
(2001) 03 OHC CK 0038
In the Orissa High Court
Case No : Criminal Revision No. 30 of 1999

Prasanta Kumar Das

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 16-03-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Constitution of India, 1950 — Article 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 210, 378, 397, 401, 435
Prevention of Corruption Act, 1988 — Section 13(1), 13(2)

Citation : (2001) 92 CLT 568 : (2001) CriLJ 2449 : (2001) 20 OCR 541

Hon'ble Judges : B.P. Das, J

Bench : Single Bench

Advocate : M.S. Panda, S. Ch. Mishra, S.K. Das and Sisir Das, for the Appellant;
G. Rath B.R. Sarangi and Addl. Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Das, J.—The petitioner by way of public interest litigation had initially filed a writ application under Articles 226 and 227 of the Constitution of India with the prayers of following nature :

(a) To cancel the appointment of Sri Indrajeet Ray as Advocate-General of Orissa and also Special Public Prosecutor for the Vigilance cases as per Annexure-1;

(b) To appoint suitable alternative counsel to conduct the cases for the prosecution of the aforesaid vigilance cases vide Annexure-1 at the cost of the State ;

(c) To direct fresh trial of T. R. Case No. 55/92 or in the alternative, direct for suo motu institution of an appeal against acquittal in T. R. Case No. 55/92 vide Annexure-2;

(d) To direct the State Bar Council to initiate a disciplinary proceeding against Sri Indrajeet Ray for his misconduct as an Advocate ; and

(e) To declare Sti Indrajeet Ray, Advocate-General to be unworthy of holding the highly constitutional post of Advocate-General and direct the State Government and the Chief Minister to remove him forthwith from the post of Advocate-General.

2. Opposite party Nos. 1, 2 and 3 filed a joint counter affidavit in reply to which the petitioner filed a rejoinder. The matter was heard by a Division Bench comprising Hon"ble the Chief Justice Mr. S.N, Phukan (as his Lordship then was) and Hon"ble Mr. Justice P. C. Naik. After hearing both the sides, judgment was pronounced on 18-12-1998 wherein it was ultimately held that the writ application was not maintainable and while dropping the writ application leave was granted to the petitioner to convert the same to a Criminal Revision or Criminal Misc. Case, as the case may be. Accordingly, the writ application was converted to and registered as a Criminal Revision whereafter the same was placed before this Court for hearing.

3. The brief facts leading to this revision application are as follows :--

Shri Kishore Chandra Patel, o.p. No. 6, who was a Cabinet Minister during the period 1980-85, was charge-sheeted by the State anti-corruption authority on the allegation of acquiring property disproportionate to his known sources of income. During the pendency of the aforesaid vigilance case before an Hon"ble Judge of this Court, who was appointed as the Presiding Officer of the Special Court constituted under the provisions of the Special Courts Act, 1990, to deal with the Vigilance cases initiated against some highly placed officials, bureaucrats and Ministers of the State, the said Act was repealed and all the cases pending before the Special Court were transferred to the court of the Special Judge (Vigilance), Bhubaneswar. Shri Indrajeet Ray, the then Advocate-General, was appointed as the Special Public Prosecutor to prosecute cases against the accused persons including o.p. No. 6, who was functioning as a Cabinet Minister of the State at that point of time. It is alleged that since there was a deep-rooted conspiracy and unholy nexus between the prosecution and the defence, o.p. No. 6 has been acquitted of the charges so levelled against him u/s 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988,

It is also alleged that after the Congress-I party got the popular mandate in March, 1995, Shri Indrajeet Ray was appointed as the Advocate-General. And in order to get rid of the trial before the Special Court being headed by an Hon"ble judge of this Court, on the advice of the then Advocate-General, the Special Courts Act, 1990 was repealed and all the cases pending before the Special Court were transferred to the court of the Special Judge (Vigilance), Bhubaneswar, wherein Shri Indrajeet Ray continued as the Special Public Prosecutor. The allegation of the petitioner is that in this case a few witnesses on behalf of the prosecution were duly examined before the Special Court when the case stood transferred to the court of the Special Judge (Vigilance). Ultimately before the Special Judge (Vigilance), it is alleged, the prosecution witnesses were not properly examined by the prosecution and nine defence witnesses so examined

by the defence were also not properly cross-examined and the prosecutor tacitly conceded in favour of the accused on many vital points in order to make an easy way for acquittal of the accused and ultimately the learned Special Judge (Vigilance) by judgment dated 30-6-1997 acquitted o.p. No. 6 of the charges framed against him.

Even after the writ application was converted to an application under Sections 397, 401 and 482 of the Code of Criminal Procedure, 1973 (for short "the Code"), the prayers so made in the writ application remain as such in the absence of appropriate amendment in that regard. That apart, while disposing of the writ application, the Division Bench has already answered some of the questions so raised by the petitioner and findings have been recorded therefor. The petitioner has, however, not challenged those finding's disallowing the prayers of the petitioner in the writ application.

4. While exercising jurisdiction u/s 397 read with Section 401 of the Code, I can only look into or consider prayer No. (c), i.e., "to direct fresh trial of T. R, Case No.55/92 or in alternative direct for suo motu institution of an appeal against acquittal in T. R. Case No. 55/92 vide Annexure-2."

5. Shri M. S. Panda, learned counsel for the petitioner, also candidly submits and makes a similar prayer and states that as Shri Indrajeet Roy, the then Advocate-General, did not conduct the case fairly and independently, there is need for interference of this Court and an order for retrial is befitting the facts and circumstances of the case.

6. At the threshold an objection was raised by Shri G. Rath, learned Senior Advocate appearing for o.p. No. 6, regarding the maintainability of the revision against the order of acquittal at the behest of a third party in an application couched as a public interest litigation. While answering to the objection so raised, learned counsel for the petitioner draws my attention to Section 397 of the Code and emphasised that it is incumbent on the part of the High Court or any Sessions Judge to call for and examine the record of any proceeding before any inferior criminal court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any findings, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court and may call for such records.

7. In order to bring home the allegation that the order of acquittal is an outcome of irregular trial, Shri Panda, learned counsel for the petitioner, draws my attention to various portions of the trial court judgment and points out that either there is no cross-examination of the defence witnesses by the prosecution and, according to Shri Panda, o.p. No. 5 being the Advocate-General and o.p. No. 6 being a Cabinet Minister, they left no stone unturned to snatch an order of acquittal of o.p. No. 6, likewise, my attention is drawn to para 20 of the said judgment wherein, it has been stated that the carbon copy of the report submitted by the Horticulturist (p. w. 35) regarding the income of o.p. No. 6

from his orchard during the period from 9-6-1980 to 9-3-1985 has been admitted to evidence without objection. But from the record, I find that the report of the Horticulturist was handed over to the Vigilance Inspector (p. w. 43) for which the Horticulturist produced the carbon copy. Efforts have been made and argument has been advanced by Shri Panda in order to fortify his stand that the order of acquittal was recorded illegally and there is no correctness or propriety in the findings of the learned Special Judge which require interference by this Court u/s 397 read with Section 401 of the Code.

This is a case where the grounds of challenge and the allegations made in the application under Arts. 226 and 227 of the Constitution of India remain the same and the Division Bench of this Court, while dealing with the question of locus standi of a third party, relied upon the decision of the Apex Court in *Simranjit Singh Mann Vs. Union of India* and another, and observed as follows :

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It is no doubt true that was a case in which an order of conviction was sought to be assailed by way of a public interest litigation, but that, we feel, would not make any difference while considering a prayer for certiorari to quash an order of acquittal, as in either case what is sought to be tested by a third party, a stranger, is the correctness or propriety of the order of a criminal court."

Even though the particular question was raised and answered above, learned counsel for the petitioner states that after the writ application was allowed to be converted to an application under Sections 397, 401 and 482 of the Code, it is the duty of the petitioner to bring the irregularities committed by the learned Special Judge to the notice of this Court, and it is this Court which should take note of the irregularities so indicated and allow the prayer of the petitioner for retrial. It is further submitted that the locus standi of the petitioner cannot stand on the way of this Court to pass necessary and appropriate orders suo motu under Sections 401, 397 and 482 of the Code to meet the ends of justice in the event of any irregularity in trial is brought to the notice of the Court.

8. Before delving into the merits of the case, it is profitable to place the background of this criminal revision.

As stated above, initially a writ application was filed and during the course of hearing of the said writ application, a petition was moved by the petitioner seeking leave of the Court to amend the writ application by styling it as one u/s 397, 401 and 482 of the Code by which an alternative prayer was sought to be incorporated praying this Court "to exercise its revisional suo motu inherent-powers as provided under the Cr. P. C. for the ends of justice". Thereafter the said petition was allowed and the writ application was converted to the present revision.

9. It is pertinent to mention here that it is not a case where an application under Articles 226 and 227 of the Constitution was merely allowed to be converted to

an application under Sections 397, 401 and 482 of the Code at the threshold, but the application was heard in its entirety on merits, issues were framed and the points raised by the petitioner were answered by the Division Bench in a fullfledged judgment passed on merits ultimately holding that the writ application was not maintainable and simultaneously allowing the writ application to be converted to a criminal revision. In the aforesaid backdrop, I have the onerous task of deciding the revision with the self-same grounds dealt with by the Division Bench and at the same time with the unchallenged findings of the Division Bench staring at me.

10. At the first instance, I have to examine whether an application at the instance of a third party is maintainable.

Shri G. Rath, learned Senior Advocate appearing for o.p. No. 6, strenuously argues that an application against the order of acquittal is absolutely not maintainable at the instance of a third party and draws my attention to Simranjit Singh Manns case (supra).

Before going to deal with Simranjit Singh Means case, I may refer to the decision of Janata Dal Vs. H.S. Chowdhary and Others, In this case the Apex Court considered the question raised regarding the revisional and inherent power of the High Court and observed as follows :--

"126. Sections 397, 401 and 482 of the new Code are analogous to Sections 435, 439 and 561(A) of the old Code of 1898 except for certain substitutions, omissions and modifications. u/s 397, the High Court possesses the general power of superintendence over the actions of Courts subordinate to it which the discretionary power when administered on administration side is known as the power of superintendence and on the judicial side as the power of revision. In exercise of the discretionary powers conferred on the High Court under the provisions of this section, the High Court can, at any stage, on its own motion, if it so desires and certainly when illegalities and irregularities resulting in injustice are brought to its notice, call for the records and examine them. The words in Section 435 are, however, very general and they empower the High Court to call for the record of a case not only when it intends to satisfy itself about the correctness of any finding, sentence or order but also as to the regularity of any proceeding of any subordinate court.

127. By virtue of the power u/s 401, the High Court can examine the proceedings of inferior Courts if the necessity for doing so is brought to its notice in any manner, namely, (1) when the records have been called for by itself, or (2) when the proceedings otherwise come to its knowledge.

128. The object of the revisional jurisdiction u/s 401 is to confer power upon superior criminal Courts--a kind of paternal or supervisory jurisdiction--in order to correct miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precaution or apparent harshness of treatment which has resulted, on the one hand, or on the other hand in some undeserved

hardship to individuals. The controlling power of the High Court is discretionary and it must be exercised in the interest of justice with regard to all facts and circumstances of each particular case, anxious attention being given to the said facts and circumstances which vary greatly from case to case.

129. Section 482 which corresponds to Section 561A of the old Code and to Section 151 of the CPC proceeds on the same principle and deals with the inherent powers of the High Court. The rule of inherent powers has its source in the maxim "*Quando lex aliquid alicui concedit, concedere videtur id sine quo res ipsa, esse non potest*" which means that when the law gives anything to anyone, it gives also all those things without which the thing itself could not exist.

130. The Criminal Courts are clothed with inherent power to make such orders as may be necessary for the ends of justice. Such power though unrestricted and undefined should not be capriciously or arbitrarily exercised, but should be exercised in appropriate cases, *ex debito justitiae* to do real and substantial justice for the administration of which alone the Courts exist. The powers possessed by the High Court u/s 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Courts must be careful to see that its decision in exercise of this power is based on sound principles.

131. The Judicial Committee in (1) AIR 1945 18 (Privy Council) 22 and (2) *Jairam Das Vs. Emperor*, has taken the view that Section 561A of the old Code gave no new powers but only provided that those which the court already inherently possessed should be preserved. This view holds the field till date."

11. In view of the well settled legal principles enunciated in the aforesaid decision of the Apex Court, the power u/s 482 of the Code may be very wide but the same should be exercised with great care and caution.

12. The next question that falls for determination is whether a revision application by a stranger against an order of acquittal can be maintainable.

In *Simranjit Singh Mann's* case (*supra*), the Apex Court dealing with a similar question held as follows :--

"Ordinarily, the aggrieved party which is affected by any order has the right to seek redress by questioning the legality, validity or correctness of the order, unless such party is a minor, an insane person or is suffering from any, other disability which the law recognises as sufficient to permit another person, e. g., next friend, to move the Court on his behalf. If a guardian or a next friend initiates proceedings for and on behalf of such a disabled aggrieved party, it is in effect proceedings initiated by the party aggrieved and not by a total stranger who has no direct personal stake in the outcome thereof.We are, therefore, satisfied that neither under the provisions of the Code nor under any other statute is a third party stranger permitted to question the correctness of the conviction and sentence imposed by the Court after a regular trial. On first

principles we find it difficult to accept Mr. Sodhi's contention that such a public interest litigation commenced by a leader of a recognised political party who has a genuine interest in the future of the convicts should be entertained. In *S.P. Gupta Vs. President of India and Others*, Bhagwati, J. observed :

"But we must be careful to see that the member of the public, who approaches the Court in cases of this kind, is acting bona fide and not for personal gain or private profit or political motivation or other oblique consideration. The Court must not allow its process to be abused by politicians and others."

These observations were made while discussing the question of "locus standi" in public-interest litigation. These words of caution were uttered while expanding the scope of the "locus standi" rule. These words should deter us from entertaining this petition. This accords with the view expressed by this Court in *M. Krishna Swami v. Union of India* (1992) 5 J. T. (S. C.) 92."

In the case referred to above, the order of conviction and sentence was questioned by a third party stranger, whose locus standi was negated. In the case at hand, a regular trial has been completed and an order of acquittal has been passed, which has not been challenged by the State even if the criminal proceeding was initiated on the basis of a police report.

For the aforesaid reason, I am inclined to hold that the petitioner has no locus standi to maintain this revision application. I may even go to the extent of saying that in the absence of any appeal by the State, even if an application is filed by an aggrieved party, the Court should be loath to set aside the order of acquittal unless there is gross irregularity in the trial which may ultimately be ended in failure of justice.

In the case of *Pranab Kumar Mitra Vs. The State of West Bengal and Another*, , it was held that "the revisional powers of the High Court vested in it by Section 439 of the Code (old), read with Section 435, do not create any right in the litigant, but only conserve the power of the High Court to see that justice is done in accordance with the recognized rules of criminal jurisprudence, and that subordinate criminal courts do not exceed their jurisdiction; or abuse their powers vested in them by the Code". From this, it follows that it is a discretionary power which has to be exercised depending on the facts and circumstances of each case and in aid of justice. It is well settled by several judicial pronouncements that order of lower court ought not to be set aside lightly unless it has entailed miscarriage of justice. In the case at hand, though the learned counsel for the petitioner in course of his argument has drawn my attention to certain portions of the judgment of the trial court alleging that the witnesses had not been properly cross-examined, in my considered opinion, even if there are contradictions elicited from the evidence of the witnesses and even if the witnesses had not been examined properly, as claimed by the petitioner, the same cannot be a ground where this Court shall interfere and allow the revision and direct for retrial.

In the case of K. Chinnaswamy Reddy Vs. State of Andhra Pradesh, the Apex Court reiterated that the power of the High Court to set aside an order of acquittal at the instance of a private party is to be exercised only in exceptional cases of glaring defect in the procedure or manifest error on a point of law resulting in flagrant miscarriage of justice. As sub-section (4) of Section 439, Cr. P. C. (old) prohibits conversion of a finding of acquittal into one of conviction, it places a limitation on the power of the High Court to set aside an acquittal order which is to be exercised only in exceptional cases. These cases may be where-- (1) the trial court has no jurisdiction to try the case but has still acquitted the accused; or (ii) the trial court has wrongly shut out evidence which the prosecution wished to produce; or (iii) the appellate court has wrongly held the evidence admitted by the trial court to be inadmissible; or (iv) material evidence has been overlooked either by the trial or appellate court; or (v) the acquittal is based on a compounding of the offence invalid under the law. In these cases or cases of similar nature, retrial or rehearing of appeal may be ordered. Hence, in the face of the aforementioned prohibition, it makes all the more incumbent upon 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. Accordingly, High Court is not entitled to reappraise the evidence for itself as if it is acting as a court of appeal and order a retrial. Normally retrial should not be ordered unless there is some infirmity rendering the trial defective. (See Akalu Ahir and Others Vs. Ramdeo Ram, Subsequently, the Apex Court in Kishan Swaroop Vs. Govt. of NCT of Delhi, relying upon K. Chinnaswamy Reddys case (supra), observed as follows -

"3. From the impugned judgment we find that the High Court has referred to the provisions of Sections 378 and 210 of the Code of Criminal Procedure to conclude that it was the primary responsibility of the State to file appeal/revision and therefore no criminal revision in respect of an order which is appealable at the instance of the State could/should be entertained without the requisite permission of the Public Prosecutor. In drawing the above inference the High Court failed to notice that if the Code of Criminal Procedure did not empower a private party to file a revision petition against an order of acquittal passed in a case instituted on a police report a formal permission of the Public Prosecutor would not entitle him to do so. To put it differently, a Public Prosecutor cannot vest a private party with a right which it has not got under the Code.

4. In dealing with the revision powers of the High Court vis-a-vis the right of a private party to move in revision against an order of acquittal passed in a case instituted upon a police report, this Court observed in K. Chinnaswamy Reddy Vs. State of Andhra Pradesh, (on which judgment the High Court relied) as under (at p. 1791 of A.I.R.) :

"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."

13. The aforesaid decisions make it amply clear that even in the case of a private aggrieved party, in a revision the Court may interfere with an order of acquittal only when the conditions indicated above are fulfilled. The facts and circumstances of the present case do not justify it to be an exceptional case so indicated in Chinnaswamy's case (supra) to interfere with the order of acquittal by exercising the revisional power.

14. Considering all these aspects and looking into the judicial pronouncements on the point, I am of the view that this is not a fit case where this Court should interfere with the impugned order of acquittal. Accordingly, the criminal revision fails and is dismissed.

15. Crl. revision dismissed.