

Court No. - 19

Case :- CRIMINAL REVISION DEFECTIVE No. - 8 of 2010

Revisionist :- Ambika Singh

Opposite Party :- State of U.P. and Another

Counsel for Revisionist :- B.K. Srivastava

Counsel for Opposite Party :- Govt. Advocate, Abdul Rafey Siddiqui, Rehan Ahmad Siddiqui

Hon'ble Saurabh Lavania, J.

Case called out. No one appeared on behalf of the revisionist to press this revision.

The present revision alongwith application for condonation of delay in filing the revision has been filed against the judgment and order dated 29.01.2009 passed by the District and Sessions Judge, Faizabad in Criminal Appeal No. 121 of 2008 (Raj Kumar Singh Vs. State of U.P.).

Considering the explanation given in the affidavit filed in support of application for condonation of delay on being found sufficient, the same is allowed.

As per case of prosecution some altercation took place on 16.04.2003 between the revisionist-Ambika (First informant) and Raj Kumar Singh at Sugarcane Weighing Centre, Mayo Bazar, Village Viyulpur and in regard to this incident an FIR was lodged under Section 504/506 IPC and Section 7 Criminal Law (Amendment) Act, Police Station Mahrajganj, District Faizabad and after investigation charge-sheet was filed. Upon denial the accused was put to trial. In trial prosecution examined four witness of fact.

The trial court convicted the private opposite party-Raj Kumar Singh vide judgment and order dated 30.09.2008 and thereafter the private opposite party- Rajkumar Singh preferred the appeal being aggrieved by the judgment and order dated 30.09.2008 passed by the Judicial Magistrate-III, in Criminal Case No. 956 of 2007 (State Vs. Raj Kumar Singh) in Crime No. 164 of 2003, under Sections 504/506(2) IPC and Section 7 Criminal Law (Amendment) Act, Police Station Mahrajganj, District Faizabad and vide judgment under revision dated 29.01.2009, the appellate court acquitted the private opposite party-Raj Kumar Singh. The relevant portion of judgment dated 29.01.2009 reads as under:-

"Therefore, this is a anonymous position that the informant in the F.I.R. and in his on oath statement had stated that the accused had abused him and threatened him at the Cane Weighing Centre at the time of incident whereas his son P.W. 2 who is stated as a witness, has stated in his testimony that the incident took place between him and the accused and it is he who had narrated the incident to his father on his arrival. This anonymous position revealed in the prosecution evidence, had not been considered by the learned court below in its judgment and has given a mixed finding that the incident took place between the informant and his son (P.W. 2) whereas this position is neither stated in the FIR nor corroborated by the statement of P.W. 2.

The witnesses named in the F.I.R. namely, P.W.3 Suresh alias Ramashanker and P.W. 4 Ram Bahadur Singh have not supported the prosecution case and are declared hostile. Thus, the position is that P.W. 2, the son of the informant, has narrated a different version of the occurrence showing deviation from F.I.R. version and the independent witnesses have not corroborated the incident."

The scope of criminal revision is very limited as observed by the Hon'ble Apex Court in catena of judgments. Revisional Jurisdiction can be invoked where the decision under challenge is grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. Another well accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. The revisional court has simply to confine to the legality and propriety of the findings and as to whether the subordinate court acted within its jurisdiction. A revisional court has no jurisdiction to set aside the findings of facts recorded by the Magistrate and impose and substitute its own findings. Sections 397 to 401 Cr.P.C. confer only limited power on revisional court to the extent of satisfying the legality, propriety or regularity of the proceedings or orders of the lower court and not to act like appellate court for other purposes including the recording of new findings of fact on fresh appraisal of evidence. The High Court in its revisional powers could not have interfered with the findings of facts recorded by the lower court only because the High Court could have arrived at a different or another conclusion. Findings of acquittal recorded by subordinate court cannot be converted into conviction by High Court in exercise of revisional jurisdiction u/s 401 (3) Cr.P.C.

Here, it may be profitable to refer to the decision of the

Supreme Court in ***Madan Lal Kapur vs. Rajiv Thapar and others, (2007) 7 SCC 623***, wherein the obligation of a revisional court to decide on merits, has been approved as the only lawful course of action by their Lordships, in the following words:

"4. The matter relates to administration of criminal justice. As held by this Court, a criminal matter cannot be dismissed for default and it must be decided on merits. Only on that ground the appeal deserves to be allowed.

5. Thus in Bani Singh v. State of U.P. [(1996) 4 SCC 720 : 1996 SCC (Cri) 848], a three-Judge Bench of this Court held that a criminal appeal should not be dismissed in default but should be decided on merits. If despite notice neither the appellant nor his counsel is present, the court should decide the appeal on merits. If the appellant is in jail the court can appoint a lawyer at State expense to assist it. This would equally apply to the respondent.

6. In Bani Singh v. State of U.P. [(1996) 4 SCC 720 : 1996 SCC (Cri) 848] the Supreme Court overruled its earlier decision in Ram Naresh Yadav v. State of Bihar[AIR 1987 SC 1500 : 1987 Cri LJ 1856] in which it was held that a criminal appeal can be dismissed for default.

7. In Parasuram Patel v. State of Orissa [(1994) 4 SCC 664 : 1994 SCC (Cri) 1320] the Supreme Court held that a criminal appeal cannot be dismissed for default.

8. In our opinion the same reasoning applies to criminal revisions also, and hence a criminal revision cannot also be dismissed in default."

In view of settled principles, this Court considered the judgment and order under revision with the assistance of Sri Diwaker Singh, learned A.G.A.

On due consideration this Court finds that the appellate court after due consideration of the statement of informant P.W. 1 namely Ambika Singh(revisionist) as also the statement of his son P.W. 2 Sheo Kumar Singh, who appeared before the trial court and stated that incident took place at Sugarcane Weighing Centre, between him and private opposite party Raj Kumar Singh and not between the private opposite party Raj Kumar Singh and the informant passed the judgment of acquittal.

This Court also considered the fact that P.W. 3 and P.W. 4 namely Suresh alias Ramakant Upadhyay and Ram Bahadur

Singh respective, who are the witnesses of fact, did not supported the story of the prosecution.

This Court is of the view that the findings of the appellate court is not perverse as the same are basically based on the statement of P.W.-2 Sheo Kumar, who is son of injured- informant Ambika Singh.

Thus, the present revision lacks merit and is accordingly ***dismissed***.

Order Date :- 22.9.2022

Jyoti/-