

(2003) 03 CHH CK 0002

In the Chhattisgarh High Court

Case No : Misc. Cr. Case No. 2636 of 2001

State of Chhattisgarh

APPELLANT

Vs

Tirathram and Others

RESPONDENT

Date of Decision : 31-03-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 395, 395(1), 395(2), 397, 397(1)

Citation : (2003) 1 CGLJ 217 : (2003) 2 MPHT 65

Hon'ble Judges : L.C. Bhadoo, J

Bench : Division Bench

Advocate : Prashant Mishra, for Suresh Yadu and Anjana Trivedi, Sharmila Singhai, for the Appellant; Sandeep Yadav, for the Respondent

Judgement

L.C. Bhadoo, J.—This reference has been made by the Additional Chief Judicial Magistrate, Baloda Bazaar, Raipur, u/s 395 of the Code of Criminal Procedure which has been registered as Miscellaneous Criminal Case No. 2636/2001.

2. The relevant facts leading up to the reference are that one Criminal Case No. 388/94 (State v. Tirathram and 3 others) for the offences punishable under Sections 324, 323/34 of the Indian Penal Code was pending before the Court of Additional Chief Judicial Magistrate, Baloda Bazaar, Raipur, in which the charges were framed against the accused persons and matter was fixed for evidence of the prosecution on 4th July, 2000 but the matter was disposed of on 23rd July, 2000 on the basis of the compromise entered between the parties. An application u/s 320(4)(b) of Cr.PC was filed by one Jivan with the averments that he be permitted to compound the offence on behalf of his deceased brother/injured/complainant Firtu alongwith an application u/s 320(2) of Cr.PC for permission to compound the offence. On that application one Jivan and Nanki affixed their thumb impression and they were identified by Advocates Suresh Yadu and Miss Anjana Trivedi. On the basis of these applications compromise was allowed and the matter was disposed of on the basis of the said compromise entered between the parties. After coming to know about this fact Nanki s/o Ramhau Kevat r/o

Village Semaria who was in jail made a complaint to the District and Sessions Judge, Raipur that without giving him an opportunity of hearing and notice, the matter has been disposed of in Lok Adalat.

3. On receipt of this application learned District and Sessions Judge directed for a fact finding enquiry. On enquiry it was found that the complaint of Nanki is correct, therefore, learned District Judge directed the Magistrate to lodge a criminal case against the persons involved in the matter in obtaining an order of acquittal by producing an imposter posing himself to be "Nankiram". On this direction of the learned District & Sessions Judge--(i) a report was lodged in the Police Station, Baloda Bazaar, where a case was registered at Crime No. 242, dated 26-8-2001, (ii) the reference has been made to this Court through the District and Sessions Judge with a request to advise in the matter as the accused persons got the matter, i.e., Criminal Case No. 388/94 disposed of fraudulently and by misleading the Court and thereby obtaining the order of acquittal by producing an imposter posing himself to be Nankiram on 23rd July, 2000. Learned Sessions Judge on receipt of this reference has forwarded the same to this Court and requested that the said judgment dated 23rd July, 2000 be set aside.

4. I have heard Miss Sharmila Singhai, learned Deputy Govt. Advocate, Shri Sandeep Yadav, Counsel for the accused persons and Shri Prashant Mishra, Counsel for the Advocates who identified the persons who had entered into compromise.

5. As far as question of above facts are concerned, they are not disputed by the learned Advocates.

6. This reference has been made to this Court for advise as to whether the order of acquittal can be set aside. Section 395(1) of the Code of Criminal Procedure provides that "Where any Court is satisfied that a case pending before it involves a question as to the validity of any Act, Ordinance or Regulation or of any provision contained in an Act, Ordinance or Regulation, the determination of which is necessary for the disposal of the case, and is of opinion that such Act, Ordinance, Regulation or provision is invalid or inoperative, but has not been so declared by the High Court to which that Court is subordinate or by the Supreme Court, the Court shall state a case setting out its opinion and the reasons therefore, and refer the same for the decision of the High Court." Sub-section (2) of this section says that "A Court of Session or a Metropolitan Magistrate may, if it or he thinks fit in any case pending before it or him to which the provisions of Sub-section (1) do not apply, refer for the decision of the High Court any question of law arising in the hearing of such case".

7. Looking to the facts and circumstances of the present case this reference u/s 395 (1) or (2) is incompetent because in this reference the validity of any Act, ordinance or any regulation or of any provision contained in any Act, ordinance or regulation is not a subject-matter. The reference in question has been made

with regard to the Criminal Case No. 388/94 which has already been disposed of and the learned Additional Chief Judicial Magistrate is no longer seisin of the case, as such it is an incompetent reference. For this view I am fortified by the decision of State of Assam Vs. Amiruddin and Others, , in which case also the allegation was that the offence of theft has been compounded fraudulently at the instance of a person other than the real owner of the article stolen. Therefore I am of the opinion that in the matter in question the proper remedy for setting aside the judgment of wrong acquittal obtained fraudulently was u/s 397 of the Criminal Procedure Code. The learned Sessions Judge ought to have taken up the case suo motu based on the record sent by the learned Additional Chief Judicial Magistrate to him and he should have passed an appropriate order for setting aside the judgment of acquittal dated 23rd July, 2000 which was obtained fraudulently by producing an imposter.

8. Now coming to the question whether based on the record before this Court, this Court can take up the suo motu criminal revision, in my opinion as per the provisions contained in Section 397 of the Cr.PC the High Court is entitled to initiate suo motu. criminal revision because Section 397 of Cr.PC provides that "the High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such Inferior Court". For this view, I am supported by the decision of Hon"ble Apex Court, Municipal Corporation of Delhi Vs. Girdharilal Sapuru and Others, , in which Hon"ble Supreme Court has held that "Section 397 of the Code of Criminal Procedure enables the High Court to exercise power of revision suo motu and when the attention of the High Court is drawn to a clear illegality, the High Court could not have rejected the petition as time barred thereby perpetuating the illegality and miscarriage of justice. The question whether a discharge order is interlocutory or otherwise need not detain us because it is settled by a decision of this Court that the discharge order terminates the proceeding and, therefore, it is revisable u/s 397(1) in terms confers power of suo motu revision on the High Court and if the High Court exercises suo motu revision power the same cannot be denied on the ground that there is some limitation prescribed for the exercise of the power because none such is prescribed. If in such a situation the suo motu power is not exercised what a glaring illegality goes unnoticed can be demonstrably established by this case itself".

9. Similarly in the case of Bachan Singh and Others Vs. State of Punjab, , Hon"ble Apex Court has held that "as the record of the case was before the High Court in connection with the two appeals and the revision petition heard together, there was nothing to prevent the High Court from invoking its power u/s 397 read with Section 401, Cr.PC and to make an order for the enhancement of the sentence".

10. A Full Bench of Delhi High Court in the case of Gopal Dass v. The State, reported in 1978 Cri.LJ 961 , has held that "in suitable cases, however, Court can treat a petition u/s 482 as a petition u/s 397 and grant necessary relief". The High Court of Madhya Pradesh in the case of Purshottam Vijay and etc. Vs. The State and Others, , has held that "these powers do not create any right in the litigant but only conserve the power of the High Court to see that justice is done in accordance with the recognized rules of criminal jurisdiction and that subordinate Courts do not exceed their jurisdiction or abuse their powers vested in them by the Code. The object of revisional jurisdiction is to confer upon Superior Criminal Courts a kind of paternal or supervisory jurisdiction. And the idea is to correct miscarriage of justice which may arise from misconception of law, or irregularity or procedure, or neglect of proper precaution or apparent harassment and the like".

11. Therefore, the reference in question is incompetent. But however, in view of the law laid down by Hon"ble Apex Court I am of the opinion that it is a fit case in which this Court should exercise its suo motu powers for treating this petition as revision petition u/s 397 read with Section 401 of the Cr.PC in order to remedy the miscarriage of justice which may otherwise arise because the Criminal Case No. 388/94 has been got disposed of by the accused persons by committing a fraud on the Court of Additional Chief Judicial Magistrate by entering into the compromise with an imposter other than the real Nankiram, therefore the order dated 23rd July, 2000 by which the Criminal Case No. 388/94 (State v. Tirathram and 3 others) pending before the Additional C.J.M. was got disposed on the basis of fraudulent compromise, is set aside and the matter is restored to its original number with the direction to the Trial Court to proceed with the matter from the stage where it was pending on 23-7-2000.

12. The bailable warrants against the accused persons were issued and a notice to complainant and Advocates Shri Suresh Yadu and Smt. Anjana Trivedi were also issued. Since a case had already been initiated against accused persons and Advocates for their conduct, as such no further action in this matter is required to be taken.