
(1989) 04 OHC CK 0016

In the Orissa High Court

Case No : Criminal Revision No. 218 of 1984

Satyananda Dwibedy and Others

APPELLANT

Vs

Bijaya Kumar Dash and Others

RESPONDENT

Date of Decision : 03-04-1989

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 204(4), 385, 385(1), 394, 417
Penal Code, 1860 (IPC) — Section 143, 379, 426

Citation : (1989) 2 OLR 11

Hon'ble Judges : V. Gopalaswamy, J

Bench : Single Bench

Advocate : J.K. Rath, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

V. Gopalaswamy, J.—The relevant facts giving rise to this revision may be briefly stated as follows:

The Sub-Divisional Judicial Magistrate, Hindol, passed his judgment on 7-6-1983 in ICC No. 27 of 1982 convicting the accused persons (the present Petitioners) under Sections 143 and 426, IPC, and sentencing each of them to pay a fine of Rs. 101/- on each count, in default to undergo simple imprisonment for a period of one month. Being aggrieved by the order of conviction and sentence passed by the learned S.D.J.M. the Petitioners preferred Criminal Appeal No. 94 of 1983 before the learned Sessions Judge, Dhenkanal. The appeal was admitted by the learned Sessions Judge and the execution of the sentences imposed on the Petitioners was stayed. The complainant Apariti Das was made the Respondent in that appeal. On 7-5-1984 the learned Sessions Judge rejected the Criminal Appeal on the ground that the Appellant had not filed the requisites for service of notice on the Respondent despite several adjournments given for the purpose. Being aggrieved by the said order of the Sessions Judge rejecting their appeal, the Petitioners have preferred this revision.

2. The legal representatives of the complaint Aparti Das are the opposite parties in this revision. Although notices were duly served on the opposite parties, none appeared to contest the revision.

3. Because of the impugned order passed by the learned Sessions Judge rejecting the appeal preferred by the Petitioners, the order of conviction and sentence passed against them under Sections 143 and 426, I.P.C. by the trial Court stood confirmed. So the only point that arises for consideration in this revision is whether on the ground of non-filing of the requisites by the Appellants, the-impugned order passed rejecting their appeal is valid in law.

4. Section 385(1)(iii), Code of Criminal Procedure provides that if the appellate Court does not dismiss the appeal summarily it shall cause notice of the time and place at which such appeal will be heard to be given to the complaint, if the appeal is from a judgment of conviction in a case instituted upon complaint. So in the present case Clause (iii) of Sub-Section (1) of Section 385, Code of Criminal Procedure makes it obligatory for the appellate Court to give notice of the date and time of the hearing of the appeal to the compliant.

But then there is no provision in the Code of Criminal Procedure or in the General Rules and Circular Orders (Criminal) which would suggest that it is legally obligatory on the Dart of the Appellants to file the requisites for the issuance of such a notice.

5. Seshadeb Parida v. Udayanath Sahoo and Anr. 1988 (II) OLR 228: 66 (1988) CLT 591 relied on by Mr. Rath the learned Counsel for the Petitioner, is a case where the Magistrate dismissed the complaint for default u/s 204(4), Code of Criminal Procedure on the ground that no requisites were filed. In that case, the Magistrate had earlier taken cognisance u/s 379, I.P.C. a cognisable offence. While allowing the Criminal Revision this Court held that since the complainant was not required to pay any fee for issuance of summons to the accused in the case of a cognisable offence, the Magistrate had no jurisdiction to dismiss the complaint in exercise of powers u/s 204(4), Code of Criminal Procedure.

6. Khedu Mohton and Others Vs. State of Bihar, , is another decision cited by the learned Counsel for the Petitioners. In that decision while considering the scope of Section 431 of the old Code of Criminal Procedure which corresponds to Section 394 of the new Code), dealing with the aspect of abatement of appeals, the Supreme Court observed thus:

From this Section It is clear that an appeal u/s 417 can only abate on the death of the accused and not otherwise. Once an appeal against an acquittal is entertained by the High Court, it becomes the duty of the High Court to decide the same irrespective of the fact the Appellant either does not choose to prosecute it or is unable to prosecution it for one reason or the other....

From the above quoted observations it is seen that even in the case of an appeal against acquittal, once it is admitted, it becomes the duty of the High Court to

decide the same on merits, even if the Appellant does not choose to prosecute it or is unable to prosecute it for one reason or the other. So it logically follows that once an appeal against conviction is entertained, it becomes the duty of the appellate Court to decide the same on merits.

7. In the present case, as earlier stated, there was no legal obligation on the part of the Appellants to file the requisites for service of notice on the complainant. By the date of the impugned order the appeal was already admitted. Under these circumstances, on the ground that requisites were not tiled by the Appellants, the learned Sessions Judge acted illegally in passing the impugned order rejecting the appeal, which has the effect of depriving the Appellants of their right of being heard on merits in spite of the fact that the appeal was already admitted.

8. In the result the impugned order dated 7-5-1984 passed by the learned Sessions judge rejecting the Appeal is hereby set aside. Criminal Appeal No. 94 of 1983 is remanded to the Court of the learned Sessions judge for disposal according to law after hearing the appeal on merits. Notice be issued to the present opposite parties (L.Rs. of complainant Apari Das) by the Court of the Sessions judge to enable them to participate in the hearing of the appeal. The appeal may be heard as expeditiously as possible.

Accordingly the revision is allowed.

Revision allowed.