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(2001) 02 AP CK 0006

In the Andhra Pradesh High Court

Case No : Criminal Revision Case No''s. 1126, 1318 and 1319 of 2000

Smt. V. Ranganayaki and Another — APPELLANT

Vs

V.J. Srinath and State of A.P. — RESPONDENT

Date of Decision : 28-02-2001

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 225, 397, 398, 399, 400

Citation : (2001) 1 ALD(Cri) 473 : (2001) 2 ALT 428 : (2002) CriLJ 154 : (2001) 2 DMC 569 : (2001) 3 RCR(Criminal) 114

Hon'ble Judges : T. Ch. Surya Rao, J

Bench : Single Bench

Advocate : Kowturu Vinaya Kumar, for the Appellant; N. Ravi Prasad and Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

T. Ch. Surya Rao, J.—Since common question of law has arisen in these three Revision Cases, they can be disposed of together. A short, but an important question of maintainability of a revision at the instance of a private party against an Order passed by the trial Court in a police case pending trial of the main case has arisen at the threshold of the filing of these cases.

2.In Criminal Revision Case No.1126 of 2000, when on a memo filed by the prosecution praying the Court to frame additional charges under Sections 4 and 6 of the Dowry Prohibition Act and that petition was dismissed under the impugned Order passed in Crl.M.P.No.3211 of 2000 in C.C.No.861 of 1995 dated 22.09.2000 by the learned XXII Metropolitan Magistrate-cum-Mahila Court, Hyderabad, the de facto complainant has sought to assail the same.

3.In Criminal Revision Case No.1318 of 2000 when the prosecution filed a petition u/s 91 of the Criminal Procedure Code (''the Code'' for brevity) to summon the records pertaining to C.C.No.41 of 1999 and when that application was dismissed under the impugned Order dated 27.10.2000 passed by the

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learned II Metropolitan Magistrate, Hyderabad, in Crl.M.P.No.2520 of 2000 in C.C.No.234 of 1999, the de facto complainant sought to assail the same.

4.In Criminal Revision Case No.1319 of 2000 when the prosecution filed a petition u/s 311 of the Code seeking to recall L.W.9 the learned II Metropolitan Magistrate, Hyderabad, dismissed that application under the impugned Order dated 27.10.2000 passed in Crl.M.P.No.2519 of 2000 in C.C.No.234 of 2000, the de facto complainant seeks to assail the same.

5.It may be mentioned at the outset that in all these cases, the State has not approached this Court in revision, notwithstanding the Orders dismissing the applications filed on behalf of the State.

6.Sri K.Vinaya Kumar, learned counsel appearing for the petitioners in all these three cases, contends that when the State is not coming up in revision before this Court, it is open to the de facto complainant to approach this Court since he/ she is an aggrieved party. To drive home the point, the learned counsel seeks to place reliance upon a Judgement of this Court in M.BALAKRISHNA REDDY v. PRINCIPAL SECRETARY TO GOVERNMENT, HOME DEPARTMENT1. That was a case where a criminal prosecution was launched against the husband on a report given by the wife for the offence punishable u/s 498A of the Indian Penal Code (''the IPC'' for brevity). When the Public Prosecutor filed an application pursuant to G.O.Rt.No.2087 dated 07.08.1997 issued by the Government for withdrawing the case u/s 321 of the Code, and when the trial Court permitted the Public Prosecutor to withdraw the same and consequently it acquitted the accused therein, the de facto complainant-wife of the first accused sought to assail the same. Under such circumstances, this Court held that the third party could certainly agitate the matter before an appropriate Court. The situation obtaining in these three cases is entirely different from the facts in the Judgement referred to above, inasmuch as the main proceedings are still pending trial before the respective Courts and have not culminated as yet in acquittal, so that it can fairly be said that the de facto complainant has been aggrieved by such an Order of acquittal.

7.In CHINNASWAMY v. STATE OF ANDHRA PRADESH2 in para 7 of its Judgement, the Apex Court held as follows:

"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."

8. In AYODHYA v. RAM SUMER SINGH3 the Apex Court while upholding the Order of the High Court in reversing the Order of acquittal by exercising the revisional powers placing reliance upon CHINNASWAMY''s case, sought to explain in the following manner:

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"We agree with the view expressed by the High Court and we only wish to say that the criminal justice system does not admit of ''pigeon-holing''. Life and law do not fall neatly into slots. When a Court starts laying down rules enumerated (1), (2), (3), (4) or (a), (b), (c), (d), it is arranging for itself traps and pitfalls. Categories, classifications, and compartments which statute does not mention, all tend to make law ''less flexible, less sensible and less just''."

9. In both the above cases the private parties have filed the revision petitions against the orders of acquittals, when the State has failed to prefer any appeals. Under the circumstances the Apex Court held while interpreting the Sections 397 and 401 of the Code that so as to prevent miscarriage of justice the revision petitions filed by the private parties can be maintained. But the question is whether the private party can be permitted to file such revision petitions against the Orders passed by the trial Court in an interlocutory application filed by the prosecutor and ended in dismissal?

10.In GOPAL CHAND SAHU v. CHOUDHURY BEHERA4 the Orissa High Court held as under:

"The position of law is now far too well settled that a private informant has a right to invoke the revisional jurisdiction of this Court in appropriate cases where an order of the Court has occasioned grave failure of justice. The principles of invoking the revisional jurisdiction by a private prosecutor outlined in K. Chinnaswamy Reddy Vs. State of Andhra Pradesh, reaffirmed in Ayodhya Dube and Others Vs. Ram Sumer Singh, is not of exclusive application only to acquittals in G.R. cases alone, but can be legitimately invoked also at different stages of the trial if grounds for interference in the revisional jurisdiction are otherwise satisfied.

[Emphasis is mine]

11. The Judgement of the Orissa High Court is direct on the point.

12. However earlier in THAKUR RAM v. STATE OF BIBHAR5, the Apex Court held as follows:

"In a case which has proceeded on a police report a private party has really no locus standi. No doubt, the terms of Section 435 under which the jurisdiction of the learned Sessions Judge was invoked are very wide and he could even have taken up the matter suo motu. It would, however, not be irrelevant to bear in mind the fact that the Court''s jurisdiction was invoked by a private party. The criminal law is not to be used as an instrument of wreaking private vengeance by an aggrieved party against the person who according to that party, had caused injury to it. Barring a few exceptions, in criminal matters the party who is treated as the aggrieved party is the State, which is the custodian of the social interests of the community at large and so it is for the State to take all these steps necessary for bringing the person who has acted against the social interest of the community to book."

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13. That was a case where it was alleged that the accused persons armed with deadly weapons went to the shops of the informants, demanded from them large sums of money and threatened them with death if they fail to pay the amounts demanded by them. Upon informations given by the informants, the offence u/s 392 of the IPC was registered against the accused in four cases. At the end of the trial, the prosecution made an application to the Court for framing charge u/s 386 or 387 of the IPC and for committing the case to a Court of Sessions. That application having been rejected by the Court, a revision application was preferred by the informants but not by the prosecution in one of the three cases. The learned Sessions Judge considering the application directed the Magistrate to commit the accused persons for trial and accordingly allowed that petition. The accused carried the matter in revision to the High Court. The High Court held that the Order of the Magistrate refusing to frame a charge u/s 386 or 387 of the IPC, which amounted to an Order of implied discharge of the accused, was improper in all the four cases. A three Judge Bench of the Supreme Court quashed the Orders of the Sessions Judge as well as the High Court and directed that the trials be proceeded before the Magistrate according to law. It is thus obvious that on an interlocutory application filed by the prosecution requesting the Court to frame additional charges, the Magistrate refused to do so and when the Sessions Court reversed that Order which was confirmed by the High Court, the Supreme Court ultimately set aside the same. True, the time at which the interlocutory application came to be filed is germane for consideration inasmuch as when the defence evidence was adduced after the closure of the prosecution evidence and the arguments even were heard on either side and when the matter was posted for Judgement, such application came to be filed. If that application were to be allowed, the case against the accused should be committed to the Court of Sessions and they have to face a fresh trial before the Court of Sessions although they have already undergone the ordeal of trial before the Court of Magistrate. But, that is not the sole criterion. The Apex Court limited the right of a private party to move the higher Courts to a few exceptions.

14.The Orissa High Court has not referred the Judgment of the Apex Court in Thakur Ram''s case while placing reliance upon the other two Judgements of the Apex Court. In Thakur Ram''s case the private party sought to file the revision against an Order passed in an interlocutory application whereas in the other two cases of the Apex Court it is against the Orders of acquittal the party wanted to proceed against.

15.It is expedient here to consider Sections 397 - 401 of the Code, which deal with the revisional jurisdiction of the Sessions Court as well as the High Court. u/s 397, a concurrent jurisdiction has been conferred upon the High Court as well as the Sessions Court to call for and examine the record of any proceeding before any inferior criminal Court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or Order passed and as to the regularity of any proceedings before such inferior Court. u/s 398, the High Court and the Sessions Court, as the case may be, upon examining any such

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record u/s 397 may direct the Chief Judicial Magistrate by himself or by any of the Magistrates subordinate to him to make further enquiry into any complaint which has been dismissed u/s 203 or under sub-section (4) of Section 204 or into the case of any person who has been discharged. u/s 399, a Sessions Judge is empowered to exercise all or any of the powers, which may be exercised by the High Court under sub-section (1) of Section 401. u/s 400, an Additional Sessions Judge is empowered to exercise all the powers of a Sessions Judge when the case is transferred to him by the Sessions Judge. Section 401 is the important Section, which deals with the High Court powers of revision. Wide powers have been conferred upon the High Court under this Section and the High Court can act on being moved or upon its own motion or when the matter otherwise comes to its knowledge. In exercising the powers of revisional jurisdiction, the High Court may exercise any of the powers conferred upon a Court of Appeal by Sections 386, 389, 390 and 391 of the Code. Certain limitations have been engrafted under sub-sections (2) to (4) of Section 401 of the Code. Under sub-section (2), no Order u/s 401 can be passed to the prejudice of the accused or other person unless an opportunity has been afforded to that person. Under sub-section (3), the Code engrafted a bar in the matter of converting a finding of acquittal into one of conviction. Under sub-section (4), when the impugned Order is an appealable Order and when no appeal is brought, a bar has been engrafted to entertain a proceeding by way of a revision at the instance of the party who could have appealed.

16.From a perusal of the above provisions, it is obvious that wide powers have been conferred upon the High Court in exercising its revisional jurisdiction and certain restrictions have also been engrafted at the same time. However, there has been no express bar for filing a revision by an aggrieved private party. Undoubtedly, in criminal cases it is the State, which is in control of the proceedings, particularly where the prosecution is launched at the instance of the State. In fact, u/s 225 of the Code, a private counsel engaged by the de facto complainant cannot conduct the proceedings in a criminal case except assisting the Public Prosecutor or to act under his instructions or to file written submissions, if any, before the Court. Therefore, the proceedings shall be prosecuted only by the Public Prosecutor in other words. Thus, in criminal matters the party who is treated as the aggrieved party is the State, which is the custodian of the social interest of the community at large and, therefore, it is for the State to take all the steps necessary for bringing the person who has acted against the social interest of the community to book. The Public Prosecutor should act fairly not only towards the Court or to the investigating agencies but also towards the accused. He is an Officer of the Court and should assist the Court in arriving at a just conclusion. On the contrary, if a private counsel were allowed a free hand to conduct prosecution, he would focus on bringing the case to conviction even if it is not a fit case to be so convicted. This distinction has been succinctly pointed out by the Apex Court in SHIV KUMAR v. HUKAM CHAND6.

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17.If for any reason, if the State has not chosen to assail an Order passed in an interlocutory application pending adjudication of the main case, it cannot be said that the de facto complainant, who set the criminal law into motion, is not aggrieved by the same. In fact he is the victim. Victim has no role to play and has been relegated to a back seat in our Criminal Justice System. When the Code has not expressly barred the said private persons, who are aggrieved by an Order of the Court either terminating the main proceedings or passing Orders pending adjudication of the main proceedings, it is not as though such aggrieved persons are remediless. That is where by an innovative approach the Courts interpreted the provisions of the Code in favour of the victim. However, a note of caution has also been struck by holding that the Courts should guard themselves against the possibility of wreaking vengeance by the private parties against the accused on account of their personal vendetta. To strike a balance in between, what the Court should view is whether there has been any glaring defect in the procedure or manifest error on a point of law or the Order impugned has resulted in any miscarriage of justice and whether the facts and circumstances warrant the interference by the High Court in the interest of justice without frustrating the object that in criminal matters the State is the custodian and barring a few exceptions private parties cannot be permitted to wreak their personal vengeance.

18. What are the cases, albeit limited, in which such interference is expected and what are the cases where such interference is not expected, should always be left to the discretion of the Court to be exercised with reference to the facts of a particular case and it is not expected of to circumscribe such discretion by laying down any parameters or indicia which tantamount to restricting the area of discretion or confining it to those cases alone. No straightjacket formula can therefore be evolved specifying the areas where a private party can approach the higher forum in the hierarchy in revision.

19. Even though the criminal justice system does not admit of any pigeon holing it is legitimate, nay expedient to consider the broad areas where a private party can be treated as an aggrieved party so as to allow him to move the higher Courts in revision. One area, which can be quoted without any hesitation, is where the main proceeding itself culminates either in acquittal or discharge of the accused and when an appeal is provided for against such Order but the State refrained from filing an appeal. The other area, which can under the circumstances be quoted is although the impugned order is passed pending trial of the case, the inaction on the part of the prosecution in carrying the matter further before the higher forum which would result in grave miscarriage of justice. Similarly in view of the bar engrafted under sub-section (2) of Section 397 of the Code circumscribing the revisional power of the Courts against the interlocutory Orders, a clue may be taken from it so as to legitimately conclude that the private party is equally barred to carry the matter in revision. Turning to the present cases, the first one is squarely covered by Thakur Ram''s case. The other two are interlocutory orders in nature. In the ordinary course even the

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State could not have maintained revisions against the said Orders. Therefore, the private party cannot be permitted to carry the matter in revision.

20.For the foregoing reasons these Criminal Revision Cases are not maintainable and are, therefore, dismissed.

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