

(2015) 06 MAD CK 0276

In the Madras High Court

Case No : Criminal R.C. Sr. No. 5405 of 2014 and M.P. No. 1 of 2014

M. Natarajan

APPELLANT

Vs

Thiru. K.R. Palanichamy and Others

RESPONDENT

Date of Decision : 05-06-2015

Acts Referred:

Chit Funds Act, 1982 — Section 4, 76

Criminal Procedure Code, 1973 (CrPC) — Section 200, 255(1), 401

Tamil Nadu Societies Registration Act, 1975 — Section 12, 15, 16, 25, 26

Citation : (2015) 06 MAD CK 0276

Hon'ble Judges : S. Manikumar, J

Bench : Single Bench

Advocate : Sriram Panchu, Senior Counsel for V. Chandraprabu, for the Appellant; P. Rathinavel, Advocates for the Respondent

Judgement

S. Manikumar, J.—Prosecution Witness No. 3, in C.C. No. 213 of 2006, has filed the present revision case, against the acquittal ordered in C.C. No. 213 of 2006, dated 22.09.2010, on the file of the Judicial Magistrate Court, Ambattur.

2. In the supporting affidavit, PW.3, Member of the Padi Manoorpettai Vaiyabarigal Sangam, has stated that as there was mis- management of the society, an enquiry was conducted, which resulted in a private complaint, against the Office bearers of the Sangam. He further submitted that the charges against the accused, have not been framed properly. Procedure had not been followed, by the Court below, while framing the charges. According to him, there were material irregularities in the conduct of the trial.

3. In addition to the abovesaid averments, inviting the attention of the Apex Court to Paragraph 7 in K. Chinnaswamy Reddy Vs. State of Andhra Pradesh, AIR 1962 SC 1788 : (1963) 3 SCR 412 , Mr. Sriram Panchu, learned Senior Counsel appearing for the petitioner submitted that even if the State has not filed any appeal against the acquittal, private parties can maintain a criminal revision case and when there is some glaring defect in the procedure or there is any manifest

error in the order and consequently, there is flagrant miscarriage of justice, then, the High Court may interfere with the acquittal. In this context, he also relied on a decision made in Kaptan Singh and others Vs. State of M.P. and another, AIR 1997 SC 2485 : (1997) CriLJ 2987 : (1997) 2 Crimes 52 : (1997) 1 CTC 672 : (1997) 5 JT 35 : (1997) 3 SCALE 607 : (1997) 6 SCC 185 : (1997) 2 UJ 44 : (1997) AIRSCW 2423 : (1997) 4 Supreme 211 .

4. On the aspect of delay, learned counsel for the petitioner placed reliance on a decision made in State (NCT of Delhi) Vs. Ahmed Jaan, (2008) CriLJ 4355 : (2008) 10 JT 179 : (2008) 152 PLR 735 : (2008) 11 SCALE 2455 : (2008) 14 SCC 582 and submitted that the term sufficient cause should be considered with pragmatism with justice oriented approach, rather than technical detention of sufficient cause for explaining every days" delay.

5. General Secretary of Padi Manoorpettai Vaiyabarigal Sangam, in his counter affidavit filed to the condone delay petition, has strongly opposed the delay excuse petition. According to him, the petitioner was removed from the primary membership of the said Sangam, by passing a resolution in the General Body Meeting. He further submitted that on the representation of the petitioner, dated 29.08.2004, an enquiry was conducted. It was prima facie found that the representation was false and motivated. However, he had obtained an ex parte direction in a Writ Petition, to dispose of his representation, dated 29.08.2004, which resulted in filing of a criminal case before the learned Judicial Magistrate, Ambattur. The said complaint was taken on file in C.C. No. 213 of 2006. The respondent has been arrayed as PW.3. Charges were framed under various Sections of Tamil Nadu Societies Registration Act and Chit Fund Act, 1982. After thorough trial, the learned Judicial Magistrate, has acquitted the accused therein, on benefit of doubt.

6. General Secretary of Padi Manoorpettai Vaiyabarigal Sangam has further submitted that there is no material irregularity in the conduct of the trial and this Court has no power to order for retrial, under Section 401 of Criminal Procedure Code. The petitioner is not a member of the Association and therefore, he has no locus standi to file the present revision case. Reasons assigned in the delay condonation petition, are unfounded and motivated and hence, prayed for dismissal of the same.

7. In addition to the above, learned counsel for the respondents submitted that the present criminal revision case is filed, as if, it is exposing a public cause. He further submitted that if the Court had not framed the charges properly, it is for the complainant to take up the issue before the appellate Court and certainly, it is not open to a witness to file a revision against the order of acquittal.

Heard the learned counsel for the parties and perused the materials available on record.

8. Perusal of the judgment made in C.C. No. 213 of 2006, dated 22.09.2010, on the file of the learned Judicial Magistrate at Ambattur, it is evident that

Tmt.Mahilini Thomas, Registrar of Societies and Chits (Additional Charge), Chennai (Central), has filed a private complaint, against the Secretary, President and Treasurer of Padi Manoor Pettai Vyabarigal Sangam, under Section 200 Cr.P.C. After recording the sworn statement, the learned Judicial Magistrate, Ambattur, has taken a case on file, for the offences, under Sections 12, 15, 16, 25, 26 and 48 of the Tamil Nadu Societies Registration Act and Rules 21(1) and 25 of the Tamil Nadu Societies Registration Rules and Section 4 r/w. 76 of the Chit Funds Act. Complainant, Tmt.Mahilini Thomas, Registrar of Societies and Chits (Additional Charge), Chennai (Central), examined herself as PW.1. Thiru.K.M. Thiagarajan @ Henry Mani and Thiru.M.Natarajan (petitioner herein), have been examined as Pws.2 and 3. Exs.P1 to P10, documents have been marked. On the defence, Secretary of the Society, Mr.K.R. Palanichamy, has been examined as DW.1 and marked two documents as Dws.1 and 2. After considering the oral and documentary evidence, the learned Judicial Magistrate, Ambattur, by observing that the complainant has miserably failed to prove the ingredients, for the offences, under Sections 12, 15, 16, 25, 26 and 48 of the Tamil Nadu Societies Registration Act and Rules 21(1) and 25 of the Tamil Nadu Societies Registration Rules and Section 4 r/w. 76 of the Chit Funds Act, determined that the accused were not guilty and consequently, liable to be acquitted of the offences charged with, in terms of Section 255(1) Cr.P.C.

9. In K. Chinnaswamy Reddy Vs. State of Andhra Pradesh, AIR 1962 SC 1788 : (1963) 3 SCR 412 , the main contention was that this is a revision by a private party and there were no exceptional circumstances, in that case, which would justify the High Court in interfering with an order of acquittal, at the instance of a private party. After considering the judgments in D. Stephens Vs. Nosibolla, AIR 1951 SC 196 : (1951) CriLJ 510 : (1951) 2 SCR 284 and Logendra Nath Jha and Others Vs. Shri Polailal Biswas, AIR 1951 SC 316 : (1951) 2 SCR 676 , the Supreme Court held as follows:

"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 a. 439 forbids a High Court from converting a finding of acquittal into one of conviction and that makes it all the 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 would in our opinion justify the High Court in interfering with a finding of acquittal in revision. These cases may

be: where the trial court has no jurisdiction to try 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 a. 439 (4). We have therefore to see whether the order of the High Court setting aside the order of acquittal in this case can be upheld on these principles."

The above reported case only sets out the scope of the revisional power of the High Court and it is not a case, where the Hon"ble Supreme Court held that a witness can maintain a revision case.

10. In Kaptan Singh and others Vs. State of M.P. and another, AIR 1997 SC 2485 : (1997) CriLJ 2987 : (1997) 2 Crimes 52 : (1997) 1 CTC 672 : (1997) 5 JT 35 : (1997) 3 SCALE 607 : (1997) 6 SCC 185 : (1997) 2 UJ 44 : (1997) AIRSCW 2423 : (1997) 4 Supreme 211 , on the scope and power of the High Court, at Paragraph 5, the Supreme Court held as follows:

"From a conspectus of the above decisions it follows that the revisional power of the High Court while sitting in judgment over and order of acquittal should not be exercised unless there exists a manifest illegality in the judgment or order of acquittal or there is grave miscarriage of justice. Read in the context of the above principle of law we have no hesitation in concluding that the judgment of the trial Court in the instant case is patently wrong and it has caused grave miscarriage of justice."

11. Both the judgments, relied on by the learned Senior Counsel, though duly explained the scope of the revisional power of the High Court to set aside the order of acquittal, at the instance of private parties, when there is some glaring defect in the procedure or there is any manifest error in the order and consequently, there is flagrant miscarriage of justice, with due respect, the said judgments cannot be said to have laid the law, on the locus of a witness to prefer a revision petition, against the acquittal of the accused.

12. As regards the law of precedents, this Court deems it fit to extract few decisions.

(i) Halsbury's Laws of England sets out only three exceptions to the rule of precedents and the following passage is found in paragraph 578 of Vol. 26, Fourth Edition....

Thereare, however, three and only three, exceptions to this rule; thus (1) the

Court of Appeal is entitled and bound to decide which of two conflicting decisions of its own it will follow; (2) it is bound to refuse to follow a decision of its own which although not expressly overruled, cannot, in its opinion stand with a decision of the House of Lords and (3) the Court of Appeal is not bound to follow a decision of its own if given per incuriam.

(ii) In *Eknath Shankarrao Mukkawar Vs. State of Maharashtra*, AIR 1977 SC 1177 : (1977) CriLJ 964 : (1977) 3 SCC 25 : (1977) 3 SCR 513 , it was held that judicial discipline as well as decorum suggested only one course when a Bench wanted to differ from the decision of a co-ordinate court and that was to refer to a larger Bench.

(iii) In *Ayyaswami Gounder and Others Vs. Munnuswamy Gounder and Others*, AIR 1984 SC 1789 : (1984) 2 SCALE 437 : (1984) 4 SCC 376 : (1985) 1 SCR 808 : (1985) 17 UJ 247 , it was held that a single Judge of a High Court not agreeing with earlier decision of single Judge of the same Court, should refer the matter to a larger Bench and propriety and decorum do not warrant his taking a contrary view.

(iv) In *Sonal Sihimappa Vs. State of Karnataka and Others*, AIR 1987 SC 2359 , it was observed, In a precedent-bound judicial system, binding authorities have got to be respected and the procedure for developing the law has to be one of evolution.

(v) The Hon"ble Chief Justice Pathak, speaking for the Constitution Bench, in *Union of India (UOI) and Another Vs. Raghubir Singh (Dead) by Lrs. Etc.*, AIR 1989 SC 1933 : (1989) 66 CompCas 466 : (1989) 178 ITR 548 : (1989) 2 JT 427 : (1989) 1 SCALE 1337 : (1989) 2 SCC 754 : (1989) 3 SCR 316 : (1989) 74 STC 313 , said:

"The doctrine of binding precedent has the merit of promoting a certainty and consistency in judicial decisions, and enables an organic development of the law, besides providing assurance to the individual as to the consequence of transactions forming part of his daily affairs. And, therefore, the need for a clear and consistent enunciation of legal principle in the decisions of a court."

(vi) In *Sundarjas Kanyalal Bhathija and others Vs. The Collector, Thane, Maharashtra and others*, AIR 1991 SC 1893 : AIR 1990 SC 261 : (1990) 68 CompCas 20 : (1989) 25 ECR 129 : (1990) 183 ITR 130 : (1989) 3 JT 57 : (1989) 2 SCALE 7 : (1989) 3 SCC 396 : (1989) 3 SCR 405 : (1989) 2 UJ 485 , the law is stated thus:

"17. It would be difficult for us to appreciate the judgment of the High Court. One must remember the pursuit of the law, however glamorous it is, has its own limitation on the Bench. In a multi-Judge Court, the Judges are bound by precedents and procedure. They could use their discretion only when there is no declared principle to be found, no rule and no authority. The judicial decorum and legal propriety demand that where a learned single Judge or a Division Bench

does not agree with the decision of a Bench of co-ordinate jurisdiction, the matter shall be referred to a larger Bench. It is subversion of judicial process not to follow this procedure."

(vii) In Philip Jeyasingh Vs. The Joint Registrar of Co-operative Societies and Others, (1992) 1 LW 216 : (1992) 2 MLJ 309 , a Full Bench of this Court, held as follows:

"49. The ratio decidendi of a decision may be narrowed or widened by the judges before whom it is cited as a precedent. In the process the ratio decidendi which the judges who decided the case would themselves have chosen may be even different from the one which has been approved by subsequent judges. This is because Judges, while deciding a case will give their own reasons but may not distinguish their remarks in a right way between what they thought to be the ratio decidendi and what were their obiter dicta, things said in passing having no binding force, though of some persuasive power. It is said that "a judicial decision is the abstraction of the principle from the facts and arguments of the case". A subsequent judge may extend it to a broader principle of wider application or narrow it down for a narrower application."

(viii) In Government of West Bengal Vs. Tarun K. Roy and Others, (2003) 9 JT 130 : (2004) 1 LLJ 421 : (2004) 1 SCC 347 : (2004) SCC(L&S) 225 , as regards binding precedent of a judgment, the Supreme Court at paragraph 26, has observed as follows:-

"26..... If rule of law is to be followed, judicial discipline demands that the court follows its earlier binding precedent. The Calcutta High Court itself has rejected such a plea. The matter is pending in appeal. An order passed to the contrary by another learned Single Judge in ignorance of the earlier binding precedent by itself would not constitute a binding precedent and may be held to have been rendered per incuriam.

13. Following the law of precedents, this Court is of the view that the abovesaid judgments, relied on by the learned counsel for the petitioner, have not laid down the law, on the issue. Private complaint has been lodged, three witnesses have been examined on the side of the prosecution, besides marking 10 documents. The petitioner is Prosecution Witness No. 3. As rightly contended by the learned counsel for the respondents, the petitioner has no locus to file the present revision case, when there is no challenge, as regards formulation of charges, by the complainant, during trial. There is no manifest illegality in the order of the Court below.

14. The Supreme Court in State (NCT of Delhi) Vs. Ahmed Jaan, (2008) CriLJ 4355 : (2008) 10 JT 179 : (2008) 152 PLR 735 : (2008) 11 SCALE 2455 : (2008) 14 SCC 582 has held that the term sufficient cause should be considered with pragmatism in justice oriented approach rather than technical detention of sufficient cause for explaining every days" delay. The present revision case is filed with a delay of 1141 days in filing the revision case. The reasons assigned in

the petition are that the petitioner is a severe diabetic patient and was also suffering from high blood pressure. From the year 2010, his health condition was deteriorating and that he was under severe medication and treatment. The reasons are not satisfactory.

15. As the petitioner has no locus to maintain this case and that the reasons assigned by the petitioner, for condonation of delay, are not satisfactory, this Court is not inclined to dismiss both the revision case as well as condonation delay petition. Hence, Crl.R.C. Sr.No. 5404 of 2014 and M.P. No. 1 of 2014 are dismissed.