

Lata Ramesh More Vs. Ramesh Dinkar More and Others

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Court : Mumbai

Decided On : Aug-03-2015

Judge : A.R. Joshi

Appeal No. : Criminal Application [ALP] Nos. 269 of 2014, 204 of 2015, 205 of 2015, 206 of 2015, 207 of 2015, 209 of 2014, 221 of 2013, 261 of 2015, 353 of 2013, 364 of 2014, 469 of 2013, 480 of 2013, 592 of 2013, 841 of 2014, 901 of 2007, 902 of 2007, 903 of 2007, 1456 of 2012, 109 of 2014, 111 of 2014, 119 of 2014, 253 of 2013, 275 of 2013, 221 of 2014 in Criminal Appeal Nos. 200 of 2012, 547 of 2014, 32 of 2015, 170 of 2015, 200 of 2012, 268 of 2015, 300 of 2015, 301 of 2015, 946 of 2014

Appellant : Lata Ramesh More

Respondent : Ramesh Dinkar More and Others

Judgement :

P.C.

1. All these matters are taken together for decision on the legal point to the following effect :

Whether under section 378(4) of Code of Criminal Procedure an application for leave to file appeal can be entertained challenging the order of acquittal passed by the Appellate Court.?

2. During the hearing on some of the above applications for leave to file appeal it was argued by various respective Counsels for the applicants that the application for leave to file appeal can be entertained under Sub-section 4 of Section 378 of Cr.P.C., challenging the order of acquittal passed by an Appellate Court. Initially considering the plain reading of sub-section 4 of Section 378 of Cr.P.C., it was thought fit by this Court to firstly decide this legal issue in view of there being no decision of a Division Bench or a larger Bench of this Court on this legal point. It was also thought fit to appoint a learned Senior Counsel as amicus curiae to assist the Court. Accordingly learned Senior Counsel Shri Niteen Pradhan was requested to act as an amicus curiae and he has readily accepted to assist the Court and accordingly his arguments were heard at length. He has also filed written notes in order to assist the Court in deciding the above mentioned law point. Apart from hearing learned amicus curiae, other Counsel representing some of the applicants in the above applications, were also heard, such as learned Counsel Shri Subhash Jha in Criminal Application No.32 of 2015 and learned Counsel Shri Tapan Thatte in Criminal Application No.269 of 2014.

3. Initially during arguments learned Counsel for the applicant in Criminal Application No.269 of 2014 placed reliance on the following authorities :

[i] AIR 1969 Guj. 342 - [Sankalchand Varchhaji vs. Kehngaram Vardhaji]

[ii] (2013) ALL MR (Cri) 1613 - [Sau Geeta Bapurao Kapse vs. Anil Vithalrao Kadu]

[iii] 1972 Cr.LJ 1409 - [Mahammadmiya Kalumiya vs. Majidkhan Dildarkhan and anr.]

[iv] (2014) Supreme (Mad) 3006 - [M. Ramamurthy vs. N A Ramakrishnan]

4. The overall effect of the ratios propounded by the authorities is that sub-section 4 of Section 378 of Cr.P.C. applies to the orders of the acquittal irrespective whether it is passed in original proceedings by the trial Court or in the appeal by the Appellate Court, which is not being the High Court.

5. In the case of **Sau Geeta Kapse** (supra), learned Single Judge of this Court had discussed this issue and also emphasized the opening words of sub-section 2 and

sub-section 4 of Section 378 of Cr.P.C. i.e. the words such an order of acquittal? and further opined that these words include the order of acquittal passed by the Appellate Court in a case instituted upon a complaint. In para-5 of the said authority i.e. **Sau Geeta Kapse** (supra), learned Single Judge of this Court placed reliance on the ratio in the case of **Sankalchand Varchhaji** (supra) and also in the case of **Mahammadmiya Kalumiya** (supra).

6. Learned amicus curiae Senior Counsel Shri Nitin Pradhan took this Court to the Scheme of the Code of Criminal Procedure, 1898 and 1973 and submitted that the Scheme provides that in the event of passing an order of acquittal the party aggrieved is entitled for one Appeal to the Higher Court. The second approach by the same party is not by way of another Appeal but it is by way of taking recourse to Revision or SLP, as the case may be.

7. It is further argued by learned amicus curiae that this Policy of Legislature has been reflected in Sections 378 and 379 of Cr.P.C.. Section 378 deals with Appeal against the acquittal. Sub-sections 1 (a) and (b) thereof deal with the cases based on police report and sub-section 1(a) deals with acquittal in cases of cognizable and non-bailable offences and the Forum chosen for filing the appeal is before the Sessions Court when the order of trial Court is that of the Court lower in rank of the Sessions Court.

8. It is further argued by learned amicus curiae that earlier before the amendment which was introduced by the Act 25 of 2005 w.e.f. 23.6.2006, Section 378(1) was as under:

(1) Save as otherwise provided in sub-section (2), and subject to the provisions of sub-sections (3) and (5), the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court or an order of acquittal passed by the Court of Session in revision.?

9. In view of the above, the appeal against acquittal was entertained only by the High Court. By Act 25 of 2005 sub-section (1) of Section 378 of the Code was substituted and the Legislature, in its wisdom, introduced Clauses (a) and (b) and

entrusted the authority to grant sanction to file Appeal against acquittal to District Magistrate and State Government respectively. Each party to the proceeding has been held entitled for only one Appeal. The new amended Section 378(1) reads thus:

(1) Save as otherwise provided in sub-section (2), and subject to the provisions of sub-sections (3) and (5),-

(a) the District Magistrate may, in any case, direct the Public Prosecutor to present an appeal to the Court of Session from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;

(b) the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of an acquittal passed by any Court other than a High Court [not being an order under clause (a)] or an order of acquittal passed by the Court of Session in revision.?

10. By referring to the above, an argument is canvassed to the effect that the Policy of the Legislature was that there shall be only one Appeal against the order of acquittal. If the order of acquittal is passed by the learned Magistrate in a case instituted on a police report and for the offence being cognizable and non-bailable, the acquittal can be challenged by filing an Appeal in the Court of Sessions, if the directions are so given by the District Magistrate to the Public Prosecutor. In any other case the State Government may direct the Public Prosecutor to present an appeal to the High Court against an original or appellate order of acquittal. The exception, however, is an order passed by the High Court or an order of acquittal by the Court of Sessions in Revision.

11. By pointing this out, it is further submitted by learned amicus curiae that the cases instituted upon complaint were to be treated differently. Thereby each party has been provided with one remedy of Appeal in the event of case ending in conviction or acquittal. In the event of an order of acquittal passed either by the learned Magistrate or order passed by the Court of Sessions or appellate order of acquittal passed by the Sessions Court, the Appeal is provided to the High Court under Section 378(4) of Cr.P.C.. It is further submitted that by this the Legislature

has maintained a balance qua the right of party to approach higher Court for redressal of its grievance caused by the order of acquittal.

12. It is further submitted that the ratio propounded by the authorities, cited above, is in conformity with the legislative intent.

13. Reference is also made to the Recommendations of the Law Commission of India in its 41st Report. In Para 31.17 of the said Report dealing with the appeals against acquittal, the scheme prevailing prior to amendment by Act 25 of 2005 has been referred to and quoted:

Section 417 (3):

Sub Section (3) permits a private complaint in a case instituted on complaint to appeal against acquittal, but only after obtaining Special Leave from the High Court; all the Appeals under Section 417 lie to the High Court. The provisions for acquittal Appeals are, in a sense, unusual, but experience shows that in the existing set up of our Courts they are necessary to avoid miscarriage of justice and that is why the Code requires that all such Appeals must be heard by the High Court. The suggestion that Sessions Judges, could be entrusted with the responsibility of deciding such Appeal has not attracted us, as it is, we think only in the High Courts that a uniform standard for dealing with such Appeal can be maintained.?

14. It is further submitted that though the aforesaid suggestions were dismissed by the Law Commission, they were brought into effect by Amendment Act 25 of 2005 by introducing Section 378(1)(a) and (b) of the Code.

15. Arguments are also advanced on the principle of Interpretation of Statute and learned amicus curiae quoted Craies on Statute Law, quoting Lord Goddard C.J. who said “

'A certain amount of common sense must be applied in construing statutes. The object of the Act has to be considered where the language of an Act is clear and explicit, we must give effect to it, whatever may be the consequences, for in that case, the words of the statute speak the intention of the legislature.' "

16. Reference is also made to the ratio in the case of **Kanai Lal vs. Paramnidhi** reported in **AIR 1957 SC 907**. In the said authority the Supreme Court has held that it must be always borne in mind that the first and primary rule of construction is that the intention of the Legislature must be found in the words used by the Legislature itself. If the words used are capable of one construction only then it would not be open to the courts to adopt any other hypothetical construction on the ground that such hypothetical construction is more consistent with the alleged object and the policy of the Act. It has been further held that the words used in the material provision of the statute must be interpreted in their plain grammatical meaning, and it is only when such words are capable of two constructions that the question of giving effect to the policy or object of the Act can legitimately arise.

17. Moreover, the observations of the Three Judges Bench of the Hon'ble Supreme Court in the case of **Mahadeolal Kanodia vs. Administrative General of West Bengal** reported in **AIR 1960 SC 936** are brought to the notice of the Court, which reads thus:

Intention of the legislature has always to be gathered from the words used by it, giving to the words their plain, normal, grammatical meaning.?

18. The above were the arguments advanced for interpretation of the words if such an order of acquittal?. These words are the opening words of sub-section (2) of Section 378 and also are the opening words of sub-section (4) of Section 378 of Cr.P.C.. By pointing this out, it is submitted that these words indicate that such order of acquittal is the order which is mentioned in sub-section (1) of Section 378 of Cr.P.C. and which include the order of acquittal by the trial Court or by an appellate Court. It is specifically argued by learned amicus curiae that the words if such an order of acquittal? is required to be interpreted considering the ratios of the above authorities and mean to include the order of acquittal passed by an Appellate Court.

19. On carefully going through the ratios propounded by the authorities submitted by the learned Counsel who argued on this legal issue and considering the research work done by the learned Senior Counsel, amicus curiae, Shri Nitin Pradhan, this Court holds that the order of acquittal passed by the Appellate Court

can also be challenged under sub-section (4) of Section 378 of Cr.P.C., for the reasoning given herein below.

20. The relevant provision that is germane to the issue in question is Section 378 of Cr.P.C.. Section 378(1)(b) of Cr.P.C. deals with powers of the State Government to direct the Public Prosecutor to present an appeal to the High Court from original or appellate order of acquittal passed by any Court other than a High Court [except order under clause (a)] or from an order of acquittal passed by the Sessions Court in revision. This is insofar as cases arising out of police report are concerned. Section 378(2) of Cr.P.C. deals with prosecution of appeals by the Central Government to the High Court against the order of acquittal passed by the Court subordinate to High Court in its original or appellate jurisdiction arising out of prosecution launched by Delhi Police Special Establishment. The Section 378(3) Cr.P.C. declares that power of the State and Central Government to prefer an appeal is again subject to leave granted by the High Court to prefer an appeal. The Section 378(4) Cr.P.C. provides that if such an order of acquittal is passed in any case instituted upon complaint and the High Court on an application made to it by the complainant in this behalf, grant special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.

21. Sub-section (2) of Section 378 of Cr.P.C. specifically use the expression original or appellate order of an acquittal? while sub-section (4) does not specifically use such an expression. However, sub-section (4) starts with if such an order of acquittal...? which expression can also be found in subsection (2) of Section 378. In sub-section (2), the expression such an order of acquittal? is stated to be an original or appellate order of an acquittal under clause (b) thereof. Similarly, the expression such order of acquittal? found in sub-section (4) should also be understood as original or appellate order of acquittal? in keeping with the policy of the Code of Criminal Procedure.

22. This Court is in respectful agreement with the submission of the learned Senior Counsel Mr. Pradhan that the policy of the Code and the intention of the legislature is such that there is at least one appeal against an order of acquittal. If the expression such order of acquittal? in sub-section (4) of Section 378 were to

mean only an original order of acquittal, the same would be contrary against the policy of the code and the intention of the legislature inasmuch as there would then be no opportunity of preferring an appeal against an order of acquittal passed by the appellate Court in an appeal from an order of conviction passed by the trial Court. Such an interpretation would thus frustrate the object of Section 378 and the policy of the Code. Moreover, such an interpretation would also leave the aggrieved party without any remedy inasmuch as the revisional jurisdiction as per Section 401(3) of Cr.P.C., does not permit conversion of a finding of acquittal into a finding of conviction. Therefore, in such an event, the only remedy would then be under Section 482 of Cr.P.C. and / or by invoking the constitutional power of the High Court, the scope of which cannot be equated with the scope of an appeal.

23. In view of the aforesaid reasons, and in keeping with the policy of the Code and the intention of the legislature, it is necessary to interpret the expression such order of acquittal? found in sub-section (4) of Section 378 of Cr.P.C. so as to be understood as original or appellate order of acquittal?. This Court accordingly answers the legal point as follows:

Under Section 378(4) of Cr.P.C. an application for leave to file appeal can be entertained challenging the order of acquittal passed by the Appellate Court.?

24. In view of the above, the individual applications shall be dealt with accordingly. Office to delink all the matters, as now they will be heard on merits separately.

25. This Court expresses its gratitude towards the able assistance of learned amicus curiae Senior Counsel Shri Nitin Pradhan and the efforts taken by him in assisting the Court in deciding the legal point raised in these matters.

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