

Araj Narayan Singh, Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Aug-05-2008

Judge : Ghanshyam Prasad, J.

Appellant : Araj Narayan Singh, Satendra Kumar Singh and Rajmani Devi

Respondent : The State of Bihar and ors.

Disposition : Application dismissed

Judgement :

Ghanshyam Prasad, J.

1. In all these three criminal revisions common question of law is involved. Accordingly, all these criminal revisions are being disposed of by this common order.

Criminal Revision No. 1122 of 2007 has been filed against the judgment and order of acquittal dated 1.8.2007 passed by Fast Track Court-III, Gaya in Sessions trial No. 332/2006/561/2006. Criminal Revision No. 405 of 2005 has been filed against the judgment and order of acquittal dated 29.5.2004 passed by Additional Sessions Judge-V, Siwan in Sessions Trial No. 14/96 and Criminal Revision No. 1127 of 2007 has been filed against the judgment and order of acquittal dated 19.5.2007 passed by S.D.J.M. Saran in Trial No. 494 of 2007.

2. All these three revision applications have been filed by the informant. The State has neither filed revision nor any appeal against the judgment and order of acquittal. In all these applications the circumstances and points of law involved are identical. In these applications accused persons have been acquitted for non-examination of witnesses/material witnesses.

3. It is submitted by the learned Counsel for the petitioners in all these three applications that the lower court ought not to have closed the prosecution evidence without examination of material witness. The courts ought to have given more time to the prosecution or ought to have taken personal efforts for examination of witnesses. Acquittal of accused persons for non-examination of material witnesses has resulted into serious miscarriage of justice and, therefore, the case should be remanded for fresh decision after examination of all material witnesses.

4. The power of High Court to set aside the order of acquittal under revisional jurisdiction at the instance of the private party/informant is very limited and it should be exercised in exceptional circumstances. One of the decisions of Hon'ble Supreme Court on this point is reported in : [1963]3SCR412 (K. Chinnaswamy Reddy v. State of Andhra Pradesh and Anr.). In paragraph 7 of the decision the Hon'ble Supreme Court has made the following observation;

Para 7- '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; but this jurisdiction should in our opinion be exercised by the High Court only in exceptional cases, when there is some glaring defect in 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 convert 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 a finding of acquittal in revision and it is only in exceptional cases that this power

should be exercised. It is not possible to lay down the criteria for determining such exceptional cases which would cover all contingencies. We may however indicate some cases of this kind, which would in our opinion, justify the High Court in interfering with a finding of acquittal in revision. these cases may be; where the trial court has no jurisdiction to try the case but has still acquitted the accused, or where the trial court has wrongly shut out evidence which the prosecution wished to produce, or where the appeal court has wrongly held evidence which was admitted by the trial court to be inadmissible, or where material evidence has been overlooked either by the trial court or by the appeal court, or where the acquittal is based on a compounding of the offence, which is invalid under the law. These and other cases of similar nature can properly be held to be cases of exceptional nature, where the High Court can justifiably interfere with an order of acquittal; and in such a case it is obvious that it cannot be said that the High Court was doing indirectly what it could not do directly in view of the provisions of Section 439(4). We have therefore to see whether the order of the High Court setting aside the order of acquittal in this case can be upheld on these principles.

5. The above observation has been approved by several subsequent decisions of the Hon'ble Supreme Court i.e. 1981 SC 1415; 1998 SC 990; 1994 SC 26.

6. The only ground for assailing the judgment and order of acquittal is non-examination of material witnesses. The basic principle is that it is prosecution who is duty bound to produce witnesses within reasonable time. The court cannot wait indefinitely for production of witnesses. If the prosecution is negligent to produce the witnesses, the trial court can close the prosecution and pass order of acquittal for want of evidence.

7. All these applications in hand are relating to old cases. On perusal of judgment it is quite apparent that the courts gave sufficient time to prosecution to examine witnesses, issued processes for production of witnesses but the witnesses failed to appear and depose. In such situation, the trial courts were perfectly justified to pronounce the judgment of acquittal.

8. Here I am tempted to refer two decisions on this point reported in 1982 CRI. L.J. 1052 (Calcutta) (Easin Ali v. Abdul Obdud and Ors.) and : AIR1980 Mad260 (The

State v. Veerappan and Ors.). The decision reported in 1982 CRL. L.J. 1052 (Supra) is based on Division Bench decision of Pallia High Court reported in 1974 CRL. L.J. (State v. Mangilal Ram and Ors.) in paragraph 3 of the Calcutta decision (Supra) it has been held as follows;

Para-3. It has been held by a Bench decision of the Patna High Court in which the judgment was delivered by Untawalia C.J. (as the learned Judge then was) in the case of State v. Mangilal 1974 Cri. L.J. 221 that in a warrant case instituted on police report the prosecution is to produce witnesses. Help of the court may, however, be asked for issuing summons to the prosecution witnesses or to issue warrant of arrest, if necessary and such a prayer would be allowed unless there are special reasons to refuse it. The power to issue summons etc. may be exercised by the court even suo motu but it is not imperative for the court to do so. The court may refuse to exercise that power where prosecution is negligent or guilty of laches. In that case summonses were issued to the witnesses but still they were not attending the court. The prosecution was not able to produce them and it was not clear whether the summonses were served or not. But no reason was given by the prosecution for the absence of the witnesses. The accused was being harassed on many dates. In such a situation it was held that the learned Magistrate was justified in closing the prosecution case and proceeding with the trial and that he did not commit any illegality or irregularity for which his order could be set aside. I respectfully agree with the view taken by the Division Bench of Patna High Court in the aforesaid case, in relation to the trial of a warrant case instituted upon police report. In the instant case, the learned Magistrate adjourned the case on 8 occasions between 19.11.75 and 2.3.78 and issued fresh summons to witnesses on three occasions. He repeatedly directed the prosecution to take steps for production of witnesses. But the prosecution was extremely negligent and was guilty of laches in not taking steps to produce witnesses in spite of repeated issue of summons to the witnesses and repeated opportunities for producing evidence. About 5 years passed between the first date of appearance of the accused persons in court after submission of charge-sheet and the impugned order of acquittal. They were harassed on many occasions for non-production. At the hearing of the case, before this Court it has been submitted by the learned advocate appearing for the State-opposite party that this is not a fit case for

interference. The learned advocate for the State is not sure that the same situation would not be repeated if the case is sent back to the learned Magistrate. Carriage of the proceeding cannot be given to the first party informant. Considering the facts and circumstances of the present case and the legal position I find that the learned Magistrate has not committed any illegality or irregularity in passing the impugned order of acquittal and that this is not a fit case for interfering with the order.

9. In a decision reported in AIR 1980 Madras 260(Supra) almost similar view has been taken by the full Bench in paragraph 24 and it has been held as follows;

Para 24- After carefully considering all the aforesaid decisions and the view expressed therein, we are of the view that if the prosecution had made an application for the issue of summons to its witnesses either under Section 242(2) or 254(2) of the Criminal Procedure Code it is the duty of the court to issue summons to the prosecution witnesses and to secure the witnesses by exercising all the powers given to it under the Criminal Procedure Code, as already indicated by us and if still the presence of the witnesses could not be secured and the prosecution also either on account of pronounced negligence or recalcitrance does not produce the witnesses after the Court had given it sufficient time and opportunities to do so, then the Court, being left with no other alternative would be justified in acquitting the accused for want of evidence to prove the prosecution case, under Section 248 Cr.P.C. in the case of warrant cases instituted on a police report and under Section 255(1) Cr.P.C. in summons cases, and we answer the two questions referred to us in the above terms.

10. Both the aforesaid decisions are in respect of trial of warrant case. However, the law and principle laid down in those decisions can conveniently be applied in sessions trial also. From the facts mentioned in the judgment it is quite apparent that the law laid down in the above decisions is applicable in those cases. Criminal Revision No. 1122/07 relates to the year of 2001. Paragraph 4 of the judgment would go to show that sufficient time was given to the prosecution but the prosecution failed to produce witnesses. Processes were also issued by the court as prayed for by the prosecution. Criminal Revision No. 405/05 also relates to a

case of more than ten years old. Paragraph 6 of the judgment would go to show that prosecution was given sufficient opportunities for examination of witnesses. Processes were also issued. Similarly Criminal Revision 1127/07 relates to a case which is of more than ten years old. More than two and half years time was given to the prosecution for examination of witnesses but not a single witness was examined. The case was closed only after exhausting all processes for appearance of the witnesses. In other words, in all these three cases accused persons were harassed for more than five years and, therefore, courts below were perfectly justified to close the case and pass order of acquittal.

11. Taking into account the narrow scope for interfere in the impugned orders of acquittal under revisional jurisdiction filed at the instance of the informant and negligent act on the part of prosecution to adduce evidence, this Court has no option but to dismiss these applications at the stage of admission itself.

Order accordingly.

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