
(2004) 07 JH CK 0046

In the Jharkhand High Court

Case No : Criminal Revision No. 97 of 2004

Shyamdeo Mahara

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 09-07-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 191

Citation : (2004) 3 JCR 419

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : H.K. Mehta, for the Appellant; APP., Mahesh Tewari and Rajeeva Sharma, Amicus Curiae, for the Respondent

Final Decision : Dismissed

Judgement

S.J. Mukhopadhaya, J.—This criminal revision application has been preferred by petitioner against the order dated 12th January, 2004 passed by learned 1st Additional Sessions Judge, Deoghar in Cr. Appeal No. 72 of 1997, whereby and where under the petition filed by petitioner u/s 391, Cr PC for taking additional evidence has been rejected on the ground that there are sufficient materials and exhibits on record to decide the appeal on merit.

2. The petitioner is the informant at whose instance FIR was lodged on 3rd November, 1991 and a case under Sections 144 and 379, IPC was registered against the accused-O.P. Nos. 2 to 16, Sartha P.S. Case No. 169 of 1991, corresponding to G.R. Case No. 1501 of 1991/T.R. Case No. 531 of 1997 was instituted. In course of trial, prosecution examined altogether 8 prosecution witnesses. After hearing, learned trial Court by its judgment dated 14th August, 1997 having found all the accused guilty for the offence under Sections 144 and 379, IPC convicted them. They were sentenced for a period of six months (R.I.) for the charges u/s 144, IPC, and sentence of one year (R.I.) for the charges u/s 379, IPC which are to run concurrently.

Against the judgment of conviction and sentence dated 14th August, 1997 passed by learned S.D.J.M., Madhupur, all the accused persons filed Cr. Appeal No. 72 of 1997, which is pending in the Court of learned District & Sessions Judge, Deoghar.

3. According to petitioner (informant), during the pendency of the appeal, he found some of the relevant documents, which are necessary to support the case of prosecution but he could not produce during trial due to inadvertence. He (informant) filed two petitions u/s 391, Cr PC on 15th February, 2003 and 7th April, 2003 in Cr. Appeal No. 72 of 1997 annexing certified copies of order dated 10th October, 1983 passed in Title (P) Suit No. 12 of 1979/73 of 1981, a compromise petition dated 6th September, 1983 along with a Batwara list dated 25th July, 1984 and certified copies of orders dated 13th December, 1983 and 16th April, 1985 passed in Title (P) Suit No. 12 of 1997/73 of 1981. Prayer was made to take those additional evidence for making them exhibits as they were over looked during trial due to inadvertence.

The appellate Court vide impugned order dated 12th January, 1984 passed in Cr. Appeal No. 72 of 1997, rejected the prayer by a reasoned order and held that the materials and evidence already on record are sufficient to decide the appeal on merit.

In this connection, one of the questions raised was whether the informant can file a petition u/s 391, Cr PC for adducing additional evidence or not, have no right to adduce any evidence during the trial. Before the trial Court either the prosecution or the defence leads evidence in support of their case.

To decide the issue one must notice the relevant provision to take further evidence as stipulated u/s 391, Cr PC and reads as follows :

"391. Appellate Court may take further evidence or direct it to be taken.--(1) In dealing with any appeal under this Chapter, 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 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 under this section shall be subject to the provisions of Chapter XXIII, as if it were an inquiry."

4. From the plain reading of the aforesaid provision of law, it will be evident that the legislatures vested the power with the appellate Court to decide whether additional evidence is necessary or not for proper adjudication of the case. There

is no restriction in the wording of the section either as to the nature of the evidence or that it is to be taken for the prosecution only or for the defence. The wording of the Section 391 does not restrict as to who will bring to the notice of the appellate Court that further evidence is necessary to be taken for proper adjudication of the case. It empowers the appellate Court to decide whether additional evidence is necessary to be taken or not for which the appellate Court is required to record its reasons. It may either take such evidence itself, or direct it to be taken by a Magistrate, when the appellate Court is a High Court then by a Court of Session or a Magistrate.

In view of the aforesaid provision of law, it is open for an informant to bring to the notice of the appellate Court that additional evidence required to be taken. The appellate Court is only to ensure "that this additional evidence cannot and ought not to be received in such a way so as to cause any prejudice to the accused" Rambhau and Another Vs. State of Maharashtra, .

5. In the present case, the petitioner (informant) failed to show that any irregularity was committed by the trial Court and that the additional evidence was required to rectify such irregularity which is required in the ends of justice. It failed to suggest that if additional evidence is not taken then justice shall suffer.

There being materials and evidence on record sufficient to decide the appeal on merit and for that if the appellate Court rejected the prayer of petitioner for taking additional evidence, it cannot be held to be illegal.

6. There being no merit; this criminal revision application is dismissed.