

(2000) 04 PAT CK 0115

In the Patna High Court

Case No : Criminal Rev. No. 461 of 1997

Manoj Kumar Singh

APPELLANT

Vs

Naval Kishore Singh, Deep Narayan Singh, Chun-Chun Singh
and State of Bihar

RESPONDENT

Date of Decision : 07-04-2000

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 435, 439, 439(4)
Criminal Procedure Code, 1973 (CrPC) — Section 354, 378, 378(4), 378(5), 397
Penal Code, 1860 (IPC) — Section 34, 363, 365, 368

Citation : (2001) 1 PLJR 610

Hon'ble Judges : I.P. Singh, J

Bench : Single Bench

Advocate : Meena Singh and Pankaj Kumar Sinha, for the Appellant; B.N.P. Singh, for O.P. Nos. 1 to 3 and , Assistant Public Prosecutor for State, for the Respondent

Final Decision : Dismissed

Judgement

I.P. Singh, J.—This is an application under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (in short "the Code"). The informant (P.W.3) is the Petitioner. It is directed against the judgment and order dated 12.6.1997 passed by Shri R.P. Thakur, Judicial Magistrate Ist Class, Purnea In G.R. No. 1209/96/Tr. No. 1124/97 by which the learned Magistrate acquitted opposite party Nos. 1 to 3 of the charges framed under Sections 365, 368 and 34 of the Indian Penal Code. These three opposite party (Nos. 1 to 3) figured as accused in the said case.

2. It appears that on 25.6.1990 at about 2 P.M. while the informant (P.W.3) alongwith Raj Kishore Singh and Sanjai Kumar Mishra was at his residence opposite party No. 3 Chunchun Singh came there and asked P.W.3 to arrange for a house on rent for his younger brother. P.W.3 alongwith Chunchun Singh went to Poddar lodge from where they went to K.P. Verma lodge. At both the places they could not get any vacant accommodation. After this Chunchun Singh informed

P.W.3 that a house near Kali Asthan may be inspected and both of them moved in that direction. In the meantime 5 persons including opposite party Nos. 1 and 2 came" there and abducted P.W.3. They took him to a village south of Madhepura and threatened P.W.3 with a revolver. In the night between 25th and 26th day of June, 1990 P.W.3 was forcibly married to a girl at Village Tuniahi on the point of revolver Ultimately on 27.6.1990 P.W.3 was rescued by Madhepura police and a case, under Sections 368, 363/34 of the Indian Penal Code was instituted. The police submitted charge sheet against the opposite party under these sections.

3. In course of the trial six P.Ws were examined. P.Ws. 1 to 4 supported the case of the prosecution. So far as P.W.5, Gauri Shankar Singh, is concerned he did not support the prosecution case. Three D.Ws. were also examined in this case. According to them PW.3 was consenting party to his marriage at village Tuniahi but since the bride party failed to satisfy the demands the elder brother of P.W.3 this false case has been instituted PW.3 (informant) filed a Suit No. 4/90 for the dissolution of his forcible marriages This suit is still pending. The mandatory provision of Section 354 of the Code were not complied with. The prosecution case has been fully proved by the evidence of P.Ws. A case of abduction has been clearly made out against opposite party Nos. 1 to 3. The defence has to prove the alleged marriage of P.W.3. The abduction of P.W.3 finds support from Exts. 1 and 2. On these facts amongst others it has been contended that the judgment of acquittal passed by the learned Magistrate be set aside O.P. Nos. 1 to 3 may be ordered to be taken into custody for the ends of justice

4. The parties have been heard in detail on the various points raised in this petition. On behalf of the opposite party it has firstly been contended that this revision application filed by the informant is not maintainable since it is only the state which can file an appeal in the case of acquittal. In this connection it has been submitted that the present case was in-(sic) on the FIR and the charge sheet has been submitted by the police and it is a police case so called popularly. In this connection my attention has been drawn Section 378 of the Code according to which in any suitable case the State government may direct the Public prosecutor to present an appeal to the High Court from an original or appellate order of acquittal by any court. It may be (sic) in this connection that this case was instituted on the basis of the F.I.R. (sic) with the police in which a charge sheet has been submitted. This is not a case instituted on the basis of a complaint and, therefore, the provision of Sub-sections (4) and (5) will not apply to the present case. In short it was the submission of the learned Counsel for the opposite party that the informant has got no (sic) standing in the matter and he can not file revision application against the judgment of acquittal.

5. This submission of the learned Counsel for the opposite party does not appear to be correct. In this connection a reference may be made to the case of K. Chinnaswamy Reddy Vs. State of Andhra Pradesh, . This was a case under the Old Code whose Sections 435 and 439 correspond to Sections 397 and 401 of

the New Code. From the facts of the said case it appears that the case was instituted on a police report and the Appellant and others were tried and convicted by the Assistant Sessions Judge. On appeal the Sessions Judge acquitted them. Against this judgment of acquittal the informant filed a revision petition before the High Court. The High Court allowed the revision application and ordered for re-trial. Against this judgment and order of the High Court one of the accused, namely, Chinnaswamy filed an appeal before the Supreme Court in which the Hon"ble Supreme Court made the following observation in paragraph 7:

It is true that it is open to the 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 the 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 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 can not 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.

Some of the exceptional cases of this type have been mentioned in this judgment which include (i) where the trial court has no jurisdiction to try the case but has still acquitted the accused or (ii) where the trial court has wrongly shut out evidence which the prosecution wished to produce or (iii) where the appeal court has wrongly held evidence which was admitted by the trial court to be inadmissible or (iv) where material evidence has been overlooked either by the trial court or by the appeal court or (v) where the acquittal is based on a compounding of the offence which is invalid under the law. Thus this decision clearly provides that though a revision application against acquittal can be filed even by the informant the High Court will be reluctant to set aside the finding of acquittal in the revision and only in exceptional cases as noted above the High Court can justifiably interfere with an order of acquittal.

6. In the case of State of Orissa Vs. Nakula Sahu and Others, also this question was taken into consideration. In this case the Respondents were convicted and sentenced by the Sub Divisional Magistrate (in the year 1965). On appeal the Sessions Judge upheld this judgment of conviction and sentence. In revision the High Court set aside the judgment of conviction and sentence of the trial court as well the lower appellate court and acquitted the Respondents. On appeal before the Supreme Court it was held as follows:

It is now well settled that normally the jurisdiction of the High Court u/s 439 is to be exercised only in exceptional cases when there is glaring defect in the procedure or there is a manifest error on a point of law which has consequently

resulted in flagrant miscarriage of justice.

It was further held in this case that inspite of the wide language of Section 435 (Old) and inspite of the fact that u/s 439 (Old) the High Court can exercise the power of the court of an appeal u/s 423 of the Code it is not expected of the High Court to act u/s 435 (old and Section 439 (New) as it is hearing the appeal. It has been pointed out in this decision that this power being discretionary has to be exercised judiciously and not arbitrarily or lightly. In this decision reliance on the case of Akalu Ahir and Others Vs. Ramdeo Ram, and also on the case of Amar Chand Agarwalla Vs. Shanti Bose and Another, etc., was placed and both these decisions have been followed.

7. My attention has also been drawn to the case of Ayodhya Dube and Others Vs. Ram Sumer Singh, . This is the decision by three Judges Bench of the Hon''ble Supreme Court in which the ratio of the decision in the case Chinnaswamy (supra) was approved and followed. But it was further observed in it that the cases, mentioned in the judgment of Chinnaswamy (supra) were only illustrative and not exhaustive. Also a word of caution was sounded in this decision that when a court starts laying down rules enumerated (1), (2), (3), (4) or (a), (b), (c), (d), it is arranging for itself traps and pitfalls,. Categories, classifications and compartments, which statute does not mention, all tend to make law less flexible, less sensible and less just since the Criminal Justice System does not admit of pigeon holing. Life and the Law do not fall neatly into slots. However, in spite of this observation this three Judges Bench has upheld the ratio of decision in the case of Chinnaswamy.

8. In the case of Kishan Swaroop Vs. Govt. of NCT of Delhi, also the ratio of the decision in the case of Chinnaswamy (supra) was followed, in the said case the police submitted the charge sheet and on trial the case ended in acquittal. The informant Bed a revision petition before the Delhi High Court which dismissed the revision petition on the ground that the informant preferred this petition without obtaining the permission from the Public Prosecutor to file the revision petition against the judgment of acquittal. The Hon''ble Supreme Court relying on the decision reported in the case of Chinnaswamy (supra) set aside the judgment of the High Court.

9. In the case of Vimal Singh Vs. Khuman Singh and Another, it has clearly been held by the Hon''ble Supreme Court in exercise of the power u/s 401 of the Code the High Court in revision does not ordinarily interfere with judgments of acquittal passed by the trial Court unless there has been manifest error of law or procedure. I has been further held that the High Court would not be justified in substituting in order of acquittal into one of conviction when if it is convinced that the accused deserves conviction. No doubt, the High Court in exercise of its revisional power an set aside an order of acquittal if it some within the ambit of exceptional cases enumerated above, but it cannot convert an order of acquittal into an order of conviction. The only course left to the High Court in such exceptional cases is order retrial.

9A. From the aforesaid decisions it becomes perfectly clear to me that against the judgment of acquittal the informant can file a revision application but only in exceptional circumstances as mentioned in the case of Chinnaswamy (supra). The revision application can also be filed even by witness or by any person challenging the judgment of acquittal. In this connection it may be mentioned that u/s 397 of the Code it is open to the court to act even suo motu for satisfying itself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed. Hence if in a suitable circumstance the court can act suo motu u/s 397 of the Code it can certainly act at the instance of the informant or a witness or any person who is able to point out to the court about the illegality or impropriety or mistake committed in any finding, sentence or order passed by any inferior court. In this connection a reference may also be made to the case of Ram Bilash Prasad v. Binda Tanti 2000 (1) P.L.J.R. 879 in which a Bench of this Court of which I was also a member had held that a revision against the order of acquittal even at the instance of the informant or a witness or any other interested person in the litigation is maintainable. In view of what has been stated above I do not find any force in the contention of the learned Counsel appearing on behalf of the opposite party that the informant has no locus standi to file a revision application against the judgment of acquittal in a case instituted on police report.

10. Coming to the facts of the present case it appears that the prosecution has examined P.W.5 Gauri Shanker Singh whose evidence is, Annexure-1 to this petition. In his evidence P.W.5 has clearly stated that Manoj Kumar Singh (P.W.3) had married the daughter of Kamleshwari Singh of Village-Tuniyahi voluntarily and out of his own free will. He has further stated that the married girl was not brought to the house of the informant. Thus, P.W.5 has fully supported the defence version that this marriage had taken place voluntarily and out of the free will of P.W.3, the informant. In this connection a reference may also be made to the evidence of D.Ws.1 to 3 who have also stated about this marriage. So far at D.W.a is concerned he is Kusheshwar Mishra who got his marriage performed as a Purohit. He has stated that As ha Devi married Manoj Kumar Singh who had come on a Jeep with the Barat. D.W.2 has also stated that Asha Devi, daughter of Kamleshwari Singh was married to Manoj Kumar Singh. The bride groom had come in Barat alongwith 20-25 persons and the marriage was properly performed. Thus, from the evidence of these witnesses it is clear that there was a regular marriage performed between the informant, Manoj Kumar Singh and Asha Devi D/o Kamleshwari Singh. It is interesting to note in this connection that D.W.1, Bindeshwari Pandit, D.W.2, Gopal Mandal and D.W.3 Kusheshwar Mishra have been named as P.Ws. in the charge sheet. From this it would appear that though they were named as P.Ws. in the charge sheet they were not willing to support the case of the prosecution and have examined themselves as D.Ws. This is a great circumstance against the case of the prosecution. Even P.W.3 has admitted that he has brought Divorce Case No. 4/90 in the Civil Court for the dissolution of his marriage with Asha Devi. This also support the defence version

of the factum of this marriage being performed between the informant and Asha Devi.

11. From the detailed discussions made above it becomes perfectly clear to me that under the facts and circumstances of this case this revision application filed by the informant Petitioner has got no merit in the eyes of law. It is, accordingly, dismissed.