
(2011) 08 UK CK 0074

In the Uttarakhand High Court

Case No : Criminal Revision No. 8 of 2003

Union of India (UOI)

APPELLANT

Vs

Chandra Pratap Mishra and Another

RESPONDENT

Date of Decision : 16-08-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 306, 347, 347(3), 386
Penal Code, 1860 (IPC) — Section 409
Probation of Offenders Act, 1958 — Section 4

Citation : (2011) 08 UK CK 0074

Hon'ble Judges : Servesh Kumar Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Servesh Kumar Gupta, J.—This revision has been preferred by the Union of India against the judgment and order dated 22.11.2002, passed in Criminal Appeal No. 4/2001, Chandra Pratap Mishra v. State of Uttaranchal. In the said appeal, the Appellant Chandra Pratap Mishra (Respondent No. 1 in this revision) was found not guilty for the charge of offence punishable u/s 409 Indian Penal Code, and thus he was acquitted.

2. Facts, in brief, giving rise to this revision are that Chandra Pratap Mishra was tried by the court of Judicial Magistrate, Ranikhet, District Almora, who vide his judgment and order dated 29.3.1996, rendered in Criminal Case No. 694/1992, found him guilty for the offence of Section 409 Indian Penal Code, but the learned Magistrate granted the accused benefit of Section 360 Code of Criminal Procedure as well as Section 4 of the Probation of Offenders Act and, accordingly, the accused Chandra Pratap Mishra was not sentenced for any term of imprisonment or fine, but he was asked only to furnish a bond of rupees five thousand with undertaking that he will not commit any crime, will maintain good conduct and shall appear in the court whenever ordered to do so for the probation period of six months. Aggrieved by this order on the point of sentence,

the Revision No. 12/1996 was preferred by the Union of India before the court of Sessions Judge, Almora. In the said revision, the finding of the learned Magistrate on the sentence was held illegal and perverse. The learned Sessions Judge, vide his judgment and order dated 1.2.2000, observed that in matters pertaining to Section 409 Indian Penal Code, the accused could not be allowed to go scot-free just by imposing the meager sentence of undergoing probation for a period of six months and, accordingly, he remitted the matter back to the learned Magistrate for passing an appropriate order afresh on the point of sentence.

3. After remand, the matter was again considered by the Judicial Magistrate, Ranikhet in Criminal Case No. 11/2000 and thereafter the learned Magistrate, vide his order dated 19.5.2001, sentenced the accused/Respondent No. 1 for a period of two years" simple imprisonment along with fine of Rs. 500/- for the said offence of Section 409 Indian Penal Code. This order of learned Magistrate, sentencing the accused Chandra Pratap Mishra as stated above, was assailed by him before the learned Sessions Judge, Almora, who vide his judgment and order dated 22.11.2002, not only set aside the order of sentence but he also reversed the finding of conviction as recorded by the trial court vide his judgment and order dated 29.3.1996. It is this judgment and order of the learned Sessions Judge, which has been challenged in the instant revision preferred by the Union of India.

4. Learned Counsel on behalf of the revisionist has drawn attention of this Court towards the provisions contained u/s 374(3) Code of Criminal Procedure, which envisages the "appeals from convictions". He submitted the arguments that Mr. Chandra Pratap Mishra filed the appeal No. 4/2001 assailing only the order of sentence dated 19.5.2001 passed by the Magistrate. No. appeal was filed against the finding of conviction, which was recorded initially by the trial court on dated 29.3.1996. Nor even the appeal could have been filed against the said finding of conviction because it was time-barred too. But the learned Sessions Judge while delivering the judgment in the said appeal No. 4/2001 has committed an error of law by re-appreciating the entire facts and evidence adduced before the trial court de novo and his finding of acquittal against the order of conviction is perverse and illegal because the said appeal was only against order of sentence. If this analogy of the learned Counsel is accepted for a moment, it would lead to the position as if No. appeal against the order of sentence can be filed, and this situation will be a misconceived one.

5. This Court is unable to agree with the view as construed by the learned Counsel of the revisionist for the reason that the provision contained u/s 374 Code of Criminal Procedure though literally is titled as "appeals from convictions", but the title "appeals from the convictions" itself implies the appeal against the sentence also and vice versa. If a person prefers an appeal against the order of conviction, then it cannot be imagined that the said appeal is not being preferred against the order of sentence. In the same manner, if an appeal

is being preferred against the order on the point of sentence, then similarly it cannot be said that the person does not intend to challenge the finding of conviction recorded against him/her. Moreover, in the memo of Appeal No. 4/2001, the prayer was made by the Appellant Chandra Pratap Mishra also to set aside the finding of conviction recorded vide the judgment and order dated 29.3.1996 as well as the order of sentence dated 19.5.2001. This memo of appeal was filed in the court below on 16.6.2001 i.e. within one month from the judgment and order dated 19.5.2001, which was assailed by filing the said memo of appeal.

6. Learned Counsel for the Respondent No. 1 has drawn the attention of this Court towards the provisions contained u/s 386(b) Code of Criminal Procedure, which provides that the appellate court in an appeal from a conviction may 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.

7. On carefully construing the above provisions, it is now abundantly clear that the appellate court has inherent powers, while adjudicating the appeals, to reverse the finding and sentence and acquit or discharge the accused. The learned Counsel for the revisionist contended that the appellate court was competent to reverse the finding of sentence only when the appeal was preferred against the order dated 19.5.2001, and since No. appeal was preferred against the order of conviction, hence, the finding of conviction ought not to have been reversed by it as has been done by the impugned judgment and order. All that could have been done by the Sessions Judge was only to reverse the order of sentence, and not the finding of conviction.

8. On the question of limitation, it can be said that the earlier judgment of the Magistrate dated 29.3.1996 stood merged in his subsequent judgment dated 19.5.2001. So the limitation for filing the appeal against the judgment and order dated 19.5.2001 runs one month next i.e. till 19.6.2001 and the memo of appeal was filed in the court of Sessions Judge on 16.6.2001. This way, the appeal before the Sessions Judge whereupon the impugned judgment and order was passed was filed well within the time limit.

9. No. other impropriety, incorrectness or illegality has been pointed out in the impugned judgment and order.

10. For the reasons recorded above, this revision is devoid of merit and is liable to be dismissed. The revision is dismissed accordingly.

11. Let the lower court record be sent back for compliance of the order.