

(1988) 08 PAT CK 0014

In the Patna High Court

Case No : Criminal Miscellaneous No. 6718 of 1986

Kashi Nath Singh and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 05-08-1988

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 401, 482

Citation : (1989) 37 BLJR 323 : (1988) PLJR 1130

Hon'ble Judges : S.N. Jha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.N. Jha, J.—This application has been filed u/s 482 of the Code of Criminal Procedure (hereinafter referred to as "Code") for restoring Criminal Revision No. 247 of 1980 to its original file after quashing the judgment and order dated 4-12-1985 passed by this Court.

2. The facts relevant for the disposal of this application, in short, are that the aforesaid Criminal Revision No. 247 of 1980, which was filed in the year 1980, was running on the daily cause list under the heading "For Hearing".

3. On 4-12-1985 the aforesaid case was also running on the daily cause list and when called for hearing before luncheon hour, from the impugned judgment it appears that nobody appeared to press this application and the hearing was deferred till luncheon. When the Court sat for hearing in the second half this case was called out repeatedly but nobody turned up to press this application. Therefore, the Court disposed of the matter without hearing the learned counsel appearing on behalf of the petitioners.

4. It has stated on oath that: the aforesaid Cr. Rev. was running on the daily cause list for a couple of days but since the name of the petitioners' counsel was wrongly printed in the daily cause list of 4-12-1985, therefore, there was no notice to the learned counsel regarding the case having been taken up for

hearing on that date. The learned counsel could know about the fate of the case only when the petitioners rushed to Patna on 19-5-1986. No sooner the learned counsel was informed, he enquired from the office and knew that the aforesaid case stood disposed of long back in December, 1985 without hearing the counsel for the petitioners. Hence, this application for restoring the same after setting aside the impugned judgment.

5. The learned counsel in support of his contention has annexed the daily cause list of that date where it has been printed "Mr. Rajeshwar Singh instead of Mr. Rakesh Kumar Singh" and therefore, it was submitted by Mr. R. K. Singh that he could not be present in the Court to press the aforesaid application due to wrong publication of his name in the cause list. According to the learned counsel this Court can set aside the order in exercise of its inherent power u/s 482 of the Code in the case where the name of the counsel appearing was omitted or wrongly published in a daily cause list with the result that the counsel could not know about the case. He has relied upon a decision in the case of Ramballabh Jha Vs. The State of Bihar, . In that case it has been held that where the name of the counsel appearing in a Criminal Appeal was omitted from the daily list through inadvertence of the High Court with the result that the counsel could not know about the appeal having been posted for hearing and the appeal was, dismissed without being heard that order can be liable to be set aside and the appeal could be ordered to be reheard in exercise of inherent; power under the Court.

6. The learned counsel has also drawn my attention to Sub-clause (2) of Section 401 which reads as follows :

No order in this section shall be made to the prejudice of the! accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.

An order passed u/s 401 dismissing the revision application is prima facie a final order and such an order cannot be vacated u/s 482 unless it is proved that either of the conditions precedent to the passing of the order as laid down in Sub-clause (2) of Section 401 has not been fulfilled and this is a question that depends on the facts" and circumstances of each case. Where it has been proved that the conditions precedent has not been complied with, the High Court has power to interfere u/s 482 of the Code under its inherent jurisdiction.

7. In the instant case the learned counsel has already filed the daily cause list of 4-12-1985 in order to show that his name was wrongly printed and he could- not mark the list. I have examined the list myself and I find that the name of the learned counsel has been wrongly printed as I have already indicated above. It has been held by the Supreme Court in the case of Swarth Mahto and another, Appellants v. Dharmdeo Narain Singh, Respondent AIR 1972 SC 1301.

If the name of the advocate who appears in the case is not shown, there would be good reason to think that he has no notice of the case being posted for

hearing. Therefore, when an application is later made by the parties who were not heard, it would be an exercise of sound discretion if an opportunity is given to the party who is not heard.

8. Having considered all the facts and circumstances of this case and having heard the learned counsel on behalf of the petitioners and) the State I am of the opinion that it is a fit case where the impugned order dated 442-1985 passed in Cr. Revision No. 247 of 1980 be set; aside and the aforesaid application be restored to its original file. Let the aforesaid cases be listed for fresh hearing before an appropriate Bench as early as possible.

9. In the result the application is allowed.