
(1990) 01 AHC CK 0062

In the Allahabad High Court

Case No : Criminal Miscellaneous Case No. 659 of 1989

Vinod Kumar

APPELLANT

Vs

Smt. Mohrawati

RESPONDENT

Date of Decision : 24-01-1990

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 386, 389, 390, 391

Citation : (1990) CriLJ 2068

Hon'ble Judges : D.K. Trivedi, J

Bench : Single Bench

Advocate : J.N. Chaudhary, for the Appellant; B.B. Rai, for the Respondent

Final Decision : Allowed

Judgement

D.K. Trivedi, J.—The present application u/s 482, Cr. P.C. has been filed by one Vinod Kumar challenging the order dated 7-10-1989 passed by the VIth Addl. Sessions Judge, Faizabad, rejecting the application moved by the revisionist for accepting additional evidence in revision. The learned Addl. Sessions Judge rejected the said application holding that the Court has no jurisdiction to accept additional evidence in revision. The sole point involved in this petition is whether Sessions Court has power to accept additional evidence in revision or not.

2. The facts of the case are that opposite party Smt. Mohrawati moved an application for maintenance u/s 125, Cr. P.C. before the Magistrate concerned who by his order dated 30-3-1987 awarded maintenance of Rs. 300/-. Aggrieved by the said order Vinod Kumar filed a revision and in revision he also moved an application for permission to file some papers as additional evidence. The learned Addl. Sessions Judge concerned by order dated 7-10-1989 rejected the said application holding that there is no provision in the Code of Criminal Procedure for adducing evidence in revision. The learned Addl. Sessions Judge while disposing of the application relied on a case of this court in Smt. Zaitoon v. State of U.P. 1987 AWC 640 in which it was held that the Sessions Judge could not accept any evidence at the stage of revision. In my opinion the above mentioned

decision is not a good law as in the said case neither any provision of the Criminal Procedure Code had been considered nor the earlier decision of this Court was considered. The earlier case decided by a Bench of this Court is reported in Darshan Singh v. Indra Kumar Mehta 1980 Cri LJ 146.

3. Section 397(1) of the Cr. P.C. runs as under:

"397. Calling for records to exercise powers of revision.--

(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local 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 or order 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 Executive or Judicial, and 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 Section 398.

(2) and (3)....."

This section gives power to High Court as well as to the Court of Session to call for and examine the records of any proceeding of any inferior court.

4. Section 399(1) of the Code of Criminal Procedure runs as follows:

"399. Sessions Judge's powers of revision

(1) In the case of any proceeding the record of which has been called for by himself, the Sessions Judge may exercise all or any of the powers which may be exercised by the High Court under Sub-section (1) of Section 401.

(2) and (3)....."

This section deals with the power of the Sessions Judge in revision and clearly provides that powers of Sessions Court in revision may be the same as High Court and the Sessions Court can exercise the same powers as the High Court while disposing of the revision. Section 401(1) Cr. P.C. defines the revisional powers of High Court and it runs as under:--

"401. High Court's powers of revision --

(1) In the case of any proceeding the record of which has been called for by itself 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 Sections 386, 389, 390 and 391 or on a Court of Session by Section 307 and, when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in the manner provided by Section 392.

(2) to (5)....."

This section provides that High Court may exercise any power conferred on a court of appeal by Sections 386, 389, 390 and 391, Cr. P.C. Section 391, Cr. P.C. provides that the appellate court may take further evidence if the appellate court thinks that additional evidence is necessary for the proper adjudication of the case. The appellate court further should record its reasons before permitting any party to adduce additional evidence. From the perusal of the above mentioned provisions of the Code of Criminal Procedure it is settled that the Court of Session has similar power as of High Court in revision and as High Court is authorised to take additional evidence in revision, therefore, the Sessions Court has also jurisdiction to take additional evidence in a revision. In the case of *Darshan Lal v. Indra Kumar Mehta*, reported in 1980 ACri 146, this Court took a view:--

"The Sessions Judge could examine that question in view of the powers conferred on him by Sub-section (1) of Section 397 of the Code of Criminal Procedure. Further, under Sub-section (1) of Section 399 a Sessions Judge, while dealing with a revision, can exercise all or any of the powers which may be exercised by the High Court under Sub-section (1) of Section 401. By this it would follow that if the High Court, while dealing with a revision can enhance the sentence, the Sessions Judge can also do it. According to Sub-section (1) of Section 401 the High Court, while dealing with a revision, can exercise any of the powers conferred on an appellate court, by Section 386, of the Code. According to Clause (c) of Section 386 of the Code, the appellate court can, in an appeal for enhancement of sentence, alter the nature or the extent of the sentence so as to enhance or reduce the same. In view of this provision contained in Section 386, Cr. P.C. it should be held that High Court, while dealing with a revision, can enhance the sentence.

Since the High Court can enhance the sentence while dealing with revision, the Sessions Judge can also do so."

No doubt in the case of *Darshan Lal* (supra) the question involved was whether Sessions Court has power to enhance the sentence or not but the Bench considered the provisions of Sections 397 and 401, Cr. P.C. and thereafter held that in revision Sessions Court can exercise any of the powers which may be exercised by the High Court under Sub-section (1) of Section 401, Cr. P.C. In view of the decision of *Darshan Lal* by a Bench of this Court in my opinion the case of *Smt. Zaitoon v. State of U.P.* 1987 All WC 640 is not a good law. In another case of *Vedpal Singh v. State* reported in 1982 CriLJ 268 : 1982 Cri LJ 119 a single Judge of this Court took a view that the Sessions Judge can exercise power analogous to that of High Court while exercising revisional jurisdiction. The Sessions Judge could, therefore, examine the question of taking of additional evidence in view of the powers conferred on him by Sub-section (1) of Section 397, Cr. P.C. because the powers of Sessions Judge are analogous to those of the High Court defined under Sub-section (1) of Section 401, Cr. P.C. In view of

these facts I am of the opinion that the Sessions Judge has jurisdiction to take additional evidence in revision. In the instant case the Sessions Judge while disposing of the application took the view that he has no jurisdiction to entertain the application for permission to adduce additional evidence in revision and, therefore, in my opinion, the order dated 7-10-1989 passed on the application moved by the applicant for permission to adduce additional evidence is not a correct order and it is, therefore, liable to be set aside.

5. In view of the above discussion the order dated 7-10-1989 passed by the VIth Addl. Sessions Judge, Sultanpur, is set aside to the extent of refusing to permit additional evidence. The Addl. Sessions Judge is directed to restore the application for adducing additional evidence to its original number and thereafter decide the same on merits in accordance with law. Learned counsel for opposite party states that execution proceedings on the basis of this petition have been stayed by the court below. There is no stay order for stay of execution proceedings, therefore, in my opinion no observation is needed on this score. As the revision is against the order of maintenance, therefore, I direct the VIth Addl. Sessions Judge, Sultanpur, to decide the revision within two months from the date of receipt of this order.

6. Copy of this order be handed over to counsel for the opposite party within two weeks of this order who undertakes to put it up before the Addl. Sessions Judge, Sultanpur.