
(1950) 05 P&H CK 0008
In the Punjab And Haryana At Chandigarh
Case No : C.R.A. No's. 72, 83 and 85 of 2006

Lal Singh and Another

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 26-05-1950

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 31
Penal Code, 1860 (IPC) — Section 302, 324, 326, 34
Pepsu Judicature Ordinance, 2005 — Section 51, 54, 68

Citation : (1950) 05 P&H CK 0008

Hon'ble Judges : Teja Singh, C.J.;Passey, J;Chopra, J

Bench : Full Bench

Advocate : D.S. Nehra, for Lal Singh, Anand Ram, for Nikha Singh and Kartar Singh, for Tara Singh, for the Appellant;

Judgement

Teja Singh, C.J. and Chopra, J.—Lal Singh and Nikka Singh were tried by the Sessions Judge, Barnala, on the charges of murder. The former was convicted u/s 324 and was sentenced to 2 years" rigorous imprisonment and a fine of Rs. 100 while Nikka Singh was convicted u/s 326 read with Section 34 and was sentenced to 7 years" rigorous imprisonment and a fine or as. 250. Botu the convicts have preferred separate appeals against their convictions and sentence. Tara Singh, brother of Amar Singh, who was alleged to have met his death at the bauds of the convicts, has made a revision petition praying (1) that both Lal Singh and Nikka Singh should be convicted of murder, and (2) that their sentences be enhanced. The appeals as well as the revision petition came up originally before Kartar Singh Campbelpuri J. when Tara Singh's counsel submitted that because of the revision petition it was necessary that the appeals as wall as the petition should be heard by a Division Bench. The learned Judge, therefore, returned the records to the office "for necessary compliance", and the appeals and the revision are now before us.

2. It is not denied that according to the rules framed by the High Court under the Patiala Judicature Farman of 1999 which are still in force, by virtue of the proviso

to Section 68 of the Patiala and East Punjab States Union Judicature Ordinance, 2005 the appeals could be heard by a single Judge. It is also not denied that the learned single Judge had the jurisdiction to hear the revision petition. What is, however, contended is that since one of the prayers of Tara Singh was that the convictions of Lal Singh and Nikka Singh as recorded by the Sessions Judge should be set aside and they may be convicted for murder, for which the maximum sentence could be transportation for life and further that because the maximum sentence that can be awarded u/s 326, Penal Code, is transportation for life and it was also prayed in the alternative by the Petitioner that the sentence under that section be enhanced which means that the enhancement could be up to the extent of transportation for life, the learned single Judge if he came to the conclusion that the revision petition be accepted whether to the extent that the convict's conviction be altered from Sections 324 and 326 to one u/s 302 or the sentence u/s 326 be enhanced, beyond seven years imprisonment he would not be competent to give effect to that prayer. We have examined the different provisions of law on this point and it appears to us that the matter is not free from difficulty. Section 54 of the Judicature Ordinance of 2005 lays down that

except as otherwise provided any function which is hereby directed to be performed by the High Court in the exercise of its original, appellate or revisional jurisdiction, or as a Court of reference may be performed by any Judge of the High Court.

Provisos (b) and (c) are to the effect that an appeal from an order convicting an accused person for an offence and awarding a sentence of imprisonment for more than seven years or any reference in such a case, and an appeal from an order acquitting an accused person shall be heard by two Judges. These are the only exceptions to the general rule laid down in the body of the section and it is not urged before us that the case of a revision petition like the one which is now before us comes within the purview of the exceptions. This means that if the words of the section are to be given effect to, there is nothing to debar a single Judge from hearing a revision petition in a case of this kind and in case he decides to accept it to award any sentence which it is open to the High Court to award. Section 31, Code of Criminal Procedure, lays down that High Court may pass any sentence authorised by law. It was urged before us that this section deals only with the powers of a High Court on the original side but the words of the section appear to us to be very wide and as at present advised we are not prepared to engraft any limitation upon it. At the same time, we cannot ignore the fact that since according to the rules an appeal from an order of conviction where the sentence is more than seven years cannot be heard by a single Judge it looks somewhat anomalous that he should have the power to enhance the sentence of a person to more than seven years in a revision petition.

3. All the counsel appearing before us say that they have not been able to lay their hands upon any clear authority on the point and since we are of the view

that the question, apart from being difficult, is of general importance and might arise in other cases, we formulate it in the following words and refer it, to a Full Bench: "It is within the competence of a single Judge of the High Court, while accepting a revision petition arising out of a case in which the accused is awarded imprisonment for seven years or less, to enhance the sentence to more than seven years" imprisonment?"

Opinion of the Full Bench

Teja Singh, C.J.

4. The following question has been referred to the Full Bench:

(sic) it within the competence of a single Judge of the H.C. while accepting a revision petition arising out of a case in which the accused is awarded imprisonment for seven years or less, to enhance the sentence to more than seven years" imprisonment?

5. The facts of the case are set out in detail in the order of reference and the relevant provisions of the law have also been quoted therein. Learned Counsel for the parties have not been able to cite a single authority bearing on the question. They drew our attention to certain cases decided by the Lahore High Court from which it appears that generally petitions for enhancement of sentences for offences of murder and culpable homicide not amounting to murder, were always heard by Division Benches instead of single Judges but this was because it was definitely provided by Clause (e) of Sub-rule (19) of Rule 1 of High Court Rules and Orders, Vol. V Chap. III-B that an appeal, petition or reference under the Code of Criminal Procedure, arising out of a case in which notice has issued to a convicted person requiring him to show cause why his conviction should not be altered to one of an offence punishable with death or transportation for life should be heard by a Division Bench. No such rule exists in our High Court and it cannot, therefore, be held that a revision petition arising out of a case in which the sentence awarded to the accused is seven years, cannot be heard by a single Bench, even though it is prayed in the petition that the conviction be altered to one of an offence punishable only with death or transportation for life and a notice is issued to the accused to show cause why it should not be so altered.

6. As regards is the power of the single Judge to enhance the sentence, no limitation is placed upon it by Section 54, which is the only section dealing with the subject. It must, however, be remembered that this section has to be read with other provisions of the Ordinance as well as the provisions of the Code of Criminal Procedure because the opening words of the section are "except as otherwise provided " As regards the Ordinance, it is laid down in Section 51, inter alia, that

when in any case a Magistrate or any Court subordinate to the High Court awards a sentence of death or transportation for life he shall refer the case to the

High Court and the High Court shall hear such reference as an appeal.

According to Clause (b) of the proviso to Section 54 of the Judicature Ordinance, such an appeal has to be heard by a Bench of two Judges. Now reading Section 51 with Clause (b) of the proviso to Section 54, it appears to me that the intention of the framers of the Ordinance was that the sentence of transportation for life and death before it is (sic) must be confirmed by a Bench of two (sic). This being so, it would defeat that intention (sic) single Judge should have the power to (sic) the sentence in a revision petition to (sic) for life or death. That is to say, if the (sic) of Section 54 are to be reconciled with those (sic) Section 51 it should be held that the latter section (sic) implication limits the powers of the single Judge to enhance the sentence to any sentence other than transportation for life or death.

7. It was urged before us that since the law is very clear on the point that an appeal or reference arising out of a case in which the sentence awarded to an accused person is more than seven years' imprisonment must be heard by a Bench of two Judges, it is anomalous that a single Judge should have the power to enhance the sentence beyond 7 years imprisonment. Probably it is but there is no bar to this, either express or implied, and I do not think we shall be justified in restricting his powers merely on the ground of anomaly. Moreover, the anomaly can be cured either by amending the law or by the High Court framing the rules but until this is done my opinion is that the provisions of Section 54 which admit of no doubt must be given effect to.

8. In the result I would answer the question referred to the Full Bench in the following words: "A single Judge while accepting a revision petition arising out of a case in which the accused is awarded imprisonment for seven years or less, is competent to enhance the sentence to more than seven years' imprisonment, but not to transportation for life or death." Before concluding I would like to add that if in a particular case a single Judge hearing a revision petition be of the opinion that it is desirable that it would be heard by a larger Bench it is open to him to move the Chief Justice to send the case to a larger Bench and since every Judge of this Court can be expected to avail of this provision in every suitable case, there can be no real hardship and no injustice is likely to result from the apparent anomaly which was so much stressed before us.

Passey, J.

9. I agree

Chopra, J.

10. I concur.