doubt that when a complaint has been dismissed u/s 203, it is open both to the Sessions Judge and the High Court u/s 436, Criminal Procedure Code, to order further inquiry When the order of such a dismissal is sought to be set aside and further inquiry desired

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/inderjit-singh-appellant-hash-ch-…

the order impugned in either case is that of the trial Magistrate, no matter whether the High Court reverses the order of dismissal or it is the Sessions Judge. A dismissal u/s 203 also presupposes that the Magistrate passing such an order is authorised by law to take cognisance of the complainant and that he has dismissed it after considering the statement on oath, if any, of the complainant, the statements of the witnesses and the result of any inquiry or investigation made u/s 202. Where, however, the complaint or the evidence produced disclose that sanction of the state Government before a prosecution is launched is required as a condition precedent, there is no valid complaint before a Magistrate and the entire proceedings before him will be void As observed by their Lordships of the Supreme Court in Nagraj v. State of Mysore AIR 1984 S. C. 269, the Court in such a case has "no jurisdiction to take those proceedings When the proceedings be void, the Court is not competent to pass any order except an order that the proceedings be dropped and the complaint is rejected." The finding of the Magistrate in the instant case was that the Chief Minister respondent purported to act in the discharge of his public duties and that sanction of the State Government u/s 197 of the Code was necessary. Whether this finding is correct or not, the fact remains that he found himself incompetent to proceed any further with the complaint. The correctness of such a finding could be assailed only in the High Court u/s 439 of the Code and the decision could not be said to be on merits in the sense that the Magistrate had erroneously come to a conclusion that no prima facie case for issue of a process had been made out and that the Sessions Judge or the High Court should order a further inquiry u/s 436 of the Code As a matter of fact, an order for further inquiry would be useless in a case like the present one where the Magistrate had recorded the entire evidence produced by the complainant and the only question left was as to whether to issue a process or not. If the Sessions Judge reached the conclusion that a process should be issued be could not pass such an order and had only to recommend the case to the High Court which alone could direct such process Co issue.

6. From whichever aspect the matter is approached, the only reasonable and practical position is that it was the Magistrate''s order against which the revision petition was filed in the High Court. It was not and could not possibly be contested by the learned counsel for the petitioner that the order of the Magistrate having been passed on 21st August, 1970 the revision petition against the same filed in the High Court on 5th May, 1971, was not barred by time. The only argument advanced by the learned counsel is that the High Court would not have entertained the revision petition as under the rules framed by it, the Deputy Registrar would not receive petitions for revision of orders of original Courts in non-appealable cases unless there is a copy of the order produced showing that the petitioner had first moved the Sessions Judge and the later had refused to recommend the case. The relevant rule in this regard is rule 3 appearing in Chapter 1-A (b) of the Rules and Orders of the Punjab High Court, Volume V. This rule reads as under:

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/inderjit-singh-appellant-hash-ch-…

3. As regards petition u/s 436 and 439, Criminal Procedure Code, the Deputy Registrar will not receive petitions for revision of orders of original Courts in non-appealable cases, unless the applicant files With his petition a copy of the order of the Sessions Judge or District Magistrate, as the case may be, to show that he has applied to one or the other and his petition has been refused. The Sessions Judge or District Magistrate can release a prisoner on bail or suspend a sentence pending a reference to the High Court.

Whatever be the true import and scope of this rule, it cannot be urged that it takes away the jurisdiction of the High Court to entertain a revision petition directly. Moreover, it was framed at the time when there was no limitation prescribed for filing a revision petition in a criminal case. Period of limitation was fixed only for the first time in 1963, when Act No. 36 of 1963 became operative. Any rule, whether statutory or otherwise, cannot override a statute. The period of limitation is now fixed at 90 days and it commences from the date of the order sought to be revised. If the case is one where the Sessions Judge or the Chief Judicial Magistrate, as the case may be, cannot I after having sent for the record u/s 435 of the Code pass a final order and recommendation to the High Court is necessary, it is for the aggrieved party to remain vigilant and see that the matter before the Sessions Judge or the Chief Judicial Magistrate is disposed of before the period of limitation for filing a revision petition in the High Court has run out or else to make an application u/s 5 of the Limitation Act for extension of time. The order sought to be revised in the present case is of 21st August, 1970 passed by the Chief Judicial Magistrate and the revision petition filed against that order in the High Court after a lapse of about eight months has got to be dismissed as barred by time.

7. The contention of Mr. Khanna that the time spent by the petitioner bona fide in the Court of Sessions Judge should be excluded in computing the period of limitation is without substance. Apart from the question whether the act of presenting the petition before the Sessions Judge was bona fide or not, the benefit of Section 14 of the Limitation Act is not available in criminal proceedings. Section 14 provides for the exclusion of time in such cases only where a plaintiff in a civil suit has been prosecuting in good faith and with due diligence another civil proceeding relating to the same matter in issue in a Court which from defect of jurisdiction or other cause of a like nature is unable to entertain the same As it has already been observed, the only course open to the petitioner was to have made an application u/s 5 of the Limitation Act praying for extension of the prescribed period explaining each day''s delay and averments to this effect had to be supported by an affidavit. No such application was ever filed though the case remained pending in the High Court for ever a year and a half and the Limitation Act had come into force with effect from November, 1963. For about a month, it remained on my daily cause list and on 7th November, 1972 when the case was taken up, Mr. Kausbal raised an objection as to limitation. Learned counsel for the petitioner obtained time to contact his client and when the case was again taken up on 10th November, 1972, no application u/s 5 was

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/inderjit-singh-appellant-hash-ch-…

made. When the counsel found that he could no'' meet the plea of limitation, he made an oral request that the delay be condone suo motu. There are no special circumstances shown by the learned counsel as to why I should condone such a long delay when it was the duly of the petitioner to explain each day''s delay.

8. In the result, the revision petition stands dismissed as barred by time.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/inderjit-singh-appellant-hash-ch-…