

(2019) 12 DEL CK 0317

In the Delhi High Court

Case No : Criminal Revision Petition No. 716 Of 2016, Criminal Miscellaneous Application No. 17291 Of 2016, 35008, 47700 Of 2018

Sushila Bhatt

APPELLANT

Vs

State (Nct Of Delhi) & Anr

RESPONDENT

Date of Decision : 19-12-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 386, 482
Indian Penal Code, 1860 — Section 468, 471

Citation : (2019) 12 DEL CK 0317

Hon'ble Judges : Manoj Kumar Ohri, J

Bench : Single Bench

Advocate : Rohit Minocha, Dr. M.P. Singh, Mohit Kumar Sharma

Final Decision : Disposed Of

Judgement

Manoj Kumar Ohri, J

Crl. M.A. No. 47700/2018 (condonation of delay)

1. By way of present application filed under Section 482 Cr.P.C., the petitioner seeks condonation of 13 days delay in filing the application under Section 482 Cr.P.C. for bringing on record the legal heirs of the petitioner late Smt. Sushila Bhatt.

2. For the reasons stated in the application, the delay in filing the application for bringing on record the legal heirs of late Smt. Sushila Bhatt is condoned.

3. Application stands disposed of.

CRL.REV.P. 716/2016 and Crl.M.A.Nos.17291/2016 (stay) and 35008/2018

1. The present revision petition has been instituted raising a challenge to the impugned judgment dated 15.09.2016 passed in Crl. Appeal No.46/2015 arising out of FIR No.60/2003 registered under Section 468/471 IPC, P.S. Dwarka, Sector - 23.

2. Learned counsel for the petitioner/complainant submitted that vide impugned judgment, the appellate court has set aside the judgment of conviction dated 10.09.2015 and order on sentence dated 20.10.2015 passed by the trial court and remanded back the matter to the trial court. It was directed that the matter will be heard afresh and be disposed of after recording clear and specific findings in respect of all the contentions raised by both the parties.

3. Learned counsel for the petitioner/complainant has submitted that the appellate court while passing the impugned judgment did not record any independent reason for its decision. It was submitted that no independent finding or observation was given by the appellate court. It was further submitted that the complainant has also expired during the pendency of the present petition and an application bearing no. CrI M.A. 35008/2018 was filed to bring her legal heirs on record. The same is allowed.

4. Learned counsel for the respondent no.2, on the other hand, has supported the impugned judgment passed by the appellate court. It was submitted that only rehearing has been directed and not the re-examination of the witnesses.

5. I have heard learned counsels for the parties and have also gone through the case records.

6. The judgment of conviction and order on sentence passed by the trial court was challenged by the respondent No.2/accused before the court of sessions. While assailing the findings recorded against him by the trial court, the respondent No.2/accused had contended before the appellate court that the evidence on record as well as testimony of various witnesses were not properly appreciated by the Trial Court.

7. The Sessions court, while hearing a challenge against the judgment of conviction passed by the Metropolitan Magistrate, is the first court of appeal and has the duty to look into all the evidence which has been adduced and is under an obligation to arrive at an independent conclusion on the basis of the said evidence. While doing so, the appellate court has got the power to reappraise and reweigh the evidence and come to its own conclusion [refer *Girja Prasad v State of MP*, reported as (2007) 7 SCC 625].

8. The powers of the appellate court are governed by Section 386 of the Cr.P.C which reads as under :-

"386. Power of the Appellate Court. After perusing such record and hearing the appellant or his pleader, if he appears, and the Public Prosecutor if he appears, and in case of an appeal under section 377 or section 378, the accused, if he appears, the Appellate Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may-

(a) in an appeal from an order or acquittal, reverse such order and direct that further inquiry be made, or that the accused be re- tried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to

law;

(b) in an appeal from a conviction-

(i) reverse the finding and sentence and acquit or discharge the accused, or order him to be re- tried by a Court of competent jurisdiction subordinate to such Appellate Court or committed for trial, or

(ii) alter the finding, maintaining the sentence, or

(iii) with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, but not so as to enhance the Same;

(c) in an appeal for enhancement of sentence-

(i) reverse the finding and sentence and acquit or discharge the accused or order him to be re- tried by a Court competent to try the offence, or

(ii) alter the finding maintaining the sentence, or

(iii) with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, so as to enhance or reduce the same;

(d) in an appeal from any other order, alter or reverse such order;

(e) make any amendment or any consequential or incidental order that may be just or proper;

Provided that the sentence shall not be enhanced unless the accused has had an opportunity of showing cause against such enhancement:

Provided further that the Appellate Court shall not inflict greater punishment for the offence which in its opinion the accused has committed, than might have been inflicted for that offence by the Court passing the order or sentence under appeal.

9. A reading of the opening words of Section 386 Cr.P.C. would show that the appellate court has to peruse the records and hear the appellant and his pleader before proceeding to decide the appeal in terms of the Section.

10. In *Mohinder Singh v. State of Punjab & Ors.*, reported as (1985) 1 SCC 342, it was held that:

"3. ... we might, however, mention that the High Court instead of analysing and appreciating evidence, remanded the case back to the Sessions Judge for writing a proper judgment. In the first place, assuming that the High Court was right in thinking that the judgment suffered from some infirmities and there were certain facts which were not taken into consideration they would not be grounds for remanding the case to the Sessions Court to write a proper judgment. The High Court itself was a final court of facts and it was its duty to satisfy itself regarding the correctness and acceptability of the evidence. Thus, it was entirely open to the High Court to reappraise the evidence once again to consider the facts which

may have been overlooked by the Sessions Judge and it should have decided the appeal itself instead of remanding the case to the Sessions Court ..."

11 The present case relates to the FIR registered in the year 2003. The sessions court, being the court of first appeal, instead of remanding back the case to the Trial court for fresh consideration ought to have heard the appeal on merits. The submissions raised before the Sessions Court were with respect to non-appreciation of the evidence in correct perspective. The challenge was not on account of the fact the trial court failed to decide the issues raised during the trial. The Sessions Court being the appellate court was the final court of facts and it was its duty to appreciate the evidence and correctness of the judgment passed by the trial court.

10. In view of the above, the impugned judgment passed by Addl. Sessions Judge is set aside. The matter is directed to be listed before the concerned Sessions Court on 14th January, 2020 for directions on which date the parties be notified of the next date for hearing of the appeal on merits. The present petition is disposed of along with the pending applications.

11. A copy of the judgment be sent to the concerned Court for information and compliance.