
(1976) 04 P&H CK 0009
In the Punjab And Haryana At Chandigarh
Case No : Criminal Revision No. 161-R of 1973

State	Vs	APPELLANT
Achhru Ram		RESPONDENT

Date of Decision : 27-04-1976

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438

Citation : (1976) 04 P&H CK 0009

Hon'ble Judges : D.S. Lamba, J

Bench : Single Bench

Advocate : T.N. Bhalla, for the Appellant; P.S. Mann and H.S. Nagra, for the Respondent

Final Decision : Allowed

Judgement

D.S. Lamba, J.—Acting u/s 438, Criminal Procedure Code, 1898, briefly the old Code, the learned Additional Sessions Judge, Sangrur, has reported this case with the recommendation that for the reasons set out therein the order dated July 28, 197(sic), passed by the learned Judicial Magistrate 1st Class, Malerkotla, during the trial of a case u/s 9 of the Indian Opium Act should be quashed and a direction issued to the Magistrate to record the statement of S. I. Surjit Singh before proceeding further. By the said order the Magistrate virtually closed the case of the prosecution and adjourned the case to August 5, 1972 for the examination of the accused and his defense, if any.

2. Facts narrated by the learned Additional Sessions Judge in his referring order are not in dispute. Those which stand out and need be mentioned are ; (1) That S. I. Surjit Singh was concerned with the investigation of the case and thus indubitably had his own importance from the point of view of the prosecution ; (2). That he was present in the Court on one of the dates when he could well be examined. On that occasion the Magistrate gave effect to the objection of the accused that the prosecution evidence should not be examined piecemeal; (3). That he was on leave up to August 18, 1972, a fact which was brought to the

notice of the Magistrate. These facts deserved notice and in particular the fact that grant of opportunity to the prosecution to examine S. I. Surjit Singh on the adjourned date would not have hindered the progress of the case. The order made was not based on sound discretion. I am satisfied in view of the aforementioned facts that the learned Magistrate acted in haste in placing a positive barrier in the way of the prosecution and that the order suffers from impropriety.

3. Mr. Mann, the Learned Counsel appearing for the accused though made efforts to convince me by advancing his two-fold legal submissions, yet I find no alternative except to vacate the order of the Magistrate. The Learned Counsel contends that the orders of the Magistrate in so far as it is interlocutory in nature is not revisable in view of the bar which Sub-section (2) of Section 397 of the Code of Criminal Procedure, 1973 (briefly called the New Code) creates.

This will be so provided the New Code applies to the case. The Learned Counsel maintains that the old Code cases to be applicable by reason of its repeal by Section 484 of the New Code. Elaborating, it is argued that a revision petition is not within the savings talked of by Sub-Section 2(i) of Section 484 of the New Code. Section 484 to the extent it is relevant, is reproduced below:-

484 (1) Code of Criminal Procedure, 1898 is hereby repealed.

(2) Notwithstanding such repeal:-

(fa) If, immediately before the date on which this Code comes into force, there is any appeal, application, trial inquiry or investigation pending, then, such appeal, application, trial inquiry or investigation shall be disposed of, continued, held or made, as the case may be, in accordance with the provisions of the Code of Criminal Procedure, 1898, as in force immediately before such commencement (hereinafter referred to as the Old Code), as if this Code had not come into force.

4. Indisputably a revision petition at the instance of the State against the order of the Magistrate was pending disposal at the time when on April 1, 1974, the New Code came into force. The argument that the revision petition is outside the saving provision is adequately negated by the use of the word "application" in Sub-section (3) of Section 397 and the words "application for revision" in Sub-section (3) of Section 399 of the New Code. Then apart from the setting in which the word "application" is placed in the saving provision there is ample evidence in the New Code itself to justify the view that the word "application" has to be understood in the sense of a petition invoking revisional jurisdiction under the old Code.

5. The view I am taking as to the meaning to be assigned to the word "application" receive full support from a recent judgment of the Supreme Court delivered on March 3, 1976 in the case P Philip v. The Director of Enforcement, New Delhi Cr. A No. 76 of 1976. Criminal Appeal No. 76 of 1976. Following observations made therein can be quoted with advantage:-

It will be seen that the word "application" in the saving provision contained in Clause (a) of Sub-section (2) of Section 484 immediately follows the term "appeal". It therefore takes same colour from the collection of words in which it occurs. It is synonymous with the term "petition" which means a written statement of material facts, requesting the court to grant the relief or remedy based on those facts. It is a peculiar mode of seeking redress recognized by law. Thus considered there can be no doubt that the word "application" as used in Clause (a) of Section 484 of the Code of 1973 will take in a revision application made u/s 485 of the "old Code" Such a revision application does not cease to be an application within the purview of the aforesaid Clause (a) merely because in the event of the application being allowed, the Sessions Judge was required to make a reference to the High Court u/s 438.

6. The argument advanced by the Learned Counsel consequently fails. The order of the Magistrate dated July 28, 1972, is hereby quashed. I direct that the Magistrate will record the statement of S.I. Surjit Singh before proceeding further to examine the accused and his defense and bring the trial to an end expeditiously.