

Satpal Vs. State and Ors.

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Court : Delhi

Decided On : Dec-16-2014

Judge : Indermeet Kaur

Appellant : Satpal

Respondent : State and Ors.

Judgement :

\$~ * IN THE HIGH COURT OF DELHI AT NEW DELHI % + Judgment reserved on :10.12.2014 Judgment delivered on :16.12.2014 CRL.REV.P. 882/2002 SATPAL Through Petitioner Mr.Sunil K.Mittal, Mr.Harsh Khanna and Mr.Anshul Mittal, Advocates. versus STATE & ORS. Through Respondents Ms.Kusum Dhalla, APP for the State. Mr.Vijay Aggarwal, Ms.Chaitali Jain and Ms.Katyayini, Advocates. CORAM: HON'BLE MS. JUSTICE INDERMEET KAUR INDERMEET KAUR, J.

1 This revision petition is directed against the order dated 11.7.2002 passed by the High Court wherein the Sessions Judge on a remand by the High Court (in terms of the order of the High Court dated 08.10.2001) had, on the ground of maintainability, dismissed the petition. 2 Record shows that two cross FIRs had been registered qua the same incident of 27.10.1988, at police station Keshav Puram. In FIR No.182/1988, the complainant was Pritam Dass (respondent no.2 in the present case). In the second FIR which is FIR No.2/1989, the complainant was Satpal (petitioner in the present case). Satpal and Pritam Dass are real brothers

and their fathers name is Budha Ram. Dispute had arisen within the family and the incident dated 27.10.1988 was an outcome of this acrimony between the parties. 3 Learned counsel for the petitioner has drawn attention of this Court to the orders sheets commencing from 24.7.1997 up to 20.02.1999. On all these dates which were nine dates listed before the Magistrate, both FIR Nos.182/1988 and FIR No.2/1989 were being heard and tried together. They were both listed before the same Court. However, on 19.02.1999 FIR No.182/1988 was shown to be listed; file not being available, the matter was listed for arguments on 19.3.1999. FIR No.2/1989 was, however, taken up on 20.02.1999 and not on 19.3.1999 although in both the FIRs, the previous date was the same i.e. 16.01.1999. On 20.02.1999, the matter was adjourned to 20.4.1999. Thus from 19.02.1999 both the FIRs got derailed and were taken up on separate dates. 4 Learned counsel for the petitioner points out that these being cross cases were being heard together and to avoid conflict of judgment it was also incumbent upon the Court to have heard both the cases together. Submission being that it was a deliberate attempt on the part of the Ahlmed of the Court not to have produced the file of FIR No.182/1988 on 19.02.1999 (this had also been clearly noted in the order dated 19.02.1999) in order that the two cases could get separated. Thereafter by the clever tactics of the respondent and the petitioner being unaware of the next date i.e. of 20.4.1999, the Court closed the prosecution evidence noting that no PW was present on behalf of the State. Submission being that all along it was the impression of the complainant as also of the Public Prosecutor that both the cases were being heard on the same date; only on one date i.e. on 20.4.1999 where the Court had noted that there was no witness on behalf of the prosecution, the Court had closed the prosecution evidence. On the same date itself, the Court had acquitted the respondents. 5 These submissions of the learned counsel for the petitioner are borne out from the record. The record does evidence that both the FIRs were being heard and tried together but on 19.02.1999 the file of FIR No.182/1988 was not traceable by the Ahlmed. On that date FIR No.182/1988 listed for 19.3.1999 . FIR No.2/1989 was not taken up on 19.02.1999 which was the actual date of hearing but was taken up on 20.02.1999. Thereafter on the following date i.e. on 24.04.1999 the evidence of the prosecution stood closed. Submission of learned counsel for the petitioner being that the petitioner/complainant in FIR No.2/1999

was under the bonafide impression that since both the FIRs were being heard and tried together the next date after 19.02.1999 was 19.3.1999 in both the cases. Further submission being that it was a deliberate tactic on the part of the respondent to get the FIR No.2/1999 detached and thereby to obtain an order of the closure of the evidence of the prosecution. CrI. Rev.P. No.882/2002 Obviously, the Page 4 of 20 complainant/petitioner being unaware of the date of 20.4.1999 was not represented. This Court notes that neither the public Prosecutor nor the complainant was present on the said date i.e. on 20.4.1999 when the evidence of the prosecution stood closed and the respondent/accused stood acquitted. 6 The complainant was aggrieved by this order dated 20.4.1999. He preferred a revision petition before the Sessions Judge i.e. C.R.No.54/1999. This was disposed of by Addl. Sessions Judge (Shri D.S.Pawaria) vide his order dated 12.8.1999. He set aside the order dated 20.4.1999. He noted the submission of the learned counsel for the petitioner that since both the cases relating to the same incident were being heard and were being tried together and the petitioner was also a victim in the case and he not having been given an opportunity to produce his witnesses the order suffered from an infirmity; it was obviously due to a mistake that one case had got derailed from other. No fault could be attributed to the petitioner. Order dated 12.8.1999 had also noted that on several dates time had been taken by both the parties for compromise and settlement noting that both the complainants (in FIR No.182/1988 and FIR No.2/1989) were real brothers. Revision petition was accordingly, allowed and the matter was remanded back to the trial Court giving liberty to the petitioner to lead evidence. 7 Against this order dated 12.8.1999, the respondent/accused filed a revision petition. This was Criminal Revision Petition No.5 of 1999. 08.10.2001. This was disposed of by the High Court on The High Court was of the view that since the revision petition decided on 12.8.1999 (by Sh. D.S.Pawaria) was without notice to the respondent/accused a fair hearing demanded that an opportunity should have been afforded to them also. On this ground alone the order dated 12.8.1999 was set aside and the matter was remanded back to the Sessions Judge to decide the revision petition afresh. 8 The third round of litigation then followed. This led to the passing of the impugned order i.e. the order dated 11.7.2002. This order was passed in Criminal Revision No.54/1999. The first paragraph itself suggests that it was only on the

maintainability of the petition, that the petition was decided. The merits of the case were not examined. The Court of Sh.R.K.Jain, ASJ, vide order dated 11.7.2002 held that this revision was not maintainable. Provisions of Section 378 of the Cr.P.C. were noted; it was noted that an appeal against order of acquittal can be filed only in the High Court. A revision petition by a private party against an order of acquittal cannot be entertained by the Sessions Court. It could be entertained only by the High Court and that to in exceptional circumstances. Revision petition not being maintainable, it was dismissed. 9 Thereafter Criminal Revision Petition No.8/2002 was filed by the petitioner (Satpal) in the High Court. The matter is pending since that date. On 12.11.2009 this Court noted that since both the FIRs relate to a dispute between two real brothers, efforts for reconciliation be made and the matter was referred to Delhi High Court Mediation and Conciliation Centre. On the following date i.e. 15.12.2009, it was reported that there was no possibility of mediation. On 19.7.2010, a second effort for reconciliation through the Mediator was made. This continued for some time but it was reported that mediation was not possible. Even on 22.7.2011 efforts for negotiation and mediation were made. On 19.12.2012, again efforts for reconciliation were made and the matter was again referred to mediation; on that date proceedings in the cross FIR i.e. FIR No.182/1988 were stayed. 10 In this background, the first submission of the learned counsel for the respondent is that this is a second revision; the remedy of one revision has already been availed by the petitioner and his revision petition had been disposed of by the Sessions Judge on 11.7.2002. This second revision petition filed by the same petitioner is not maintainable; he has to cross the hurdle of Section 397 (3) Cr.P.C. Attention has also been drawn to the provisions of Section 401 of the Cr.P.C.; submission being that even the High Court under its power of revision cannot convert an acquittal into a conviction. The impugned order calls for no interference. Additional submission of the learned counsel for the respondent being that even presuming that this Court does not go by the nomenclature and this revision petition be treated as a petition seeking invocation of the inherent powers of this Court under Section 482 of the Cr.P.C., even then the bar of limitation would prevail and petitioner would have to explain the inordinate delay in preferring these proceedings. In support of his submission, learned counsel for the respondent has placed reliance upon AIR 1966

SC911Thakur Ram and Ors. Vs. State of Bihar. This is to support his submission that a private party cannot come against an order of acquittal; he has no locus standi; such a petition cannot be entertained. Reliance has also been placed upon 2010 (1) JCC48Desh Raj Vs. Kewal Krishan & Ors. to support his submission that revisional jurisdiction is distinct from an appellate jurisdiction and the revisional jurisdiction when invoked by a private complainant against an order of acquittal ought not to be exercised lightly. Reliance has also been placed upon (1996) 6 SCC342Ashok Kapil Vs.Sanna Ullha to support his submission that a Court of justice and equity does not permit a man to take advantage of his own wrong; this is one of the salient tenets of equity; in the present case, the petitioner is actually challenging the order dated 19.3.1999 when his case (FIR No.2/1989) got bifurcated from the second FIR i.e. FIR No.182/1988; this was all because of his own fault; he should have kept a track of the case and having failed to do so, he cannot now take advantage of his own wrong. 11 Needless to state that these arguments have been refuted. 12 Arguments have been heard. Record has been perused. 13 The Criminal Procedure Code had been amended by Act 5 of 2009. Section 372 now gives a right to the victim to file an appeal against any order passed by the Court acquitting the accused or convicting him for a lesser offence or imposing inadequate compensation and such an appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such a Court. This amendment came into effect on 31.12.2009. The present case, however, pertains to a period prior to the amendment. At that point of time under Section 378 of the Cr.P.C. an appeal against an order of acquittal could only be filed by the State. There is also no dispute to the factum that the powers of the appellate Court under the Cr.P.C. which are engrafted under Section 386 of the Code are distinct and different from the powers of revision which are contained in Section 397 of the Cr.P.C. and in a separate Chapter. It is also settled position that under Section 397 (3) wherein an application for revision has been made by one person before the Sessions Judge no further proceedings by way of another revision at the instance of the same person shall be entertained by the High Court or any other Section 401(3) has detailed the High Courts power of Court. revision. Under this sub-section the High Court also cannot convert a finding of acquittal into one of conviction. On this count the submission of the learned counsel for the petitioner is

noted; he submits that the prayer made in the revision is not for converting the finding of acquittal (as passed in the order dated 24.9.1999) to one of conviction but to set aside the order dated 20.4.1999 and to allow the complainant to produce his witnesses. This submission of the learned counsel for the petitioner is well founded; the arguments of the learned counsel for the respondent on Section 401 (3) of the Cr.P.C are thus not sustainable. 14 The Sessions Judge had disposed of the revision petition vide his order dated 11.7.2002. This is the impugned order. This revision petition has been filed by Satpal. The petitioner before this Court is also Satpal i.e. the revisionist before the Sessions Judge. The bar of Section 397 (3) does create a hurdle. The submission of the learned counsel for the petitioner on this score is that it is not the nomenclature of the petition itself which can decide the fate of the case; wherever there is a travesty of justice it is open to the Court to convert a revision petition and read it as a petition under Section 482 of the Cr.P.C. invoking the inherent powers of the Court. 15 A Bench of the Guwahati High Court in a decision reported as 1991(1) Crimes 509 Guwahati Otin Panging Vs. Nambor Kaman had observed as follows:

The question as to whether the bar contained in subsection(3) of Section 397 of the Cr.P.C. will in any way limit or affect the inherent powers of the High Court under Section 482 is also no more res integra. This aspect of the matter was considered by the Supreme Court in AIR 1978 SC47(50) Madhu Limaye Vs. State of Maharashtra. It was observed that the bar operates only in exercise of the revisional power of the High Court meaning thereby that the High Court will have no power of revision under sub-section(1) of Section 397. The bar will not operate to prevent the abuse of the process of the Court and/or to secure the ends of justice. The label of the petition filed by the aggrieved party is immaterial. The High Court can examine the matter in an appropriate case under its inherent power. 16 It is thus clear that as per the ratio of this judgment the High Court is not precluded from treating a petition under Section 397 as a petition under Section 482 of the Cr.P.C. and to grant necessary relief, if it is satisfied that it is necessary to do so for the purpose of securing the ends of justice. The language of Section 482 of the Cr.P.C. is very widely worded. The observations of the Supreme Court in 2004 Cr.L.J.3866 (3868) (SC) State of Punjab Vs. Kasturi Lal are relevant and read herein as under:

Exercise of power under S.482 of the Code in a case of this nature is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of Court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All Courts, whether civil or criminal possess, in the absence of any express provisions, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice. While exercising powers under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone Courts exist. 17 This Court also notes the argument of the learned counsel for the petitioner that prior to the amendment of 2009 a private complainant had no remedy against an order of acquittal. His locus standi was under challenge. However, the concept of locus standi would pale into insignificance if the present petition is treated as a petition under Section 482 of the Cr.P.C. 18 The fact that there were two cross FIRs pending inter se the parties is not disputed. It is not in dispute that it was out of a common incident dated 27.10.1988 that both the brothers had cross grievances against one another pursuant to which the two FIRs i.e. FIR No.182/1988 and FIR No.2/1989 had been registered at police station Keshav Puram. It is also an admitted fact that both the FIRs were being tried together. In fact, the Supreme Court in (2003) 9 Supreme Court Cases 426 State of M.P. Vs. Mishri Lal in this context had noted as follows:

In the instant case, it is undisputed, that the investigating officer submitted that challan on the basis of the complaint lodged by the accused Mishrilal in respect of

the same incident. It would have been just, fair and proper to decide both the cases together by the same court in view of the guidelines devised by this Court in Hathuy Lal case. The cross-cases should be tried together by the same court irrespective of the nature of the offence involved. The rational behind this is avoid the conflicting judgments over the same incident because if cross-cases are allowed to be tried by two courts separately there is likelihood of conflicting judgments. In the instance case, the investigating officer submitted the challan against both the parties. Both the complaints cannot be said to be right. Either one of them must be false. In such a situation, legal obligation is cast upon the investigating officer to make an endeavour to find out the truth and to cull out the truth from falsehood. Unfortunately, the investigating officer has failed to discharge the obligation, resulting in grave miscarriage of justice.

19 The fact that they were being tried together up to a particular date i.e. up to 19.02.1999 has also been noted supra. It was only thereafter that the file was not traceable of one case and one got derailed. Several dates for compromise had also been taken not only before the trial court but even before this Court. This has also been noted. Efforts for reconciliation were again sought to be initiated before this Court. Learned counsel for the respondent, under instructions of his client who was present in the Court during the course of hearing, submits that there is no possibility of settlement. The acrimony between the warring brothers has in fact increased. It does not appear to have lessened over the past 25 years. It appears that generation after generation will continue with this litigation. The respondent wants to pursue his FIR i.e. FIR No.182/1988 where proceedings are pending before the trial Court. FIR No.2/1989 had, however, met the fate of an acquittal of the respondent as on one particular date neither the prosecutor nor the witnesses of the prosecution were present. This appears to be largely for the reason that since both the FIRs were being heard and tried together, the petitioner was under the bonafide and correct impression that his matter would be taken up on the same date i.e. on 19.3.1999; however, his case (FIR No.2/1989) was taken up on a separate date i.e. on 20.4.1999 and on that date itself noting that neither the Public Prosecutor nor the witnesses of the prosecution were available, prosecution evidence was closed and accused persons stood acquitted. The long chain of litigation which had followed after 20.4.1999 has already been discussed supra. It

is not as if that the petitioner was lying quiet; he was running from pillar to post and exhausted all other legal forums before he filed the present proceedings. There were several rounds of litigation. The first order passed by Sh.D.S.Pawaria, ASJ on 12.8.1999 had set aside the order dated 20.4.1999. This order was passed in his favour. The respondent had gone in revision to the High Court. The High Court on 08.10.2001 had remanded the matter back to the Sessions Judge. On 11.7.2002, a different Sessions Judge had taken a different opinion; he was of the view that this revision was not maintainable. This order has now become the subject matter of the present proceedings. 20 In this background, this Court thinks that this is a fit case where the inherent powers of the Court, to secure the ends of justice, should be invoked. Not allowing the petitioner to lead his evidence in FIR No.2/1989 would become a travesty of justice as in the cross FIR i.e. FIR No.182/1988, the respondent (brother of the petitioner) is successfully pursuing the trial which may well result in a conviction order against the petitioner. The petitioner who had suffered grievous injuries in the same incident of 27.10.1988 would be left with no remedy. He would not be able to prove that he was also allegedly the victim of that same incident and he also had a grievance against the respondent. 21 The submission of the learned counsel for the respondent that the petition is time barred is incorrect. The order impugned before this Court is the order dated 11.7.2002. The present petition was filed in 01.10.2002. 22 Under Section 482 of the Cr.P.C. the ends of justice is the paramount consideration which has to weigh with the Court. The Full Bench of the Andhra Pradesh High Court, in AIR 1979 AP146 In Re: Puritipatti Jega Reddi had also examined this proposition and had noted that wherever warranted, irrespective of the manner in which the matter had been brought to the notice of the Court, or that the parties who had been unsuccessful in a revision before the Sessions Judge and would then be precluded from filing a second revision petition in the High Court, yet the High Court, in its inherent powers may, to prevent the abuse of the process of the Court and to secure the ends of justice, entertain such a petition. 23 The impugned order dated 11.7.2002 is accordingly set aside. Petitioner is granted liberty to produce his witness before the Magistrate. This Court has been informed that the connected FIR i.e. FIR No.182/1988 had since been adjourned sine die. The stay of proceedings granted in FIR No.182/1988 is also set aside. Parties are

directed to appear before the District and Sessions Judge (North-West), Rohini Courts on 05.01.2015 at 2.00 p.m. who shall assign both the FIRs to a Court of competent jurisdiction. 24 With these directions, this petition stands disposed of. INDERMEET KAUR, J DECEMBER16 2014 ndn

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