
(2013) 12 AHC CK 0123

In the Allahabad High Court

Case No : Government Appeal No. 4504 of 2008

State of U.P.

APPELLANT

Vs

Bal Chand Chaurasia

RESPONDENT

Date of Decision : 10-12-2013

Acts Referred:

Citation : (2014) 2 ACR 1974

Hon'ble Judges : Pankaj Naqvi, J; Dharnidhar Jha, J

Bench : Division Bench

Judgement

Dharnidhar Jha and Pankaj Naqvi, JJ.—Out of four respondents, three have appeared through counsel whose names appear in the cause list. Respondent No. 2, Pappu Chaurasia, is reported absconding by the Chief Judicial Magistrate, Azamgarh.

2. The difficulty with the court is that this Court has been reading the words "any subordinate court" appearing in Section 390, Cr.P.C. to mean the Chief Judicial Magistrate. We respectfully want to point out that "any subordinate court" may include the Chief Judicial Magistrate, but when it is an appeal in connection whereof the powers u/s 390, Cr.P.C. have to be exercised evidently by the appellate court then it has to be constructed so harmoniously as to explaining the full import of the words for making the exercise of that power under the provision more meaningful and workable. "Any subordinate court" appearing in Section 390 could never be the court only of Chief Judicial Magistrate of any district if the judgment of acquittal has been passed by a Court of Sessions manned either by the Sessions Judge or by an Additional Sessions Judge, who exercise powers in the Court of Sessions by virtue of Section 9, Cr.P.C.

3. Any subordinate court" has its own special meaning, because the appellate court, like, the High Court has the powers of entertaining appeals/revisions also against the judgment of acquittal, as the case may be, which may be passed by a lower appellate court or a subordinate court, like, the Court of Sessions which again, as we have just noticed, is manned by an officer of the rank of the

Sessions Judge or the Additional Sessions Judge as may appear from Section 378(2), and Section 397 read with Section 401, Cr.P.C. Section 378(2)(a), Cr.P.C. relates to the procedure of filing of an appeal against acquittal in a case investigated into by the C.B.I. or by any agency, like, the State police and identifies the Court of Session as the appellate forum if the order of acquittal has been passed by a Magistrate. The same provision by Clause (b) of its sub-section (2) refers to the appellate forum in case of an order of acquittal passed by any court other than referred to in Clause (a), either in exercise of the original jurisdiction by any other court than the High Court or an order of acquittal passed by the court of session in revision. Thus, when such orders of acquittal which are referred to in Section 378(2) are to be challenged before the High Court, they all have to be under the appellate jurisdiction of the High Court and the court whose order of acquittal is being questioned in appeal has, indisputably, to be a court subordinate to the High Court. This is more appropriate when we consider the provisions of Section 389, Cr.P.C. which speaks of powers of an appellate court of suspending the order of conviction and staying the sentence by directing the release of the accused on bail. It may be found from Section 389(2), Cr.P.C. that the powers contained in Section 389(1), Cr.P.C. could be exercised also by the High Court in case of an appeal by a convicted person to a court subordinate thereto, i.e. the Court of Session which has refused to stay the order of conviction of the appellant in the appeal pending before it or has not granted the prayer for bail of such an appellant. It enlarges and extends the jurisdiction of the appellate court, like, the High Court in respect of an order of conviction which has been recorded by an appellate court in an appeal decided by it, which may be a court subordinate to the High Court and when the High Court is sitting in appeal or revision, which has been preferred by the aggrieved persons to challenge such an order of acquittal passed by such subordinate-appellate or revisional-court, which may be the Court of Sessions, such lower appellate Court could only be described vis-à-vis the High Court as a court subordinate to the High Court. If the Legislature in its wisdom was choosing to describe such an appellate or revisional court which is a court under the subordination of the High Court by putting a common nomenclature, like, "any subordinate court" in Section 390, Cr.P.C. then how could we direct any Chief Judicial Magistrate to issue warrant of arrest u/s 390, Cr.P.C. If, we still do, then we are unmindful of one aspect of the post trial procedure and practice also that the post conviction records are maintained by the trial courts and the purpose of maintaining the post conviction record is only to comply with any of the orders which may be issued by the appellate court or the revisional court, may be u/s 390, Cr.P.C. or under any appropriate provision, which may be required to be issued by such an appellate court, like, the High Court. This view of ours may be appreciated more when one had considered the provision of Section 457A which requires the trial court or the appellate court to require the accused to execute bail-bonds with sureties to appear before the higher court as and when such court had issued notice in respect of any appeal or petition filed against the judgment of the respective court. The mandate of law is very clear

that the trial court or the appellate court, which may be the subordinate court to the "higher court" u/s 437A has to be the court which has to be directed to proceed as per Section 390, Cr.P.C. and no other court in place of that court could be deemed as "any subordinate court" as the term appears in that Section.

4. In the present case, the Chief Judicial Magistrate was directed to issue warrant of arrest and what has happened is that the Chief Judicial Magistrate has reported that respondent No. 2 is absconding. Now, the difficulty with this Court is that the Chief Judicial Magistrate does not have a single leaf of post conviction record and as such, if we desire him to declare the respondent No. 2 an absconder, the Chief Judicial Magistrate shall be finding himself amidst a peculiar situation as in connection of which record he should issue a direction or an order of proclamation u/s 83 of the Cr.P.C. We want to remind ourselves that even if a Chief Judicial Magistrate does pass such an order declaring someone an absconder in respect of a record which is under the domain, lawfully, of a superior court, like, the Court of Session, he may be indulging in an act of impropriety and insubordination as he is judicially subordinate to the Court of Sessions. Judicial wisdom requires that we, as such, direct the Additional Sessions Judge, Court No. 5, Azamgarh by whom Sessions Trial No. 136 of 2002 was disposed of by judgment of acquittal dated 21.9.2002, to seek all records from the Chief Judicial Magistrate, Azamgarh in respect of the present appeal and ensure taking steps for declaring respondent No. 2, i.e., Pappu Chaurasia Son of Saltu Chaurasia, Resident of Village Hussainganj, Police Station-Sidhari, District-Azamgarh an absconder and send a report with a copy of the order passed by him in the above behalf whereafter the appeal may be listed before the appropriate Bench.