

inayatullah Rizwi Vs. Rahimatullah and Other

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Court : Mumbai

Decided On : Apr-14-1980

Reported in : 1981CriLJ1398; 1981MhLJ249

Judge : V.G. Palshikar and; Waikar, JJ.

Acts : [Constitution of India](#) - Article 134

Appeal No. : Criminal Revn, Appl. Nos. 120 of 1978 and 158 of 1977

Appellant : inayatullah Rizwi

Respondent : Rahimatullah and Other

Judgement :

Waikar, J.

1. In these two Criminal Revisions Applications (Criminal Revisions Applications Nos. 120 of 1978 and 158 of 1977) which were pending before the learned single Judge (Tulpule J.) one for admission and the other for final hearing respectively, a common question of law raised before him was one of interpretation of the provisions of Section 397(3) of the Criminal P.C. 1973 (hereafter called the Code).

2. Against the orders of the Sub-Divisional Magistrate, the present opponents non-applicants in these two revision applications had filed Criminal Revision Applications in the Court of Sessions Judge, Akola. The learned Sessions Judge

allowed their revisions and feeling aggrieved by the said orders of the learned Sessions Judge, the present applicants (i.e. the unsuccessful parties before the Sessions Judge) filed these two revisions in this Court.

3. According to the learned single Judge, a second revision to the High Court, even at the instance of the unsuccessful opponents before the Sessions Court would not be tenable. The applications could be treated or converted as applications under Section 482 of the Code, which, in his opinion, could be disposed of by the Division Bench of this Court.

4. There could be no doubt that if the Criminal Revisions under Section 397 of the Code are legally untenable, or barred, the inherent jurisdiction of this Court under Section 482 of the Code could be invoked.

5. The question for consideration. which the learned Single Judge referred to us for decision is whether no revision application is maintainable in this Court, once a Criminal Revision Application in respect of the proceedings is filed in the Court of Session, irrespective of the fact, who had moved the Court of Session in revision.

6. According to the learned Single Judge, the Division Bench decision of this Court reported in *Madhavalal Pittia v. Chandrashekar* and the other single Judge decision of the Allahabad High Court reported in *Sarjoo v. Babadin* seem to support his view that the revision to this Court is untenable against an order passed by the Court of Session in a revision even at the instance of the unsuccessful or aggrieved party as in the instant case. With respect we find that these two rulings do not seem to support such a view.

7. In *Madhavalal's* case (cit. supra) in the proceeding under Section 145 of the Code, the question for consideration was whether a person aggrieved by the order of the Magistrate can file a criminal revision directly in the High Court without approaching the Sessions Judge. Under the old Criminal P.C. 1898, if the revision application filed by a party before the Sessions Judge was rejected, then that party had a further opportunity of revision before the High Court and the High Court could give, if it was found necessary, a relief to that party concerned. A Rule of practice or a statement of policy of the High Court, however, was that the

aggrieved person before coming directly to the High Court should first approach the Sessions Court. Rule 14 of Chapter XXVI of the Bombay High Court Appellate Side Rules, 1960 was in these terms :

'14. In the absence of special circumstances, the High Court will not entertain an application for revision where an application for revision might have, but has not, been made to a lower revisional Court'.

In the above case it was held that under the new Code a further opportunity of revision before the High Court is now taken away.

8. In this context in Madhavlal's case 1976 Cr.L.J. 1604 (cit supra) it was observed thus :

'Once the revision application filed by a party before the Sessions Judge is rejected then under the new Code by virtue of provisions of sub-section (3) of Section 399, that order becomes final and that party whose revision has been rejected by the Sessions Judge cannot further move the High Court for the revision of the said order though the opponent can file a revision application if the revision were allowed.'

9. This decision thus does not seem to support the view that no further revision to the High Court against the order passed by the Sessions Judge in revision is tenable even at the instance of the unsuccessful or the aggrieved Party.

10. In Sarjoo's case what the Allahabad High Court decided was that the inherent powers of the High Court under Section 482 of the Code are not barred by Sections 397(3) and 399(3) of the Code. What was argued was that the revisional order passed by the Sessions Judge is final and sacrosanct and cannot be touched by the High Court even under Section 482 of the Code. It was observed that Section 399(1) confers revisional jurisdiction on the High Court and upon the Sessions Judge so that either of them has the power to call for and examine the records of any proceedings before any inferior criminal Court and pointing out the change in the new Criminal P.C. with the old Code, it was observed in a general way that the right to file two revisions initially before the Sessions Judge and

thereafter before the High Court has been taken away under the new Code. The inherent powers of the High Court, it was finally observed are, however, not circumscribed by anything in the new Code. The question whether the revision to the High Court at the instance of the aggrieved or unsuccessful party before the Sessions Court in a revision is barred or not was never considered in this ruling. We find that the language of Section 397 of the Code is itself clear and peremptory and it leaves no scope for an interpretation that the bar of further revision to the High Court is a blanket and a total bar. The wordings of this section are :

'397(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 purpose 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 of 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.

Explanation : All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purpose of this sub-section and of Section 398.

(2) The powers of revision conferred by sub-section. (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.

11. The introduction of Section 399 in the new Code makes a material change and it would be useful to extract the language of the said section :

'399(1) In the case of any proceeding the record of which has been called for by himself, the Sessions Judge may exercise all or any of the powers which may be

exercised by the High Court under sub-section (1) of Section 401.

(2) Where any proceeding by way of revision is commenced before a Sessions Judge under sub-section (1), the provisions of sub-sections (2), (3), (4) and (5) of Section 401 shall, so far as may be apply to such proceeding and references in the said sub-sections to the High Court shall be construed as references to the Sessions Judge.

(3) Where any application for revision is made by or on behalf of any person before the Sessions Judge, the decision of the Sessions Judge thereon in relation to such person shall be final and no further proceeding by way of revision at the instance of such person shall be entertained by the High Court or any other Court'.

12. Section 399 of the Code enacts that a Sessions Judge can exercise all or any of the powers exercisable by the High Court in revision under Section 401(1) as provided in Section 399(1) of the Code. Sub-section (3) of Section 399 provides that the order of the Sessions Judge would be final for the party who moves him. Thus the finality attaches only in relation to the person who or on whose behalf the Sessions Judge is moved. In other words, the decision of the Sessions Judge in a revision cannot be final for the person aggrieved by it. To put it succinctly, the concurrent finding of the Sessions Judge and the Courts below becomes final, while in cases where the Sessions Judge reverses the order of the Court below in revision, the defeated party is not barred to move the High Court under Section 399(3) of the Code.

13. In a Full Bench decision of Andhra Pradesh High Court in *re Puritipati Jagga Reddy* 1979 Cri LJ 112 it was held that the party which is unsuccessful in revision before the Sessions Judge is precluded from filing such a revision in the High Court by virtue of Section 397(3) of the Code. However, the High Court can exercise its inherent powers where that exercise is warranted.

14. In *Ramchandra Puja Panda v. Jambeswar* precisely the same question as is raised in this reference had come up for consideration before a Division Bench of Orissa High Court. In the proceedings under Section 145 of the Code it was declared that the petitioner was in possession. The opposite party preferred

criminal revision before Sessions Judge, who allowed the same and declared that the opposite party was in possession of the disputed land on the date of the preliminary order. The petitioner (i.e.) the unsuccessful or aggrieved person by the order of the Sessions Judge) filed a revision in the High Court. The points urged were (1) a second criminal revision does not lie to the High Court against an order of the Sessions Judge passed in revision, and (2) a Sessions Judge is not a court inferior to the High Court within the meaning of Section 397(1) of the Criminal P.C. 1973.

15. Both the arguments were repelled and it was held that the Sessions Judge is a judicially inferior Court to the High Court and that the High Court may call for and examine the record of any proceeding before the Sessions Judge. The High Court can call for the record of a criminal revision disposed of by the Sessions Judge. So far as the first point is concerned, it was observed as under :

'The language of Section 397(3) and Section 399(3), however, leads to a different conclusion. The statute did not adopt the language used by the Joint Committee of the Parliament. The prohibition is confined to a second revision application filed by the same person. In Section 397(3) the crucial words are 'no further application by the same person shall be entertained by the other of them'. Similarly, the material clause in Section 399(3) is 'no further proceeding by way of revision at the instance of such person shall be entertained.'

'It is thus clear that the bar of a second revision was only confined to cases where the criminal revision was dismissed by the Session Judge. At the instance of the person who lost the criminal revision before the Sessions Judge no revision to the High Court lies.

An illustration would make the position clear. A proceeding under Section 145. Criminal P.C. between X and Y terminated before the Magistrate in favour of X. The criminal revision of Y before the Sessions Judge was dismissed. A criminal revision before the High Court at the instance of Y shall not be entertained.

In the same illustration if Y's criminal revision before the Sessions Judge was allowed, a criminal revision to the High Court against the order of the Sessions

Judge at the instance of X is maintainable. This is for the simple reason that the second criminal revision before the High Court is not at the instance of such person who filed the criminal revision before the Sessions Judge.

On the language of Section 397(3) and Section 399(3) conclusion is irresistible that a second revision at the instance of a successful party before the Magistrate who lost the revision before the Sessions Judge lies'.

16. In the opinion of the learned single Judge reading of the provisions of Sections 397(1) and 397(3) and Section 402 of the Code show that the revisional powers cannot be exercised once over. What is observed in this connection in the referring order is as under :-

'If that could be done, then similarly under Section 402 the High Court could have kept the proceedings before it pending or alive until the disposal of the application before the Court of Session filed by any of the parties. The Legislature in providing under Section 402 of the Criminal Procedure Code, transfer to itself by the High Court such proceedings or transfer to the Court of Session such proceedings pending before it seems to provide a single exercise of revisional jurisdiction against the order of an inferior criminal Court either by a Court of Session or by a High Court, at least, so far as the order of conviction and sentence by a Magistrate. It could not be the intention in a Code which seeks to provide for a speedy and early disposal of cases and justice, to provide for one more forum and opportunity for consideration of the same questions involved'.

17. With respect, we are unable to agree with this view. Under the new Code full revisional powers are now conferred on the Sessions Judge and the powers of the Sessions Judge and of the High Court are co-extensive and concurrent. Section 399(3) of the Code further provides that the decision of the Sessions Judge is final and no further proceedings by way of revision at the instance of the same person can be entertained by the High Court. A Sessions Judge and High Court being now the two parallel forums with an option to a party to approach any of them for redress by way of revision, a possibility (in case of more persons tried and convicted at one trial) of some of the persons approaching the Sessions Judge and some approaching the High Court could not be ruled out. In such a situation

there would be likelihood of conflict of decision between the High Court and the Sessions Judge. Section 402 of the Code, therefore, had to be newly enacted to make the provision for such cases and it provides that in such cases the High Court will decide, having regard to the general convenience of the parties and the importance of the question involved, which of the two Courts should finally dispose of the application for revision and when it decides that all the applications should be disposed of by itself, it will direct that the applications made to the Sessions Judge to transfer to itself and when it decides that it need not dispose of the revision applications itself, it will direct that the applications made to it be transferred to the Sessions Judge. The object of enacting S. 402 of the Code thus was mainly to avoid a conflict of decisions by the two Courts of concurrent jurisdiction and not necessarily to provide a single exercise of revisional jurisdiction. Section 402 of the Code, therefore, is not a pointer or a key for construing the provisions of Sections 397(3) and 399(3) of the Code.

18. The words 'any person' and 'by the same person' in sub-clause (3) of Section 397 of the Code and the words 'by or on behalf of any person' and 'in relation to such person' appearing in sub-clause (3) of Section 399 must be given their proper meaning and construction. In interpreting a Statute redundancy or superfluity of the words is not normally contemplated or presumed. A plain reading and construction of these two provisions shows that the Legislature intended that an aggrieved person choosing the forum before the Sessions Judge shall be bound by his verdict which shall be final so far he is concerned and he shall be precluded from filing another revision before the High Court and by necessary implication it further means that so far as unsuccessful or aggrieved person by the order the Sessions Judge is concerned, the decision is not conclusive or final for him and a remedy of a revision to the High Court is not barred. If the Legislature really intended to make no distinction between an unsuccessful or successful party before the Sessions Judge in revision and intended that there shall be no further or second revision in any event irrespective of who moved the Sessions Judge and who wins and who loses before the Sessions Judge, the Legislature could have enacted that if an application for revision has been made by any party to the Sessions Judge or to the High Court, no further application shall be entertained by either of them.

19. We are, therefore, of the view that a revision to the High Court would be tenable at the instance of a party who is unsuccessful before the Sessions Judge, or who is aggrieved by his order. In other words, a concurrent finding of the Sessions Judge and of the Courts below becomes final, but when the Sessions Judge reverses the order of the Court below in revision the defeated party is not precluded from moving the High Court. The consensus of judicial opinion as can be seen supports only this view.

20. We, therefore, hold that these two criminal applications filed here by the persons who were non-applicants before the Sessions Judge in the Criminal Revisions and who are aggrieved by the decisions of the Sessions Judge are tenable and competent. There is no need to convert these petitions into applications under Section 482 of the Code. These criminal revisions shall be dealt with and disposed of by the learned single Judge according to law.

21. Revisions allowed.