

(1955) 09 AP CK 0034

In the Andhra Pradesh High Court

Case No : Criminal Revision Cases No"s. 105 and 106 and Cr. Revision Petns. No"s. 100 and 101 of 1955

Veera Ramayya and others

APPELLANT

Vs

Udayagiri Venkata Seshavatharam and another

RESPONDENT

Date of Decision : 23-09-1955

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 435

Citation : AIR 1956 AP 97

Hon'ble Judges : K. Subba Rao, C.J.; Satyanarayana Raju, J

Bench : Division Bench

Advocate : K. Sarala Devi, for the Appellant; Y. Rami Reddi, for the Respondent

Final Decision : Allowed

Judgement

Subba Rao, C.J.—These two Criminal Revision Petitions have been referred to a Bench by Chandra Reddi J. on the ground that the matters concerned practice and it was desirable that an authoritative opinion should be expressed on the point.

2. The Sub-Divisional Magistrate, Bandar passed similar orders under S. 145, Criminal P. C. in Misc. Cases Nos. 24 and 25 of 1954 declaring that the respondent in each of the cases was in possession of the schedule land and was entitled to retain such possession until ousted in due course of law. The petitioners, who were respondents before the Sub-Divisional Magistrate, filed the aforesaid two revision petitions under S. 435, Criminal P. C, against the said orders.

3. The Learned Counsel for the respondents raised the preliminary objection that revision petitions under S. 435, Criminal P. C. should not be entertained in the High Court unless the petitioners moved the Sessions Court in the first instance. The Learned Counsel for the petitioners and also the Public Prosecutor argued that under S. 435 Criminal P. C, the High Court and the Sessions Judge have

concurrent jurisdiction and that it is at the option of the aggrieved party to file a revision either in the Sessions Court or in the High Court as he thinks fit.

The Learned Counsel for the petitioners also contended that the practice of the Madras High Court for over a quarter of a century has been to entertain such a revision without insisting upon the condition that the petitioners should have in the first

instance moved the Sessions Court, and that the said practice should be recognised and followed in the Andhra High Court.

She would further add that, even if such a practice was not recognised in this Court, revisions once admitted should not be dismissed on the preliminary point as, by the time the revision came to be disposed of, a long time might elapse, circumstances might change and the petitioner might not be in a position to go to the Sessions Judge thereafter. Before considering the case law on the subject, it would be convenient to read the relevant provisions of the Criminal Procedure Code. Section 435 :

The High Court or any Sessions Judge or District Magistrate or any Sub-divisional Magistrate empowered by the State Government in this behalf, may call for and examine the record of any proceeding before any inferior Criminal Court situate within the local limits of its Or his 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, and may, when calling for such record, direct that the execution of any sentence be suspended and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

Explanation:- All Magistrates, whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this Sub-section and of S. 437,

Section 436: On examining any record under S. 435 or otherwise, the High Court or the Sessions Judge may direct the District Magistrate by himself or by any of the Magistrates subordinate to him to make & the District Magistrate may himself make or direct any subordinate Magistrate to make further inquiry into any complaint which has been dismissed under S. 203 or sub-S. (3) of S. 204 or into the case of any person accused of an offence who has been discharged.

Section 437: When on examining the record of any case under S. 435 or otherwise, the Sessions Judge or District Magistrate considers that such case is triable exclusively by the Court of Session and that an accused person has been improperly discharged by the inferior Court, the Sessions Judge or District Magistrate may cause him to be arrested and may thereupon instead of directing a fresh inquiry order him to be committed for trial upon the matter of which he has been, in the opinion of the Sessions Judge or District Magistrate, improperly discharged.

Section 438 (1): The Sessions Judge or District Magistrate, may, if he thinks fit, on examining under S. 435 or otherwise the record of any proceeding, report for the orders of the High Court the result of such examination & when such report contains a recommendation that a sentence be reversed or altered, may order that the execution of such sentence be suspended and if the accused is in confinement that he be released on bail or on his own bond.

Section 439 (1). In the case of any proceeding the record of which, has been called for by itself or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may in its discretion, exercise any of the powers conferred on a Court of Appeal by Ss. 423, 426, 427, and 428 or on a Court by S. 338 and may enhance the sentence; and when the judges composing the Court of Revision are equally divided in opinion, the case shall be disposed of in manner provided by S. 429.

4. Section 435 confers on the authorities mentioned therein a controlling power of revision over inferior Courts. It states the ground, for, and also prescribes the mode for, exercising the powers conferred under Ss. 436 to. 438. The jurisdiction conferred under S. 435 on the High Court, the Sessions Judge and the District Magistrate is concurrent and, in exercise of that jurisdiction, any of the three authorities can, for the purposes of satisfying itself, as regards the correctness, legality or propriety of any finding, sentence or order recorded or passed by any inferior tribunal or as to the regularity of any proceedings of such interior Court, call for the records and examine them.

But none of the said authorities has any power to suspend the operation of any order, for the latter part of the section expressly limits their power to pass an interim order only to the suspension of the execution of any sentence and to the release of any person in confinement on bail. It is, therefore, obvious that under that Section none of the three authorities can suspend the order of an inferior tribunal made under S. 145 Criminal P. C.

But, after calling for the records and satisfying themselves as to the correctness of the proceedings in regard to the passing of the operative orders, there is a distinction between the powers of the High Court and that of the Sessions Judge and the District Magistrate. While- the former can make any final orders mentioned in S. 439, the latter two can only make the orders specified in Ss. 436, 437 and 43d. if the complaint was dismissed under S. 203 or sub-s (3) of S. 204, a Sessions Judge or a District Magistrate can direct a subordinate Magistrate to make a further enquiry into the complaint that was so dismissed. If an accused person has been improperly discharged by a inferior Court, the Sessions Judge or the" District Magistrate may order him to be committed for trial.

Under S. 438 in other cases, the Sessions judge or the District Magistrate, after examining the record, may submit a report for the final orders of the High Court- If, in the report, a recommendation is made for reversing or altering the sentence, the Sessions Judge or the District Magistrate as the case may be may

also suspend the sentence or release the accused on bail.

Even in that case, they have no power to suspend the orders made by an inferior tribunal if the said orders do not amount to a sentence. It is clear from the aforesaid provisions that the three authorities mentioned in S. 435 have concurrent powers of revision over inferior tribunals though, in the exercise of the revisional jurisdiction, the powers of the High Court are higher than those of the two other authorities.

It is also manifest that except in the two cases mentioned in Ss 436 and 437, Criminal P. C. the Sessions Judge or the District Magistrate cannot make a final order cancelling or modifying that of the Subordinate Tribunal, It is further clear that, under v S. 435. none of the authorities" mentioned there in can make an order other than one suspending the sentence or releasing the accused in confinement on bail.

5. All the High Courts in India have considered the scope and the limits of the concurrent jurisdiction conferred on the three authorities mentioned in S. 435. Criminal P. C. and have evolved, with, slight modifications, a practice for exercising that jurisdiction without conflict and in the best interests of judicial administration.

6. A long catena of cases have been cited at the Bar but it would be enough if we consider the leading case of each of the High Courts. As early as 1909, the Calcutta High Court in "Emperor v. Abdus Sobhan" 36 Cal 643 (A) recorded the previous practice existing in that Court in regard to the manner of the exercise of revisional jurisdiction under S. 435, Criminal P. C. "At page 644", the learned Judges observed:

The practice which ought to be followed in such cases is that indicated in the case of the - "Queen Empress v. Reolah", 14 Cal 887 (B), where it was laid down that

the High Court will not entertain an application; for revision in cases where the District Const Or Magistrate has concurrent revisional jurisdiction with the High Court, save on some special ground shown, unless a previous application shall have been made to the lower Court: ""but in the cases in which concurrent jurisdiction is not possessed by the lower Courts, no such general rule exists.

That was a decision arrived at after consultation with the Chief and the other Judges of this Court, on the point. We are not prepared to differ from it We think it is a ruling which should be adhered to.

7. The Assam High Court in Gobardandas v. Chaturbhuj", AIR 1950 Ass 165 (c), had to consider a similar question in revision against the order of an inferior Court under S. 147, Criminal. P. C. Ram Labhaya J. observed at p. 166:

This petition was filed in this Court directly. The Sessions Judge was not moved at all. He has concurrent jurisdiction with this Court to entertain. a revision

petition under S. 147, Criminal P. C. He, however, could not pass final orders on the petition. In spite of this, the practice, which is followed in the majority of the High Courts in India, is that petitions of revision against orders under Chap. 12 are not entertained if the Sessions Judge has not been moved in the first instance.

This practice tends to administrative convenience and from a purely judicial view point also nothing can be said against it except that in certain cases of an exceptional nature speedy interference may be desirable in the interests of justice and resort to the High Court for redress may be justified, be these circumstances agreeing substantially with the view of Findlay O. J. C. expressed in- AIR 1926 285 (Nagpur) , I hold that the High Court should not ordinarily entertain petitions of revision like the present one under Chap. 12, Criminal P. C. unless, the lower Court has been moved in the first instance though it should not hesitate to do so if extraordinary and special circumstance are shown to exist which justify departure from the normal course.

8. The Nagpur Judicial Commissioned Court in AIR 1926 285 (Nagpur) , recorded a similar practice in that Court at P. 286 as follows :

As regards the mere entertaining of the application of revision it is undoubtedly true that the Sessions Court has concurrent jurisdiction with the High Court and the fact that the Sessions Judge may not be able to pass final orders in the matter and should be see cause to do so, have to refer the case for such final orders to the High Court is (sic) per se any efficient reason for departing from a rule of practice which is not only administratively convenient but is also from a purely judicial point of view a salutary one.

9. The Patna High Court also in - "Bihar Municipality v. Ramanandi Kuer", AIR Pat 548 (E) pointed out at P. 548 that it was not usual to entertain applications in revision direct but after they have been admitted, they must be disposed of on the merits. A similar view was expressed by the same High Court in Prasad Gareri Vs. Mt. Kesari and Another, At P. 446, the learned Judge stated. :

The point was also considered by a Full Bench of the Allahabad High Court in Shailabala Devi Vs. Emperor , that once an application in revision has been admitted and the record called for, an objection on the ground of departure from the practice of not interfering in-revision unless lower Courts of revision have first been moved should not therefore be entertained.

10. In - "Debi Singh v. Emperor", AIR 1941 Oudh 268 (H), Thomas C. J. observed that the Chief Court was precluded, except on special grounds, from entertaining an application for revision of the appellate order passed by the District Magistrate by reason of uniform practice of the Court refusing to entertain an application in revision where the applicant had not gone in revision to the Sessions Court which had concurrent jurisdiction,

11. The Lahore High Court recorded a similar practice in that Court in -

"Mohomed Ishaq v. Emperor, AIR 1927 Lah 689 at P. 690 CI):

The usual practice of this Court is to decline to consider an application under S. 439, Criminal P. C. unless and until the petitioner satisfied this Court that the Sessions Judge or the District Magistrate has been moved in the matter unsuccessfully.

12. A Full Bench of the Allahabad High Court Shailabala Devi Vs. Emperor re-stated the practice obtaining in that Court. Sulaiman C. J. stated at P. 681 thus:

The jurisdiction is concurrent and there is nothing to prevent the High Court from entertaining an application direct and exercising its jurisdiction. At the same time, it is quite clear that practice has grown up in this Court to refuse to entertain applications direct until the District Magistrate or the Sessions judge has been approached. This practice is based largely on convenience and seems to me to be sound.

The District Magistrate or the Sessions Judge is on the spot and easily accessible and the record can be locally called for promptly without any loss of time and without the necessity of sending it through the post. The proceedings are also likely to be less expensive. The High Court is a superior Court and its time would not be unnecessarily spent in examining the record and in some cases even considering the evidence, when a subordinate Court has already considered the matter and made its report.

Further, the High Court would have the opinion of another Court before it which would be of help. In practice no great harm is likely to be suffered by the accused, if he is required to go to the District Magistrate or the Sessions Judge in the first instance. When a practice of this kind becomes well known to the members of the Bar in the Mofussil and in the High Court the accused would be advised to approach the subordinate Court forthwith and not attempt to file a revision in the High Court direct.

In many cases if the District Magistrate or the Sessions Judge reports in favour of the accused, he need not be represented in the High Court, particularly when the illegality of the conviction or the severity of the sentence is patent. On the other hand, if such a salutary rule of practice were not to prevail, there would be a temptation and even an encouragement, to accused persons to come up straight to the High Court over the head of the District Magistrate or the Sessions Judge concerned, because the latter can only report to the High Court and cannot themselves pass an order in favour of the accused. Many accused persons may therefore think it more expeditious and much cheaper to come up straight to the High Court. The High Court would then be flooded with such applications.

On these grounds it seems that a practice of long standing has grown up under which the High Court does not ordinarily entertain an application in revision unless the District Magistrate or the Sessions Judge has been moved first.

These observations were made by an eminent and experienced Judge. The

reasons for having such a recognised practice in the Allahabad High Court will equally lend support for the establishment of a similar practice in this High Court.

13. Now, coming to the Madras High Court, the practice was, for the first time, noticed and expressed by Krishnan J. in - *Gopobondhu Behara Vs. D. Venkatesam Pantulu and Others*, The learned Judge says at P. 229 :

"It is not denied that, so far as this application is for getting a further enquiry ordered, it was open to the petitioner to go to the District Magistrate or the Sessions Judge. That being so, even though this Court has concurrent jurisdiction in the matter, I think, it is a right course to adopt to insist on the party exhausting all his remedies in an inferior Court before he comes up to this Court.

On the facts, the observations of the learned Judge may be distinguished on the ground that in that case the Sessions Judge could have made a final order directing further enquiry. But the cases relied upon by the learned Judge in making the said observations related to a case where the Sessions Judge could not have made a final order.

14. *Alter 25 years. govinda Menon J.* again noticed the practice in the Madras High Court in - *Kapa Kasi Viswanadham Vs. Bondili Madan Singh and Others*, when he stated at p. 424:

Ordinarily, this Court will not entertain a revision against discharge by a Magistrate where the aggrieved party has not moved the Sessions Judge or the District Magistrate before coming up to this Court.

These observations again may be distinguished on the ground that the practice-recorded by the learned Judge was limited only to revisions directly filed against orders of discharge. But if such a practice existed, on principle there cannot be any distinction for the application of this salutary rule of practice between an order of discharge and other kinds of Orders.

15. *Chandra Reddi J.* in his order says that, so far as he was aware, for over a quarter of a century the practice of the High Court was to entertain criminal revision cases against orders passed by Sub-Divisional Magistrates under S. 145, Criminal P. C. Though the correctness of that observation was questioned by the Learned Counsel appearing for the petitioners, we have no reason not to accept that statement based upon the learned Judge's knowledge and experience in the Madras High Court.

It may, therefore, be taken that, in the Madras High Court, the practice is to entertain revisions directly against orders made by subordinate Magistrates under S. 145, Criminal P. C. though in other matters the Court does not ordinarily entertain a revision unless the Sessions Judge or the District Magistrate as the case may be was moved in the first instance.

16. It is not necessary to multiply cases of the other High Courts which only restated the practice obtaining in the respective High Courts. If so, except in the

Madras High Court, in all the other High Courts, the practice has ordinarily been not to entertain revisions directly from orders of subordinate Magistrates unless the aggrieved party in the first instance moved the Sessions Court or the District Magistrate's Court as the case may be.

In the Madras High Court, this practice is not followed in the case of revisions against orders made under S. 145, Criminal P. C. The question is which practice is more salutary from both administrative and judicial points of view. The following points will support the practice obtaining in all the High Courts except Madras High Court.

- (a) The time of the High Court will not be wasted with frivolous applications.
- (b) The High Court will have the advantage of the considered opinion of the Sessions Judge or the District Magistrate as the case may be and in most of the cases its work would be facilitated or minimised in disposing of revisions.
- (c) The subordinate Courts are within the easy reach of the parties and the expenditure to be incurred will be comparatively less than in the High Court.
- (d) It avoids conflict of jurisdictions and
- (e) The Legislature in conferring concurrent jurisdiction may reasonably be assumed to have intended that the inferior Court should exercise jurisdiction in the first instance.

The following points may be advanced in support of the exercise of jurisdiction by the High Court in the first instance:

- (1) The subordinate Courts have no inherent power to make interim orders of stay and, therefore, an aggrieved party may not get the entire relief he seeks" if he approaches the Sessions Court or the District Magistrate's Court in the first instance.
- (2) The Sessions Court or the District Magistrate's Court will not be in a position to make a final order and a party has to make arrangements for representing him in two Courts i. e.. in the Sessions Court or the District Magistrate's Court as the case may be and also in the High Court.
- (3) The order of the High Court would be final whereas if the revision petition was; dismissed by the Subordinate Court, another revision may have to be filed in the High Court.

17. On a consideration of the aforesaid points, we are of the view that the practice obtaining in all the High Courts, except in Madras would carry out the intention of the Legislature and would better serve the interests of the public from the administrative and judicial points of view.

18. We should not be understood to have laid down that the High Court has no jurisdiction to entertain a revision in the first instance. The Criminal Procedure Code in terms expressly confers the jurisdiction. Nor do we say that it is an

inflexible rule of law that under no circumstances should the High Court entertain a revision if the aggrieved party did not file a revision in the first instance in the inferior Court. Nor do we intend to lay down any rule, which, directly or indirectly affects the undoubted inherent powers of the High Court to pass orders, to prevent grave and substantial injury to the parties.

But in our view the salutary practice to be followed in this High Court should be that ordinarily the High Court will not entertain a revision unless the aggrieved party approached an inferior Court in the first instance and will not deviate from that practice, except on special, exceptional or extraordinary grounds. When there are no such grounds the mere fact that a revision has been admitted by this Court cannot make any difference in the enforcement of the rule of practice, for the party, who with open eyes ignored the practice and filed a revision direct in the High Court, cannot take advantage of his deviation from the rule of practice.

19. The Sub-Divisional Magistrate found on the evidence that the party was in possession within two months from the date of the preliminary order. We have been taken through the relevant evidence by the Learned Counsel for the petitioners. The finding is one of fact based upon appreciation of the entire evidence placed before the Magistrate. We do not find any exceptional circumstances for interfering with the finding.

20. The Revision Petitions are dismissed.