
(2004) 01 SC CK 0019
In the Supreme Court Of India
Case No : Criminal Appeal No. 141 of 2004

Omwati	Vs	APPELLANT
State of Uttar Pradesh and Another		RESPONDENT

Date of Decision : 30-01-2004

Acts Referred:

Penal Code, 1860 (IPC) — Section 395, 397

Citation : (2005) 3 ACR 2688

Hon'ble Judges : Brijesh Kumar, J;Arun Kumar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Brijesh Kumar and Arun Kumar, JJ.—Leave granted.

2. Sometimes, one would come across strange orders passed, depicting very unhappy state of affairs. The case in hand is one of such cases. It appears that the Appellant before us filed an appeal, Criminal Appeal No. 356 of 1981 in the High Court against the acquittal of the Respondents who were acquitted after their trial. As it is evident from the number assigned to that appeal, it may have been filed sometime in 1981. On 9.10.2002 an order was passed by the High Court which we quote below:

Case called out in the revised list. Neither the Appellant nor her counsel is present.

Issue bailable warrant against the Appellant, in the event of her being arrested, she will be produced before the C.J.M., Aligarh, who will release her on bail on furnishing a personal bond with two sureties each in the like amount of Rs. 20,000 to the satisfaction of C.J.M., Aligarh.

The C.J.M., Aligarh will submit photocopies of the personal bond and security bond to this Court within four weeks.

3. The above order seems to have been passed unmindful of the fact that the

Appellant was not an accused but a complainant who had preferred an appeal against acquittal. In case the Appellant was not present, there may have been other options but certainly not for arrest of the complainant Appellant who was complaining against the acquittal of some accused persons. The Appellant approached this Court and on 25.4.2003 an order was passed to the following effect:

The Registry to obtain information from the Registrar, Allahabad High Court, with regard to reasons for issuing bailable warrants against the Petitioner.

4. An affidavit was filed by the Registrar General of the High Court narrating therein that the Appellant had filed an appeal against an order of acquittal passed in Sessions Trial No. 25 of 1979, acquitting the Respondent-accused under Sections 395/397, I.P.C. The said appeal was admitted by the High Court on 5.2.1981. The affidavit was filed by the Registrar General on 26.9.2003 but in the meantime it appears that once again when the matter was listed in the High Court before another Bench of single Judge, on 15.7.2003, surprisingly, despite the order passed by this Court requiring the Registry to indicate the reasons for issuing bailable warrants, an order was passed which is quoted below:

None is present for the Appellant though called twice. Shri P. Dikshit is present for the Respondent.

Issue non-bailable warrant of arrest of Appellant Omwati. The Chief Judicial Magistrate, Aligarh will execute the same and submit compliance report within two months. List thereafter.

5. It appears, perhaps nothing may have been available on the file nor was the attention of the Court drawn by the Registry or anyone, to the order passed by this Court nor the Court itself noticed the fact that it was a matter pertaining to an appeal against acquittal. Thus, an order was passed for issue of non-bailable warrants for the arrest of the Appellant. A compliance report was also sought.

6. From the order passed on 15.7.2003, it appears that a counsel was also present on behalf of the Respondent. In an additional affidavit filed by the Appellant, it is indicated that the counsel was a State Counsel. We feel that the State Counsel should have pointed it out to the Court about the nature of the matter and the propriety of issuing bailable or non-bailable warrants against the complainant Appellant. The unfortunate sequel of such unmindful orders has been that the Appellant was taken into custody and had to remain in jail for some time, may be for a few days, but without any justification whatsoever. She suffered in view of the total non-application of mind at the stage of passing of the two impugned orders. Some degree of care is supposed to be taken before passing an order of issue of warrants, bailable or non-bailable. Such orders cannot stand.

7. In view of the position as indicated above, we allow the appeal and quash the orders dated 9.10.2002, for issue of bailable warrants against the Appellant and

the order dated 15.7.2003 for issue of non-bailable warrant passed by the High Court. It is informed that the Appellant was released on bail on furnishing personal bonds and sureties. The sureties and the personal bonds stand discharged. As a token of compensation, we direct Respondent 1 to pay a sum of Rs. 10,000 to the Appellant within a period of six weeks.

8. A copy of this order may also be sent to the Chief Justice of the High Court.