

Prabind Kumar Vs. the State of Bihar

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Court : Patna

Decided On : Nov-29-2006

Judge : Ghanshyam Prasad, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 125 and 397; [Code of Criminal Procedure \(CrPC\) , 1898](#)

Appeal No. : Cr. Revision No. 162 of 2005

Appellant : Prabind Kumar

Respondent : The State of Bihar

Judgement :

Ghanshyam Prasad, J.

1. This application for revision under Section 397 Cr.P.C. has been filed for setting aside the order dated 5.1.2005 passed by Judicial Magistrate Ist Class, Danapur in Bikram P.S. Case No. 70 of 2001 thereby and thereunder the learned Judicial Magistrate has ordered for release of truck bearing No. BR-25G/8681 in favour of opposite party No. 2 Amrendra Kumar after rejecting the prayer of the petitioner for the same.

2. In course of hearing, a preliminary objection was raised as to maintainability of this revision application as the petitioner has directly approached this Court

ignoring the forum of Sessions court which was available to him to challenge the order in question. On the other hand, the learned Counsel for the petitioner submitted that in the matter of revision jurisdiction of High Court and Sessions Court is concurrent under Section 397 Cr.P.C. of 1973 and, therefore, it is the sole discretion of the aggrieved party to choose one of the forum as per his choice. Section 397 Cr.P.C. does not create any bar against directly invoking the jurisdiction of the High Court instead of availing the forum of Sessions Court.

3. There was no problem in old Code of Criminal Procedure 1898 as the High Court alone was empowered to entertain application for revision. However, under new Code of Criminal Procedure 1973 concurrent jurisdiction has been conferred both upon High Court and Sessions Court in the matter of revision. Section 397 of the Cr.P.C. 1973 runs as follows:

397. Calling for records to exercise of 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 purposes 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 or 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.

4. From plain reading of the provision, it is manifestly clear that the law neither prohibits the party to directly invoke the revisional jurisdiction of the High Court nor bars the High Court to entertain such application if approached directly by-passing the forum of Sessions Court.

5. However in order to understand true intent for conferring concurrent and coordinate revisional jurisdiction one has to go behind the enactment of Code of Criminal Procedure, 1973. The Law Commission of India in its 41st report did not make any recommendation for conferring concurrent revisional jurisdiction to High Court and Sessions Court. However, in its earlier report, particularly in 14th report the Commission had recommended for such concurrent revisional jurisdiction. The

relevant recommendation has been mentioned in paragraph-32.7 of Vol. I of the 41st report of the Law Commission of India, 1969. It runs as follows:

32.7. It has been suggested that some of these powers can be safely entrusted to the Session Courts and that would relieve some of the congestion of work in the High Courts. In the 14th Report, the Law Commission said:

A further measure which will relieve congestion in this category of work needs consideration. Could some of the revisional powers now being exercised by the High Courts be entrusted to sessions judges? The Judicial Reforms Committee of Uttar Pradesh recommended that sessions judges should be given full powers to hear and determine all criminal revisions except revisions against orders of acquittal and revisions for enhancement of sentences.

The evidence before us generally favoured the grant of revisional jurisdiction to this extent to the sessions judge. There was general agreement that in most petty matters a party applying for revision labours under a disadvantage in that he has to take the matter to the High Court. The view was also expressed that there was no reason why sessions judges who are entrusted with the trial of every important case and are competent to impose even the penalty of death should not be empowered to deal with minor matters in revision and be required to submit them to the High Court for its final orders. It is anomalous that a sessions judge should be able to deal with and dispose finally an appeal from a sentence passed by a first class magistrate, but that he should not be competent to revise an order passed by a third class magistrate.

We are, therefore, of the view that sessions judges may well be invested with powers to pass final orders in revision in all matters other than petitions against orders of acquittal and for enhancement of sentence.

6. The purpose and intent to confer concurrent jurisdiction appears to be manifold one of it is to relieve some of the congestion of work in the High Court. The energy and time of High Court should not be wasted in dealing with petty matters under revisional jurisdiction which could be effectively dealt with by the lower court.

7. My attention was drawn towards a decision of the Bombay High Court reported in 1999 Cr.Law Journal 122 (Padma Nath Keshav Kamat v. Anup R. Kantak and Ors.). In that very decision, two other decisions of the same High Court reported in 1996 Cr.Law Journal 172 and 1976 Cr.Law Journal 1604 alongwith decision of apex court reported in 1959 Cr.Law Journal 256 have been taken into consideration and relied upon. In that very decision, similar matter had fallen for consideration before the High Court.

8. The main theme of the above decision is that when the proceeding is maintainable by two different courts one being inferior and subordinate to other the propriety demands that the superior court should not entertain such proceeding which could have been filed in lower court unless there is some strong circumstances to by-pass the forum of inferior court. I would like to refer two relevant paras of the above decisions:

7. Shri Dessai, however, relied upon the decision in Tejram Mahadeoruo Gaikwad v. Smt. Sunanda Tejram Gaikwad 1996 Cri.LJ 172, wherein the learned single judge (R.M. Lodha, J) of this Court while dealing with a revision application filed by the petitioner-husband challenging the order of maintenance passed against him under Section 125 of the Criminal Procedure Code by a Magistrate, deal with the question of maintainability of revision application which was directly filed in the High Court. In paragraph 4 of his judgment, the learned Judge made the following observations:

It is undoubtedly true that Section 397 of the Code of Criminal Procedure confers jurisdiction of revision concurrently on the Court of Sessions as well as the High Court, but it is equally true that where the jurisdiction is conferred on two Courts, the aggrieved party should ordinarily first approach the inferior of the two Courts unless exceptional grounds for taking the matter directly before the superior Court is made out. Since the applicant has come directly to the High Court, though he could have filed the revision before the Sessions Judge and there are no exceptional reasons, the revision application deserves to be dismissed on this count also. This Court does not encourage filing of revision application under Section 397 of the Code of Criminal Procedure directly before this Court if it could

be challenged in revision before the Sessions Court having jurisdiction of revision over the matter.

9. It has been held further in para 12 of the decision which is as follows:

12. Exercise of revisional powers is not a matter of course but it is a matter of rare and sparing use. Hence as pointed out above when two fora are available to the petitioner for getting redressal of the alleged wrong, then it will certainly be more appropriate for him to first approach the lower forum. It is certainly within the discretion of the higher forum, that is this Court to consider whether it should entertain or not such a revision application which can lie before the Sessions Judge. In this respect I am in full agreement with the opinion express by my learned brother R.M. Lodha, J., in the case of *Tejram v. Sunanda* 1996 Cri.LJ 172 and I am of the opinion that this Court should not entertain this revision application which can be entertained and decided by the Sessions Judge, Panaji. No question of causing inconvenience or prejudice to the petitioner arises, if the Sessions Judge, in exercise of his revision powers, deals with the application.

10. Similar view has been expressed by Gauhati High Court also in a decision reported in 2000 Cr.Law Journal 1621 (*Shanti Ranjan Majumdar v. Smt. Alo Banik and Ors.*). In paragraph-3 it has been held as follows:

It is true that under Section 397 Cr.P.C. both the High Court and the Sessions Judge have concurrent revisional jurisdiction. But as a matter of established practice which was also under old Criminal Procedure Code 1898 the revision is filed first before the Sessions Judge then before the High Court. The obvious advantages are the convenience of the parties and the witnesses who appeared before the court, it is very much, convenient to approach the court of learned Sessions Judge situate in the district than to approach the High Court. Secondly, the High Court is not crowded with the cases. Thirdly, the High Court has advantage; of having the views of the learned Sessions Judge in case the matter comes before the High Court eventually. In cases of special, exceptional and extraordinary circumstances, the party may come direct to the High Court in revision. No such special, exceptional or extraordinary circumstances have been urged or pointed out by the petitioner. The proper remedy for the petitioner is to file

revision before the learned Sessions Judge.

11. I am in full agreement with the above decisions of the two High Courts. Maintainability and entertainment are two separate things. The law does not prohibit the party to approach the High Court directly but this Course should be used sparingly and in exceptional circumstances and not as a matter of practice. Otherwise the entire purpose of conferring concurrent revisional jurisdiction will be frustrated. This Court does not incline to encourage such practice.

12. Since, there is no exceptional circumstance involved in this case to approach this Court directly by passing the forum of lower court, I am not inclined to entertain this application. Accordingly, the office is directed to return the memo of this revision application to party concerned for presentation before the appropriate forum in the lower court.

13. Accordingly, this application stands disposed of.

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