
(2014) 05 AHC CK 0319

In the Allahabad High Court

Case No : Criminal Misc. Writ Petition No. 5386 of 2014

Ramdhan Dang

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 08-05-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 307, 386, 389, 390, 391
Penal Code, 1860 (IPC) — Section 420, 467, 468, 471

Citation : (2015) 1 ACR 476 : (2014) 7 ADJ 21 : (2014) 86 ALLCC 775

Hon'ble Judges : Karuna Nand Bajpayee, J

Bench : Single Bench

Advocate : Nisheeth Yadav, Advocate for the Appellant

Final Decision : Allowed

Judgement

Karuna Nand Bajpayee, J.—This petition has been filed seeking of quashing the order dated 19.1.2013 passed by Additional District and Session Judge-III, Gautam Budh Nagar whereby the application moved on behalf of petitioner No. 2 seeking to bring on record an order passed by the Apex Court, was rejected. It has also been prayed by the petitioner to direct the Court of revision to reconsider the petitioner's application in respect of bringing on record the judgment and order dated 12.12.2008 passed by Hon''ble Supreme Court. Heard learned counsel for the revisionists and learned AGA for the State. Record has been perused.

It appears that on a complaint having been filed by opp. party No. 2 Rakesh Bala Aneja the Court of Additional Chief Judicial Magistrate, Nagar thought it fit to summon the petitioners to face the trial u/s 420, 467, 468 and 471 IPC. Aggrieved by the aforesaid summoning order the petitioners No. 1 and 2 preferred a revision in the Court of Sessions, the revision seems to have been admitted by the Court of In-charge Sessions Judge and the trial proceeding also were put in abeyance. It further transpires that during the course of hearing of the revision, an application dated 5.9.2012 on behalf of petitioner No. 2 Kailash

Rani Dang was moved before the revisional Court alleging the suppression of some very relevant facts. The application which is Annexure-6 to the petition reveals that it was submitted before the Court that there was already in existence a litigation in between the parties and the Hon''ble Apex Court has also adjudicated upon the same vide its order dated 12.12.2008. It was this order passed by the Apex Court which was said to have been suppressed by the opp. party and without disclosing this fact the summoning order was said to have been procured from the magisterial Court. It was in this back ground that the certified copy of the Apex Court judgment was sought to be taken on record because of its relevant nexus with the proceedings in question. The aforesaid application was objected to by the opp. party on the ground that the petitioners/revisionist had no legal right to produce such a document and the same was inspired with the object of delaying the proceedings of the case. After hearing his parties the Court of revision passed an order which is almost cryptic in nature and the only thing observed by the revisional Court is that there does not seem to be any law or legal basis which may legitimize or justify the aforesaid Supreme Court''s judgment to be brought on record. With that observation the application of the petitioners/revisionists was rejected.

2. The contention of the petitioner''s counsel is that the impugned order suffers from a patent error of law and also reflects a breach of judicial propriety in as much as the revisional Court has refused to take on record a judgment of the Hon''ble Supreme Court which had a direct relevance to the issues involved in the matter and was touching upon the same subject-matter and was also in between the common parties litigating in the trial Court. The attention of the Court has also been drawn to section 399 of Cr.P.C. and it has been emphasized that a bare reading of the aforesaid provision shall demonstrate that the powers to take additional evidence are sufficiently there with the Court of revision and are the same which the Court of appeal has. It has been argued that as the above power to take additional evidence by appellate Court is almost identical with that of revisional Court therefore, the observations of the Court that there is no law or legal basis which may legitimise the taking of any document on record flies in the face of law and is liable to be quashed. Further submission is that if the Hon''ble Apex Court has also had the occasion to adjudicate upon the same subject-matter or an identical matter or even if there has been an adjudication on some relevant aspect or relevant issues involved in the proceedings in question, the significance or relevance of the Apex Courts'' judgment was demonstratively manifest and cannot be over emphasized. It has been submitted that the impugned order also reflects an act of impropriety as the Court below should not have refused to take on record the judgment of the Supreme Court.

3. The Court has perused the entire record alongwith the impugned order in the light of the submission made at the bar. Ordinarily the Court could have issued notice to the opp. party No. 2 and passed any order after giving him opportunity of hearing but adopting such a course would necessarily involve the staying of lower Court''s proceedings which are going on against the petitioners. In the

wake of heavy pendency in the Court, where the dockets of the pending cases are already bursting on their seams, if this Court at the time of issuing notice puts the operation of impugned order in abeyance, there is hardly any likelihood for this petition to get decided on merit in a measurable distance of time or in near future. Such a course shall be more detrimental to the cause of the opposite party and shall have very adversely affected the larger interest of the complainant. As the impugned order also reflects gross illegality which is palpable on the face of record, this Court deems it fit to decide this petition on the basis of the record with assistance of learned AGA. who is representing the State, respondent No. 1 and also after perusing the entire law on the point.

4. At the very outset it shall be relevant to reproduce Section 399 of Cr.P.C. which reads as thus:

Section 399 in The Code of Criminal Procedure, 1973

399. Sessions Judge" s powers of revision.--(1) In the case of any proceeding the record of which has been called for by himself, the Sessions judge may exercise all or any of the powers which may be exercised by the High Court under sub-section (1) of section 401.

(2) Where any proceeding by way of revision is commenced before a Sessions Judge under sub-section (1), the provisions of sub-sections (2), (3), (4) and (5) of section 401 shall, so far as may be, apply to such proceeding and references in the said sub-sections to the High Court shall be construed as references to the Sessions Judge.

(3) Where any application for revision is made by or on behalf of an person before the Sessions Judge, the decision of the Sessions Judge thereon in relation to such person shall be final and no further proceeding by Way of revision at the instance of such person shall be entertained by the High Court or any other Court.

Now it shall also be relevant to quote section 401 of Cr.P.C. which reads as thus:

401. High Court's Powers of revisions : (1) In the case of any proceeding the record of which has been called for by itself or Which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 386, 389, 390 and 391 or on a Court of Session by section 307 and, when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in the manner provided by section 392.

(2).....

(3).....

(4).....

(5).....

Now when we reflect upon Section 391 of Cr.P.C. it reads as follows:

391. Appellate Court may take further evidence or direct it to be taken : (1) In dealing with any appeal, the Appellate Court, if it thinks additional evidence to be necessary, shall record its reasons and may either take such evidence itself, or direct it to be taken by a Magistrate, or, when the Appellate Court is a High Court, by a Court of Session or a Magistrate.

(2) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

(3) The accused or his pleader shall have the right to be present when the additional evidence is taken.

(4) The taking of evidence u/s 391 of the Code shall be subject to the provisions of Chapter XXIII as if it were an inquiry.

Even if we cast a glance on the aforesaid provisions it shall become very clear that revisional Court has also ample power to take additional evidence on record. This power has been vested in the Court of appeal through Section 391 of the Code. The same power may be exercised by the High Court when it presides on its revisional jurisdiction with the strength of sub-section (1) of Section 401 of Cr.P.C. and all the powers exercisable by the High Court under this Sub-section (1) to 401 Cr.P.C. have been made akin to the power of the Sessions Judge when the same sits in its revisional jurisdiction.

5. Enactment of Sub-section (1) to Section 399 of the Code brings the Sessions Judge on the same footing with that of the High Court in many aspects including its power to take additional evidence. It also does not need any elaboration that evidence shall include documentary evidence also and not merely oral evidence. The aim and object behind the enactment of the aforesaid provisions is not very far to seek. There may be many eventualities and situations where in the course of an appeal or that of a revision, the Court may feel handicapped in arriving at a just conclusion for want of some crucial piece of evidence which may still be procured or furnished either orally or through a document. In such a situation if the Courts were to confine its adjudication strictly on the basis of the available record before it alone, it was likely to result in an imbalanced lop-sided decision or in the mutilation of the justice itself in the ultimate analysis. The procedure is to prosper the cause of justice and not to impede it. That is why the legislation in its wisdom has armed the Courts with adequate powers to take on such exigencies and prove equal to such needs and calls. When and under what circumstances the Court of revision shall deem it proper to summon certain documents or allow certain documents to be brought on record shall depend upon the facts and circumstance of each case which shall vary from case to case.

6. So far as the correctness of the impugned order is concerned, it is very obvious that the Court below seems to have rejected the application moved on behalf of the revisionist under the misconceived notion that the Court of revision has no legal power to bring any documents on record during the course of

hearing and that a prayer to the same effect lacked legal basis. On the prima facie basis, this Court also finds that if there was an adjudication done by Hon"ble Supreme Court with regard to the same subject-matter between the same parties or with regard to some of the parties which are common to the litigation in question with regard to similar or identical issues even then such an adjudication shall assume great significance. Definitely a judgment by Hon"ble the Supreme Court can never be said to be irrelevant in the aforesaid situation.

7. The Court abstains to observe that the refusal done by the Court of revision bordered on judicial impropriety because this Court has also abstained to make any observation as to the fact whether on the merits of the case, the aforesaid document was relevant or not and if so then how much. It is left to the Court below to look into this aspect of the matter. It is clarified that this Court has felt persuaded to quash the order only on the ground that the Court of revision had rejected the petitioners' application under the misconception of law that there did not exist any power with the revisional Court to bring on record or summon any documents during the course of its hearing and it was completely oblivious of its power to take additional evidence if need be.

8. In the light of the forgoing discussions of law and facts and also in view of the aforesaid circumstances the order impugned is hereby quashed and the Court of revision is directed to rehear the application moved on behalf of the petitioners, seeking to bring on record the judgment of the Apex Court in the light of the observations made herein above. The Court below shall be at liberty to look into the whole matter on merits afresh and is supposed to decide and adjudicate upon the need to allow the application on the basis of the facts and contents of the judgment and its relevance with the matter in question.