

(2009) 07 CHH CK 0005
In the Chhattisgarh High Court
Case No : M.Cr.C. No. 668 of 2005

Kumari Meenu Banerjee

APPELLANT

Vs

Rajmani Pandey and Others

RESPONDENT

Date of Decision : 17-07-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378, 378(3), 439(3), 439(4), 482

Citation : (2010) 1 CGLJ 282

Hon'ble Judges : T.P. Sharma, J

Bench : Division Bench

Advocate : Somnath Verma, for the Appellant; Rajendra Tripathi, P.L. for State, for the Respondent

Final Decision : Allowed

Judgement

T.P. Sharma, J.—This petition u/s 482 of the Code of Criminal Procedure, 1973 against the order dated 30/12/04 passed by the Fifth Additional Sessions Judge, Bilaspur in criminal Revision No. 420/04 by which learned Additional Sessions Judge has refused to hear the criminal revision on the ground that the judgment of acquittal dated 21/8/04 passed by Additional Chief Judicial Magistrate, Bilaspur in Cr. Case No. 477/2002 ought to have been challenged by the State u/s 378 of the Code of Criminal Procedure, 1973 (in short the code).

2. Learned Counsel for the Petitioner submits that in the State case private party was having no locus standie to prefer appeal and only revisional remedy is available to the Petitioner which present Petitioner has invoked but the learned Additional Sessions Judge has not heard and decided the revision on merits and dismissed only on the ground that it ought to have been heard by way of appeal. Judgment dated 21/7/04 copy of the judgment reveals that in the case filed by the police learned Additional Chief Judicial Magistrate, Bilaspur has acquitted the accused persons revision against such judgment of acquittal was filed by the present Petitioner who is effected person of the case, under the Provisions of Section 378(3) of the Code State has competent to file appeal against such

judgment of acquittal but private party was not competent to assail the judgment in appeal.

3. While dealing with the question of maintainability in case of K. Chinnaswamy Reddy Vs. State of Andhra Pradesh, Respondents. Apex Court has held that in case of revision against the judgment of acquittal by the private party though the State may not thought fit to appeal High Court only in exceptional cases set aside the order of acquittal para-7 reads as follows:

7. It is true that it is open to a High Court in revision to set aside an order of acquittal even at the instance of private parties though the State may not have thought fit to appeal but this jurisdiction should in our opinion be exercised by the High Court only in exceptional cases when there is some glaring defect in the procedure or there is a manifest error on a point of law and consequently there has been a flagrant miscarriage of justice. Sub-section (4) of Section 439 forbids a High Court from converting a finding of acquittal into one more incumbent on the High Court to see that it does not convert the finding of acquittal into one of conviction by the indirect method of ordering retrial when it cannot itself directly convert a finding of acquittal into a finding of conviction. This places limitations on the power of the High Court to set aside a finding of acquittal in revision and it is only in exceptional cases that this power should be exercised. It is not possible to lay down the criteria for determining such exceptional cases which would cover all contingencies. We may however indicate some cases of this kind which could in our opinion justify the High Court in interfering with a finding of acquittal in revision. These case may be where the trial Court has no jurisdiction to the case but has still acquitted the accused or where the trial Court has wrongly shut out evidence which the prosecution wished to produce or where the appeal court has wrongly held evidence which was admitted by the trial Court to be inadmissible or where material evidence has been overlooked either by the trial Court or by the appeal court or where the acquittal is based on a compounding of the offence, which is invalid under the law. These and other cases of similar nature can properly be held to be cases of exceptional nature, where the High Court can justifiably interfere with an order of acquittal and in such a case it is obvious that it cannot be said that the High Court was doing indirectly what it could not do directly in view of the provisions of Section 439(3). We have therefore to see whether the order of the High Court setting aside the order of acquittal in this case can be up held on these principles.

4. While dealing with the same question of maintainability of the revision against the judgment of acquittal filed by the private complainant Apex Court has held in case of K. Pandurangan etc. Vs. S.S.R. Velusamy and Another, that such revision by private party is maintainable. Para 6 reads as follows:

6. So far as the first question as to the maintainability of the revision at the instance of the complainant is concerned, we think the said argument has only to be noted to be rejected. Under the provisions of the Code of Criminal Procedure, 1973, the Court has suo motu power of revision, if that be so, the question of the

same being invoked at the instance of an outsider would not make any difference because ultimately it is the power of revision which is already vested with the High Court statutorily that is being exercised by the High Court. Therefore, whether the same is done by itself or at the instance of a third party will not affect such power of the High Court, hi this regard, we may note the following judgment of this Court in the case of Nadir Khan v. State Delhi Adrnn.

5. In the light of aforesaid proposition of law, the revision filed on behalf of the private party was competent and revisional court was under obligation to hear and decide the case on merits but revisional court has not decided the case on merit and thereby committed an illegality resulting into miscarriage of justice. The order impugned is not sustainable under the law same is liable to be set aside. Consequently, petition is allowed. Order impugned is hereby set aside. Case is remitted back to the revisional court for hearing the case on merits and decide afresh.