
(2013) 10 AHC CK 0204
In the Allahabad High Court
Case No : Government Appeal No. 864 of 1992

State of U.P.	Vs	APPELLANT
Mahipal @ Madu and Another		RESPONDENT

Date of Decision : 25-10-2013

Acts Referred:

Citation : (2014) 84 ALLCC 488

Hon'ble Judges : Vinod Prasad, J; Het Singh Yadav, J

Bench : Division Bench

Judgement

Vinod Prasad and Het Singh Yadav, JJ.—This Court vide order dated 30.7.1992 granted leave to appeal and admitted this Government Appeal against acquittal order. Since parentage and complete addresses of the respondents/accused persons were not mentioned in the memorandum (in short the memo) of appeal, therefore, learned A.G.A. vide order dated 26.8.1992 was directed to furnish parentage and complete addresses of the respondents so that this Court may issue warrants directing that the accused be arrested and brought before this Court or any other Subordinate Court as envisaged u/s 390 of the Code of Criminal Procedure, 1973 (in short the Code). Section 382 of the Code enacts that every appeal shall be made in the form of petition in writing. No specific format of petition is prescribed in the Code nor the word "petition" is defined anywhere in the Code. The meaning of word "petition" as per Black Law Dictionary (IIInd Edition) is a written address embodying prayer from the person preferring it, to the power, body, or person to whom it is presented, for the exercise of his or their authority in the redress of some wrong, or the grant of some favour, privilege or license. Thus, the petition must necessarily contain the name and full particulars of the petitioner/applicant and also the name and complete particulars of the person against whom the petitioner has sought redress of some wrong or his grievances.

2. Rule 3 of Chapter XVIII of the Rules of this Court clearly lays down that every petition of appeal shall be accompanied by date/event wise synopsis of the case

and inter alia shall further state the name and, where the opposite party is not the State, the address, if available, of each opposite party.

3. Thus, in view of the provisions of section 382 of the Code and as per the Rules of this Court, it is incumbent upon the Government Advocate to mention full particulars of the respondent/accused such as his parentage and complete address in memo of appeal presented to this Court.

4. We have gone through the memo of instant Government Appeal and found that the parentage and the addresses of the respondents/accused persons have not been mentioned therein. This Court, accordingly, directed learned A.G.A. to furnish their particulars on number of occasions. A perusal of the order-sheet of the appeal would evince total non compliance of directions issued repeatedly by this Court on 26.8.1992, 26.8.1994, 8.11.1994, 9.12.1994, 15.5.2013 and 29.5.2013 regarding furnishing of particulars relating" to parentage and addresses of the respondents by the learned Government Counsel. In view of aforementioned procedural back drop, the appellant State is under legal obligation to furnish parentage and complete addresses of the respondents, which are not mentioned in the memo of appeal. We do not tolerate such unethical practice any more on the part of the Government Counsel.

5. Learned A.G.A., however, tried to explain the circumstances due to which this Court's order could not be complied with. It is pointed out that in the cause title of the judgment of the trial Court the parentage and the addresses of the accused persons are not mentioned. At the time of drafting the memo of appeal Lower Court's record was not available in the office of the Government Advocate. The record was not available in this Court also prior to 26.7.2013 as is obvious from the order-sheet of the appeal. The learned A.G.A. further contended that the Trial Court is required to mention name and complete particulars of the accused persons such as parentage and complete addresses in the cause title of the judgment. He also submitted that for want of complete particulars of the accused persons in the judgment of acquittal passed by the Trial Court the Government Advocate while drafting the memo of the appeal find himself handicapped in mentioning therein full particulars of the respondents/accused persons. Learned A.G.A. strenuously urged that this Court may issue directions in judicial side to all the Subordinate Courts to mention full particulars of the accused persons in the judgments to avoid unnecessary delay caused in the adjudication of Government Appeals due to incomplete particulars of the respondents.

6. A complete judgment normally consists of (i) cause title (ii) facts and points for determination (iii) findings (iv) conclusion and (v) sentence. Cause title is like address book of a case. Usually, the name of the Court with name of the presiding officer then the case number and name of parties with their parentage and complete address are to be mentioned. Chapter XXVII (Section 353 to section 365) of the Code provide about the contents, language, and other essentials of the judgment. There in no specific mention about the particulars

required to be mentioned in the cause title of the judgment. Section 353 of the Code provides the manner in which the judgment shall be pronounced. Section 354 provides that every judgment referred to in section 353 shall be written in the language of the Court, shall contain points for determination, the decision thereon and the reasons for the decision. The judgment shall also specify the offence of which the accused is convicted and the punishment to which he is sentenced mentioning the section of the Indian Penal Code or any other law. In case of judgment of acquittal, it shall be stated that the accused is acquitted of the offence and direct him to be set at liberty. Section 355, however, provides that a Metropolitan Magistrate instead of recording a judgment in the manner hereinbefore provided in section 353 and 354 shall record the following particulars:

- (a) the serial number of the case;
- (b) the date of the commission of the offence;
- (c) the name of the complainant (if any);
- (d) the name of the accused person, and his parentage and residence;
- (e) the offence complained of or proved;
- (f) the plea of the accused and his examination (if any);
- (g) the final order;
- (h) the date of such order;
- (i) in all cases in which an appeal lies from the final order either u/s 373 or under Sub-section (3) of section 374, a brief statement of the reasons for the decision.

7. On conjoint reading of section 353 to 355 of the Code it emerges out that the judgment of a Metropolitan Magistrate is not required to contain the points for determination, the decision thereon and the reasons for the decision as mentioned u/s 354 of the Code. Although these exceptions are not available where the Order is appealable as is mentioned in Clause (i) of section 355. Clause (a) to (d) of section 355 obviously relate to the cause title of the judgment. The words "herein before provided" in section 355 have specific connotation while interpreting scheme of Chapter XXVII of the Code. In our view words "herein before provided" means that judgment of every trial Court other than Metropolitan Magistrate besides, the requirements as embodied in section 354 and other sections of this Chapter, shall record the particulars as mentioned in Clause (a) to (h) of section 355 of the Code. To our mind it is a total misconception that in the Trial Court judgment other than Metropolitan Magistrate, it is not required to mention particulars mentioned as above in section 355. Thus, in our view mentioning of the name of the accused person, his parentage and complete address is essential requirement of a complete judgment of every Trial Court whether it is a Court of sessions or a Court of Magistrate.

8. This is a travesty of justice that this Government Appeal against acquittal is pending for the last more than 21 years due to reason that the parentage and complete addresses of the respondents/accused persons have not been provided in the memo of appeal. The learned A.G.A. explained the reason for not providing the aforesaid particulars as mentioned above is also not appealing to us.

9. We have come across several other Government Appeals against acquittal also, pending in this Court, and are being protracted for years together for want of parentage and complete addresses of the respondents in the memo of appeals. In one case we found that bailable warrants issued by this Court against the respondent/accused was return un-executed by the police concerned with a remark that there are 8 persons of same name in the village and in absence of name of his parentage it is not possible to execute the warrant.

10. We, accordingly, take serious note of fact of not mentioning of the parentage and complete address of the accused in the cause title of the judgment by the Subordinate Courts. It is one of the major factor for the delay in disposal of Government Appeals.

11. We are accordingly inclined to issue direction to all the Courts subordinate to this Court to necessarily mention full particulars of the accused/respondent such as his name, parentage and complete address in all the trial courts' judgment particularly where an appeal is provided for from the final order.

12. We also direct strict adherence of the directions made as above.

13. Let copy of this order be sent to all the District and Sessions Judges under control and subordination to this Court through Registrar General of this Court for communication and compliance of this Order.

14. All the District and Sessions Judges shall ensure that all Courts subordinate to this Court shall comply with the above directions.

15. As per office report dated 26.7.2013 Lower Court's record has already been summoned, therefore, learned A.G.A. is directed to ensure immediate compliance of series of orders passed by this Court as aforementioned to furnish particulars and complete addresses of the respondents, and further to make necessary amendment/incorporation of necessary particulars in the memo of appeal and leave applications. List this appeal on 12th November, 2013.