
(1955) 12 GAU CK 0004
In the Gauhati High Court

Ningombam Damu Singh

APPELLANT

Vs

Khaidem Mangoljao Singh and Others

RESPONDENT

Date of Decision : 22-12-1955

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 439

Citation : (1955) 12 GAU CK 0004

Hon'ble Judges : Brij Narain, J.C.

Bench : Single Bench

Judgement

Brij Narain, J.C.

1. This is an application in revision u/s 439, Criminal P. C., against an order of acquittal passed by Sri O. Niladhwaja Singh, E. A. C., First Class Magistrate, Manipur in Criminal Case No. 167 of 1904, dated 25-2-1955, and a revision application No. 167 of 1954, against this order has already been dismissed by the learned Sessions Judge, Manipur, on 14-G-1955.

2. It appears that Ningombam Damu Singh, petitioner had come to Court with the allegation that Khaidem Mangoljao Singh, opposite party 1 had called him to his house on the pretext that he had to talk to the petitioner on an important business and when the petitioner reached there, he was bound and beaten by all the remaining opposite parties.

On the petitioner's raising hue and cry, the neighbours rushed to the spot and this accident was seen by Tomcha Mia, companion of the petitioner also. The learned Magistrate recorded the prosecution evidence and after considering that evidence, he came to the conclusion that the complainant had brought up a got up case in Court and so the complaint was dismissed and the opposite parties were acquitted.

The learned Sessions Judge rejected the revision on the ground that the judgment of the learned Magistrate had not been assailed on any law point.

3. The learned Advocate for the petitioner has urged before me that the learned Magistrate trying this case did not appreciate the evidence of the Medical Officer and as he failed to examine a very important witness, viz. Village Chowkidar, even though he had been summoned, the judgment given by the learned Magistrate is simply perverse.

I have gone through the judgment of the learned Magistrate and I find that he has examined in detail the evidence of the complainant as well as of Tomcha Mia and after discussing their evidence, he has come to the conclusion that the case put forward by the complainant is a got up one and it was inherently improbable. I have now to see whether any interference is called for on the grounds pressed by the petitioner.

4. There is no doubt that in cases where serious or substantial injustices are caused by an error of law, the High Court can interfere in revision with an order of acquittal; vide - Mohammad Sabed Ali Vs. Thulesvar Borah, vide also - AIR 1933 36 (Nagpur) and - "Babu Mal v. Ghasi" AIR 1928 Lah 185.

In Mohd. Sattar Vs. Behari Lal Jain, it was held that the High Court in the exercise of its power u/s 439 should interfere with an order of acquittal only when the case is of a serious nature, and the failure of the Magistrate to pronounce the judgment himself, in open Court was merely an irregularity curable u/s 537.

Similarly, in Ram Gopal Vs. Madan Lal, it was held that the power to interfere in revision with an order of acquittal is to be exercised only in exceptional cases where it appears that the Judge has made an obvious mistake which has resulted in a failure of Justice and where the case was tried in the regular way and the order of acquittal was passed upon a consideration of all the material evidence on the record, no interference could be made on the ground that the conclusion arrived at was not correct. Before the High Court is called upon to invoke its revisional jurisdiction, the applicant must satisfy the Court that some salient features of the case have been overlooked by the Court or that judgment is otherwise perverse or unjust.

Where there has been a gross miscarriage of Justice or a manifest illegality, interference might be justified; vide - D. Stephens Vs. Nosibolla, - Logendra Nath Jha and Others Vs. Shri Polailal Biswas, - Harihar Chakravarty Vs. The State of West Bengal, Bijoy Kumar Basu Vs. Kalipada Ghosh and Others, and - Naran Velji Vs. Ranjitsingh Jamnadas Kapadia, .

In the present case it is clear that the complainant dragged on his case in two Courts and he never raised the present objections before the learned Sessions Judge in Criminal Revision No. 11 of 1955 of that Court and so it cannot be said that he really had any genuine grievance on this ground or any gross injustice has been done to him.

The mere fact that the learned Magistrate did not examine the chowkidar, who

took the complainant to the hospital will be no ground for believing that the allegations made in the complaint were correct, when the learned Magistrate after examining the complainant and his material Witness came to the conclusion that the story about the alleged beating was totally got up one. I am, therefore, of opinion that the rulings cited above clearly go against the petitioner in this case.

5. Even in cases where an order of acquittal is wrong owing to omission or curable irregularity, there should be no interference in revision against the order of acquittal. In - "Damdoo v. Harba" AIR 1927 Nag 210(K) it has been laid down that the omission to comply with the provision of Section 242, is nothing more than a curable irregularity where a failure of Justice has not been caused, and where the Magistrate acquitted the accused without examining the complainant's other witnesses when the complainant refused to examine himself, it was held that even in such cases, the High Court would, not interfere in revision against the order of acquittal in view of the fact that the Legislature has provided a special provision for an appeal against acquittal being filed.

Similarly, in "Tilak Bam v. Bhagga Singh" AIR 1915 Oudh 203 it was held that the High Court has power u/s 439, Criminal P. C., to revise an order of acquittal, but in practice that power should not ordinarily be exercised because an appeal can always be instituted by the Local Government, vide also - "P. D. Shamdasani v. Central Bank of India Ltd. (No. 1)" AIR 1944 Bom 107 - "U. Min v. Maung Taik" AIR 1931 Rang 04 - Bakshi Sita Ram Vs. Lachhmi Chand and Another, "Mast Ram v. Basant Ram" AIR 1955 HP. 24 and - "Hamir Singh Sadhu Singh v. Mt. Gurdial Kaur Hamir Singh" AIR 1955 NUC 1875.

6. As the complainant got sufficient opportunity of substantiating his allegations and he failed to do so, I do not think any case for remand has been made out by him and the ruling reported in - "Anwar v. The Crown" AIR 1955 NUC 2596 which lays down that no artificial rules can be laid down defining the classes of cases in which the High Court should or should not order a retrial as the power of the High Court to examine the evidence on which a finding of fact is based is unlimited, cannot properly be applied in the present case, which appears to be not at all a serious case and it can be deemed to be a petty case.

In "Nagoor Kanni Nadura v. Sithu Naick" AIR 1927 Mad 298 it was held that the High Court will not ordinarily interfere to set aside acquittals in cases of petty assaults.

7. I, therefore, see no force in the present application in revision, which is hereby rejected.