
(2008) 07 AHC CK 0089
In the Allahabad High Court

Vikas Yadav (In Jail)

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 10-07-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 24
Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 195, 2, 374, 378, 389
Penal Code, 1860 (IPC) — Section 201, 302, 34, 364

Citation : (2008) 07 AHC CK 0089

Hon'ble Judges : Vijay Kumar Verma, J; Sushil Harkauli, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Sushil Harkauli, J.—This criminal appeal has been filed by Vikas Yadav u/s 374(2) of the Code of Criminal Procedure, 1973, (hereinafter referred to as the Cr. P.C.). There is a prayer u/s 389(1) Cr. P.C. for an interim order for bail and suspension of the execution of sentence and stay of realisation of the fine. The Stamp Reporter has given a note in his report that the order under challenge has been passed by an Additional Sessions Judge, Delhi. When the matter was taken up yesterday i.e. 9.7.2008, an objection was raised from the complainant's side that the Allahabad High Court does not have territorial jurisdiction to entertain this appeal. The matter was heard yesterday and was adjourned for today on the request from the appellant's side.

2. We have heard Sri V.C. Tewari, Senior Advocate assisted by S/Sri Manish Tewari and G.K. Bharti from the appellant's side, Sri G.S. Chaturvedi, Senior Advocate assisted by Sri Samit Gopal for the complaint and the learned A.G.A Sri R.K. Singh at length again today on the question of the jurisdiction of the Allahabad High Court regarding this appeal.

3. The undisputed facts relevant for this decision are that an offence is alleged to have been committed by the appellant along with others at Ghaziabad, which

falls within the territory of Uttar Pradesh and, which is within the territorial jurisdiction of the main seat of the High Court at Allahabad. The case was committed to the Court of Session and was pending in the Court of the Sessions Judge, Ghaziabad. By an order dated 23.8.2002, the Supreme Court in exercise of powers u/s 406 Cr. P.C. transferred the trial "to the Sessions Court in Delhi". This order was passed in Transfer Petition (CrI) No. 449/2002 - Nilam Katara v. State of U.P. and Ors. Subsequently, another order was passed by the Supreme Court on 25.10.2002 saying that because by its earlier order dated 23.8.2002 the case has been transferred from Ghaziabad (U.P.) to the Sessions Court in Delhi, therefore, all proceedings in relation to the said criminal application would be filed only in Delhi High Court. The order further says that if the accused has filed any application for bail which is pending before the Allahabad High Court, that also shall stand transferred to the Delhi High Court. By the impugned judgment dated 30.5.2008, the Additional Sessions Judge, New Delhi has convicted the appellant and sentenced him to imprisonment for life u/s 302 34 I.P.C., 10 years R.I. u/s 364 34 I.P.C. and 5 years R.I. u/s 201 34 I.P.C. and has also imposed fine of Rs. 1,00,000/-, Rs. 50,000/- and Rs. 10,000/- respectively with regard to the aforesaid offence.

4. In support of the contention that the appeal is maintainable both before the Delhi High Court as well as the Allahabad High Court, learned Counsel for the appellant relied upon the decision of the Supreme Court in the case of Sri Nasiruddin Vs. State Transport Appellate Tribunal, , which is a case relating to the United Provinces High Court (Amalgamation) Order, 1948, and where the issue was between the territorial jurisdiction of the Allahabad High Court and its Lucknow Bench. The decision has no relevance whatsoever to the question involved because the present appeal being a statutory appeal u/s 374 Cr. P.C., the territorial jurisdiction of the High Court has to be examined with reference to the said provision of Cr. P.C. alone.

5. Similarly, the other decisions relied upon from the appellant's side namely Haji Esmail Noor Mohammad and Co. and Others Vs. The Competent Officer, Lucknow and Others, U.P. Rashtriya Chinni Mills Adhikari Parishad, Lucknow Vs. State of U.P. and others, are in respect of the jurisdiction of the High Court under Article 226 of the Constitution of India, which unlike Section 374 Cr. P.C. permits a writ petition to be filed before the High Court within the territorial jurisdiction of which the cause of action either wholly or in part arises. Therefore, these two decisions are also totally irrelevant.

6. Another decision of the Supreme Court namely Syedabad Tea Company Limited Vs. State of Bihar, cited from the appellant's side is based upon an interpretation of the Bihar and West Bengal (Transfer of Territories) Act, 1956. Therefore, this decision is also of no help.

7. Another decision relied upon by the appellant is a Constitution Bench decision of the Supreme Court in Garikapatti Veeraya Vs. N. Subbiah Choudhury, This decision deals with an amendment of the law by which right of appeal is alleged

to have been taken away. In that context, the Supreme Court said that the vested right of appeal can be taken away by a subsequent enactment only if that subsequent enactment provides for taking away such rights either expressly or by necessary intendment. In the present case, there is no deprivation of the right of appeal of the appellant by any subsequent enactment and, therefore, this decision is also totally irrelevant.

8. Heavy reliance was placed from the appellant's side upon the decision of the Supreme Court in the case of AIR 1953 435 (SC) The detailed facts of that are not clear from the law report nor any attempt was made from the appellant's side to bring any further facts of that case on record. The law report indicates that the petitioner therein had been convicted at Mysore of attempt to murder by a Judge specially brought down to Mysore State from Bombay for holding the trial. The Supreme Court said that the forum of appeal would be the High Court at Mysore. This was not a case where the trial had been transferred from Mysore to Bombay. Apparently, this was a case where a Judge from Bombay had been sent on some kind of a temporary transfer or deputation to the State of Mysore for holding the trial. Thus, for all practical and legal purposes the trial Judge while holding the trial and convicting the petitioner was acting in the capacity of a Judge of Mysore State. We are, therefore, of the opinion that this case also does not help the appellant.

9. Repeated reference was made from the appellant side to a decision of a Full Bench of the Gujarat High Court in *Hiralal Nansa Bhavsar and Another Vs. The State of Gujarat*, The relevant words of that judgment which have been relied upon are extracted below:

The forum to file the appeal is also thus determined as soon as the action is instituted. Till the case is instituted no litigant has any right to the forum in which the case can be instituted. IN a criminal case this right of appeal and the right to file the appeal in the forum prescribed by law would precipitate at the date when the Court takes cognizance of an offence against the accused. It is perfectly competent for the legislature to affect this vested right retrospectively. The legislature may do so by making express provisions to that effect or by the disclosure of such an intention by necessary intendment.

10. Apparently, the facts of that Full Bench decision were that the accused had been convicted by a Magistrate of Ahmedabad Court. The accused had been chargesheeted on 25.8.1973 and the conviction was recorded on 8.4.1974. In the meantime, with effect from 1.4.1974, the Code of Criminal Procedure, 1973, came into force and the right of appeal under the new Code was restricted. In this context, the Full Bench held that the right of appeal of the accused or the forum thereof can not be governed by the provisions of the new Code in view of the repeal and saving clause in Section 484 of the new Code, particularly Sub-section (2)(a) of Section 484. The Full Bench also has no bearing upon the territorial jurisdiction of the High Court u/s 374 Cr. P.C. No other case law has been cited by either party though we had adjourned the case for that purpose.

11. Appeal being a creature of statute and there being no inherent or common law right of appeal, the appellate rights of an appellant and the jurisdiction and powers of the appellate Court would necessarily be circumscribed by the relevant statute. For example appeals from the orders of the Company Law Board or Income Tax Appellate Tribunal, both located in Delhi, are entertained by the Allahabad High Court in certain cases, only because of specific provisions in the Companies Act and Income Tax Act to that effect.

12. The statutory provision relevant for the present appeal is Section 374(2) Cr. P.C., which is reproduced below for ready reference:

374. Appeals from convictions.- (1) ...

(2) Any person convicted on a trial held by a Sessions Judge or an Additional Sessions Judge or on a trial held by any other Court in which a sentence of imprisonment for more than seven years has been passed against him or against any other person convicted at the same trial, may appeal to the High Court.

(3) ...

13. The question to be examined is the meaning to be given to the words "the High Court" used in the aforesaid provision.

14. In the definition clause that is Section 2 of Cr. P.C. "High Court" has been defined in clause (e). The relevant part of the definition says that "High Court" means in relation to any State, the High Court for that State.

15. Section 374(2) quoted above does not talk at all about the commission of offence but merely talks about conviction, trial, Sessions Judge or an Additional Sessions Judge. The words "High Court" have also therefore to be interpreted in that context.

16. Section 406 gives the power to the Supreme Court to transfer a criminal trial inter alia from a criminal court subordinate to one High Court to another criminal court subordinate to another High Court. In exercise of that power and pursuant to the order of the Supreme Court, the trial was transferred from the sessions Court at Ghaziabad (subordinate to Allahabad High Court) to the Sessions Court in Delhi (subordinate to Delhi High Court). Thus, the trial took place at Delhi by an Additional Sessions Judge of Delhi State, the conviction was recorded by the said Delhi Court at Delhi and, therefore, the "High Court" for the purpose of Section 374(2) Cr.P.C. would also mean the High Court of Delhi State.

17. The Additional Sessions Judge of Delhi was not acting as a Judge of Uttar Pradesh while holding the trial. The learned Judge while holding the trial was not sub-ordinate to the Allahabad High Court but continued to be subordinate to the Delhi High Court. The appeals ordinarily lie from the decisions of that Court to the Delhi High Court.

18. There is yet another reason for taking the above view. If while hearing the appeal, the High Court were to direct prosecution in respect of an offence

covered by Section 195 Cr.P.C. of any person connected with the trial, in respect of the offence committed in relation to the trial, it would have to be the Delhi High Court to which the Court of Additional Sessions Judge, Delhi is subordinate. In this connection, the provisions of Section 195(1) and 195(4) are relevant.

19. Again u/s 397 Cr.P.C. the High Court of Delhi alone can exercise revisional powers and the Allahabad High Court cannot exercise revisional powers in respect of the trial by the Delhi Court as exercise of such power is contingent upon the court below (1) being inferior, and also (2) being situate within its local (i.e. territorial) jurisdiction. If the appellant had been acquitted in respect of some of the charges and the complainant (not being entitled to file appeal {see Section 378(4)}), the case being not upon complaint but upon police charge-sheet), could have filed a revision against acquittal only in Delhi High Court. Permitting the accused to appeal against the conviction in one High Court and the complainant to file a revision against acquittal in another High Court, may lead to the undesirable result of conflicting orders. Normally in such situation the appeal and the revision are connected and heard together, because they are in the same Court.

20. Further, in the case of Sanjay Somani and Ors. v. State of U.P. and Ors. (44) 2002 ACC 894, a Division Bench of this Court held by a detailed judgment that it is the location of the Criminal Court which will be determinative of the fact whether challenge to the orders passed by it can be entertained by the principal seat at Allahabad or the Lucknow Bench of the Allahabad High Court and the place of commission of offence is not relevant. This Judgment was given in the context of Cr. P.C.

21. Moreover, whenever, civil suits or criminal trials before Magistrates are transferred by the High Court from one district to another in exercise of powers of Section 24 C.P.C. or Section 407 Cr. P.C. and appeals or revisions from such suits or trials lie before the District Judge, it is always the District Judge of the district to which the case has been transferred, who hears the revisions and appeals and not the District Judge of the place from which the case has been transferred. In view of this settled position of law, we have no hesitation in holding that this appeal is not maintainable in the Allahabad High Court for want of territorial jurisdiction. The appeal accordingly is dismissed as not maintainable.