

Reserved on 02.01.2020

Delivered on 07.01.2020

In-Chamber

Case :- CRIMINAL REVISION No. - 2316 of 1999

Revisionist :- Basant Narain Dubey

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

Counsel for Revisionist :- Dr. G.S.D. Mishra

Counsel for Opposite Party :- Govt. Advocate

Hon'ble Raj Beer Singh, J.

1. This Revision has been preferred against judgement and order dated 13.10.1999 passed by learned 7th Additional Chief Judicial Magistrate, Varanasi in Complaint Case No. 607 of 1999 (Basant Narain Dubey Vs. Kripa Shanker) under Sections 407, 504, 506 of IPC whereby complaint filed by revisionist has been dismissed and opposite party no. 2 has been acquitted.

2. None has appeared for revisionist whereas this Revision is pending since the year 1999 and thus, it is being decided finally.

3. Heard learned AGA for the State and perused the record.

4. Perusal of record shows that revisionist has filed a complaint against opposite party no. 2 mainly alleging that regarding a land dispute between the parties, civil court has passed order in favour of complainant. Thereafter, on 09.09.1995 opposite party no. 2 has tried to take forcibly possession over disputed land and when resisted, he has abused the complainant and after that on 28.09.1995 at around 06:00 am, accused persons forcibly tried to take possession over his land and dig in a peg in his land and abused and threatened to kill him. The complainant was examined under Section 200 Cr.P.C. and two witnesses namely PW-1 Dukhran Dubey and PW-2 Basant Narain Dubey were examined under Section 202 Cr.P.C. and thereafter, opposite party no. 2 was summoned for trial under Sections 447, 504, 506 of IPC.

5. After recording evidence under Section 244 Cr.P.C. charges were framed under Section 447, 504, 506 of IPC and thereafter, evidence under Section 246 Cr.P.C. was recorded. After evidence, opposite party no. 2 was examined under Section 313 Cr.P.C., however, no oral evidence was led. In documentary evidence, certain statements of witnesses recorded in Crime No. 162 of 1992 and some documents of Civil Suit No. 31/1963 (Basant Narain Vs. Rajaram) were filed.

6. After hearing and analysing evidence on record, the complaint of revisionist was dismissed by impugned judgment and order dated 13.10.1999 and opposite party no. 2 was acquitted of charges under Sections 447, 504, 506 of IPC and above stated order dated 13.10.1999 is being impugned in the present Criminal Revision.

7. At the outset, it may be mentioned that it is a Revision against order of acquittal and thus, extent and ambit revisional jurisdiction of this Court is quite limited. In **Venkatesan Vs. Rani & Anr. (Criminal Appeal No. 462 of 2008) decided on 19.08.2013**, Hon'ble Apex Court has considered the true contours of the jurisdiction vested in the High Court's under Section 397 read with Section 401 of Code of Criminal Procedure, 1973 while examining order of acquittal passed by trial court and held as under:

"6. To answer the questions that have arisen in the present case, as noticed at the very outset, the extent and ambit of the revisional jurisdiction of the High Court, particularly in the context of exercise thereof in respect of a judgment of acquittal, may be briefly noticed. The law in this regard is well settled by a catena of decisions of this Court. Illustratively, as also chronologically, the decisions rendered in Pakalapati Narayana Gajapathi Raju vs. Bonapalli Peda Appadu[1], Akalu Ahir v. Ramdeo Ram[2], Mahendra Pratap Singh v. Sarju Singh[3], K. Chinnaswamy Reddy v. State of A.P.[4] and Logendranath Jha v. Polai Lal Biswas[5] maybe referred to. Specifically and for the purpose of a detailed illumination on the subject the contents of paras 8 and 10 of the judgment in the case of Akalu Ahir v. Ramdeo Ram (supra) may be usefully extracted below.

"8. This Court, however, by way of illustration, indicated the following categories of cases which would justify the High Court in interfering with a finding of acquittal in revision:

i. Where the trial court has no jurisdiction to try the case, but has still acquitted the accused;

- ii. Where the trial court has wrongly shut out evidence which the prosecution wished to produce;
- iii. Where the appellate court has wrongly held the evidence which was admitted by the trial court to be inadmissible;
- iv. Where the material evidence has been overlooked only (either) by the trial court or by the appellate court; and
- v. Where the acquittal is based on the compounding of the offence which is invalid under the law.

These categories were, however, merely illustrative and it was clarified that other cases of similar nature can also be properly held to be of exceptional nature where the High Court can justifiably interfere with the order of acquittal."10. No doubt, the appraisal of evidence by the trial Judge in the case in hand is not perfect or free from flaw and a Court of appeal may well have felt justified in disagreeing with its conclusion, but from this it does not follow that on revision by a private complainant, the High Court is entitled to re-appraise the evidence for itself as if it is acting as a Court of appeal and then order a re-trial. It is unfortunate that a serious offence inspired by rivalry and jealousy in the matter of election to the office of village Mukhia, should go unpunished. But that can scarcely be a valid ground for ignoring or for not strictly following the law as enunciated by this Court." The observations in para 9 in the case of Vimal Singh v. Khuman Singh[6] would also be apt for recapitulation and, therefore, are being extracted below.

"9. Coming to the ambit of power of the High Court under Section 401 of the Code, the High Court in its revisional power does not ordinarily interfere with judgments of acquittal passed by the trial court unless there has been manifest error of law or procedure. The interference with the order of acquittal passed by the trial court is limited only to exceptional cases when it is found that the order under revision suffers from glaring illegality or has caused miscarriage of justice or when it is found that the trial court has no jurisdiction to try the case or where the trial court has illegally shut out the evidence which otherwise ought to have been considered or where the material evidence which clinches the issue has been overlooked. These are the instances where the High Court would be justified in interfering with the order of acquittal. Sub-section (3) of Section 401 mandates that the High Court shall not convert a finding of acquittal into one of conviction. Thus, the High Court would not be justified in substituting an order of acquittal into one of conviction even if it is convinced that the accused deserves conviction. No doubt, the High Court in exercise of its revisional power can set aside an order of acquittal if it comes within the ambit of exceptional cases enumerated above, but it cannot convert an order of acquittal into an order of conviction. The only course left to the High Court in such exceptional cases is to order retrial."

7. The above consideration would go to show that the revisional jurisdiction of the High Courts while examining an order of acquittal is extremely narrow and ought to be exercised only in cases where the Trial Court had committed a manifest error of

law or procedure or had overlooked and ignored relevant and material evidence thereby causing miscarriage of justice. Re-appreciation of evidence is an exercise that the High Court must refrain from while examining an order of acquittal in the exercise of its revisional jurisdiction under the Code. Needless to say, if within the limited parameters, interference of the High Court is justified the only course of action that can be adopted is to order a re-trial after setting aside the acquittal. As the language of Section 401 of the Code makes it amply clear there is no power vested in the High Court to convert a finding of acquittal into one of conviction."

8. Similarly, in case of **Vimal Singh Vs. Khuman Singh and Anr., AIR 1998 SC 3380** while examining ambit of power of the High Court under Section 401 Cr.P.C. Hon'ble Apex Court has made following observations:

"The legal position as to the powers of the High Court in revision in the matter of interference with the order of acquittal is no longer res integra, as the law in this regard is very well settled. Suffice it to refer in this regard a decision of this Court in K.Chinnaswamy Reddy vs. State of Andhra Pradesh and anr. (AIR) 1962 Sc 1788) wherein it was held, thus :

"It is true that it is open to a High Court in revision to set aside an order of acquittal even at the instance of private parties, though the State may not have thought fit to appeal by the jurisdiction should be exercised by the High Court only in exception the procedure or there is a manifest error on a point of law and consequently there has been a flagrant miscarriage of justice. Sub-section (4) of Section 439 forbids a High Court from converting a finding of acquittal into one of conviction and that makes it all the more incumbent on the High Court to see that it does not covert the finding of acquittal into one of conviction by the indirect method of ordering retrial, when it cannot itself directly convert a finding of acquittal into a finding of conviction. This places limitations on the power of the High Court to set aside the finding of acquittal in revision and it is only in exceptional cases that this power should be exercised....."

Where the appeal Court wrongly ruled out evidence which was admissible, the High Court would not be justified in interfering with the order of acquittal in revision, so that the evidence may be reappraised - after taking into account the evidence which was wrongly ruled out as inadmissible. But the High Court should confine itself only to the admissibility of the evidence and should not go further and appraise the evidence also".

"7. Coming to the ambit of power of High Court under Section 401 of the Code, the High Court in its revisional power does not ordinarily interfere with judgments of acquittal passed by the trial court unless there has been manifest error of law or procedure. The interference with the order of acquittal passed by the trial

court is limited only to exceptional cases when it is found that the order under revision suffers from glaring illegality or has caused miscarriage of justice or when it is found that the trial court has no jurisdiction to try the case or where the trial court has illegally shut out the evidence which otherwise ought to have been considered or where the material evidence which clinches the issue has been overlooked. These are the instances where the High Court would be justified in interfering with the order of acquittal. Sub- section (3) of Section 401 mandates that the High Court shall not convert a finding of acquittal into one of conviction. Thus, the High Court would not be justified in substituting an order of acquittal into one of conviction even if it is convinced that the accused deserves conviction. No doubt, the High Court in exercise of its revisional power can set aside an order of acquittal if it comes within the ambit of exceptional cases enumerated above, but it cannot convert an order of acquittal into an order of conviction. The only course left to the High Court in such exceptional cases is to order retrial. In fact, Sub- section (3) of Section 401 of the Code forbids the High Court in converting the order of acquittal into one of conviction. In view of the limitation on the revisional power of the High Court, the High Court in the present case committed manifest illegality in convicting the appellant under Section 304, Part – I and sentencing him to seven years' rigorous imprisonment after setting aside the order of acquittal.”

9. The revision jurisdiction of the High Court as contemplated under Section 401 of Cr.P.C. operates within narrow limits and can be exercised only in exceptional cases where interests of public justice require interference for the correction of gross miscarriage of justice. It cannot be exercised because the lower court has taken a wrong view of the law or mis-appreciated evidence on record. The revision power of the High Court is to be exercised when there is manifest error of law or glaring defect in the procedure.

10. In the instant case, perusal of record shows that PW-1 Dukhran Dubey has not supported version of complaint in his cross examination under Section 246 Cr.P.C. and has back tracked from the version as stated by him in the statement under Section 244 Cr.P.C. This witness has not stated the date and time of incident nor he has explained how he has reached at the spot. It was also noticed that at one place PW-1 has stated that when he reached at spot no scuffle has taken place and the matter was already subsidised. Learned court below has found that his statement is

quite contradictory. PW-2 Basant Narain is complainant of the case but his statement was also not found cogent and consistent and his statement was suffering from various infirmities. He has stated date of incident as 28.09.1995 whereas in notice dated 15.09.1995 he has told that incident took place in October month. Learned trial court has found that the statement of PW-2 Basant Narain regarding date of incident is quite conflicting. On the basis of evidence and documents of proceedings of civil court, learned trial court has also found that the complainant has no possession over disputed land, rather that land was sold by his father to Harihar etc. and thus, no offence under Section 447 of IPC is made out. Similarly, statement of PW-3 Nandlal Pandey was also not found cogent and consistent and he has also not supported the version of complainant.

11. Considering all aspects of the case, learned trial court has held that complainant has failed to prove its case beyond doubt. After perusing entire evidence, it cannot be said that findings and conclusion of trial court are perverse or suffers from any illegality or any other error of jurisdiction. It is one of the cardinal number of criminal jurisprudence that prosecution is required to prove its case beyond doubt. In view of all these facts, there is no such illegality, perversity or any other error of jurisdiction in the impugned order so as to warrant interference by this Court in revisional jurisdiction.

12. Criminal Revision lacks merit and it is accordingly, dismissed.

Dated: 07.01.2020

Mohit Kushwaha

(Raj Beer Singh, J)