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Court : Andhra Pradesh

Decided On : Aug-14-1974

Reported in : AIR1975AP54

Judge : S. Obul Reddi, C.J. and ;Lakshmaiah, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 378, 378(1), 378(2) and 378(3)

Appeal No. : Criminal Misc. Petn. Nos. 1611 and 1620 of 1974

Appellant : The Public Prosecutor, High Court of A.P., Hyderabad

Respondent : Adunuthula Kirshna Murty and ors.

Advocate for Def. : K. Jagannadha Rao, Amicus curiae

Advocate for Pet/Ap. : Public Prosecutor

Judgement :

S. Obul Reddi, C.J.

1. In these two applications, the question that arises for consideration is whether it is necessary under Section 378(3) of the Code of Criminal Procedure, 1973, for the Public Prosecutor to file one application in the first instance seeking leave of

the Court and in case leave is granted, to file another application for an appeal being entertained by the Court.

2. Our learned brother, Kondaiah, J. in S.R. No. 24073 of 1974 (Criminal Appeal) (since reported in 1975 Cri LJ 141 (Andh. Pra.)--Ed.) construing the provisions of Section 378, expressed the view that the State Government or Central Government, as the case may be, must obtain the leave of the High Court before appeals are preferred against acquittals by them just as in the case of a private complainant.

3. Mr. Jayachandra Reddy, the learned Public Prosecutor appearing for the State, contended that a comparison of the language employed in Sub-sections (3) and (4) of Section 378 would make it clear that the Parliament never intended that, in the case of an appeal being preferred against an order of acquittal, the State should first make an application and obtain leave and then file another application for the appeal being entertained.

4. Mr. K. Jagannadha Rao appearing as amicus curiae contended that the absence of a provision like Sub-section (3) of Section 378 in Section 417 of the old Criminal Procedure Code and the use of the two words 'leave' and 'entertained' in Subsection (3) of Section 378 would indicate that the Parliament, in its wisdom, has not chosen to treat the state in a manner different from a complainant in the matter of preferring appeals against acquittals. According to him the fact that Sub-section (4) of Section 378 prescribes an application to be made by the complainant for grant of special leave and making of such an application is not provided in Sub-section (3), does not in substance and effect, make any difference. It is also his case that, whether the word used in Sub-section (3) is 'leave' or the words used in Sub-section (4) are 'special leave', they do not make any difference in so far as obtaining the leave of the Court is concerned before an appeal could be entertained, that is, admitted after being posted for admission. In short, it is argued by him that there are two stages before an appeal against an acquittal preferred by the State could be entertained or admitted for hearing (1) seeking leave in the first instance; and (2) then filing memorandum of grounds for entertaining the appeal.

5. It is, therefore, necessary to notice the changes that this provision relating to appeals against acquittals by the State had undergone, Section 417, as it stood in the Code of Criminal Procedure, 1898, reads:

'The Provincial Government may 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.'

6. This section, which was substituted by Section 84 of Act 26 of 1955 (i.e. substituted Section 417) may be read in juxtaposition with Section 378 of the new Code (Act 2 of 1974).

'Section 417. (1) Subject to the provisions of sub-sectoin (5) the StateGov-ernment 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 flran a High Court.

'Sec. 378. Appeal in case of acquittal (1) Save as otherwise provided in sub-section (2) and subject to the provision 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.

(2) If such an order of acquittal is passed in any case in which the offence Special Police Establishment constituted under the Delhi Special Police Esta-blishment Act, 1946 (35 of 1946) the Central Government may also direct the Public Prosecutor to present an appeal to the High Court from the order of acquittal.

(2) If such an order of acquittal is passed in any case in which the offence has been investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 (35 of 1946} or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, the Central Government may also direct the Public Prosecutor to present an appeal subject to the provisions of sub-section (3} to the High Court from the order of ac-quittal.

(3) If such an order of acquittal is pass-ed in any case instituted upon com-plaint and the High Court, on an application made to it Dy the complainant in this behalf, grants special leave to ap-peal from the order of acquittal, the complainant may present such art appeal to the High Court.

(3) No appeal under sub-section (1) or sub-section (2) shall be entertained except with the leaveof the High Court.

(4) No application under sub-section (8) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of sixty days from the date of that order of acquittal.

(4) If such an order of acquittal is passed in any case instituted upon complainant and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal the complainant may present such an appeal to the High Court.

(5) If, in any case, the application under sub-section (3) for the grant of special leave to appeal from an order of acquittal is refused no appeal from that order of acquittal shall lie under sub-section (1).'

(5) No application under sub-s. (4) for the grant of special leave to appeal from an order of acquittal shall be enter-tained by the High Court after the expiry or six months, where the complainant is a public servant and sixty days in every other case computed from the date of that order of acquittal.

(6) If, in any case the application under sub-section (4) for the grant of special leave to appeal from an order of ac-quittal is refused no appeal from that order of acquittal shall lie under sub-section (1) or under sub-sec. (2).'

Sub-section (1) of the substituted Section 417 and Sub-section (1) of Section 378 are almost on identical terms in so far as the power of the State Government to 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 is concerned. The language of the old Section 417, prior to its substitution by Act 26 of 1955, was also worded in similar terms. The changes introduced from time to

time relating to appeals against acquittals to be presented by the Public Prosecutor are these: The original Section 417 did not provide for appeals against orders of acquittals in cases investigated by the Delhi Special Police Establishment. It did not also provide for appeals being preferred by a complainant by seeking special leave against an order of acquittal. For the first time, the right of appeal to a complainant was given in the substituted Section 417 and also the right of appeal to the State to prefer appeals against orders of acquittal in cases invested by the Delhi Special Police Establishment, except for Sub-section (3) of Section 378, the other provisions of Section 378 correspond to the provision of Section 417. The only other difference is that the scope of Sub-section (2) of Section 378 has been enlarged so as to include cases investigated under any Central Act other than the Criminal Procedure Code.

7. The right of appeal against acquittals by the State was created for the first time in the Code of Criminal Procedure, 1872 and that is being continued in subsequent Codes. That is an extraordinary remedy conferred upon the Government on account of conditions peculiar to this country. No restriction is placed upon the power of the Government to 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. No distinction was or is made between appeal preferred by an accused person against his conviction and an appeal by the State against an acquittal, the underlying idea being every erroneous decision is a miscarriage or justice and every such miscarriage is detrimental to the common interests of the public and society. That is why a right of appeal is given to an accused person as well as to the State. Section 419 of the old Code corresponding, to Section 382 of the new Code provided for an appeal being presented in the form of a petition. Section 420 corresponding to Section 383 enabled an accused in jail to present his petition of appeal through the jail authorities to the appellate Court. Though it is so worded in Section 378 that 'the Government may direct the public prosecutor to present an appeal', mere presentation of an appeal will not amount to an appeal being entertained or admitted or taken on file for hearing. The Criminal Rules of Practice, which are saved by Section 484(2)(b) of the new Code, provide for presentation of a petition of appeal and every such appeal being posted for admission at the earliest possible opportunity after it was filed. It is only in Sections

419 and 420 (old code) and Sections 382 and 383 (new code) that there is reference to an appeal being 'made in the form of a petition in writing,' The words 'in the form of a petition' were, however, absent in Section 417 but nonetheless, it made no difference, for under the Criminal Rules of Practice, any appeal presented under Section 417, 419 or 420 had to come up for admission. Unless it was posted for admission and admitted or entertained the question of hearing an appeal in accordance with the provisions of Section 423 did not arise. The same is the position now in view of Section 385 which corresponds to Sections 422 and 423.

8. Though Section 419 provided that such an appeal shall be accompanied by a copy of the judgment of order appealed against, discretion was given to the Court to dispense with the production of the copy of the judgment at the time of the filing of the appeal. The object of requiring a copy of the judgment to be produced obviously is to enable the Court to judge the correctness of the grounds set forth in the memorandum of appeal. As regards the presentation of the appeal, there was no special procedure or method prescribed by the Code, nor is any procedure or mode prescribed now. It is one of administrative convenience. So long as it is properly presented to a clerk or an officer of the Court duly authorised in this behalf that would be valid presentation. The expression 'presented' only means that such a petition of appeal should be delivered to the proper officer of the Court either by the appellant or his pleader

9. What the learned public prosecutor contends now is that, in the absence of such words in Sub-section (3) of Section 378 as 'on an application made to it' and 'special leave to appeal, which occur in Sub-section (4) of Section 378, it should be understood that the Parliament did not intend to treat the complainant and the State on the same footing. The fact that the language employed in Sub-section (4) is not the same as the language employed in Sub-section (3) will not by itself lead to an inference that the Parliament intended to prescribe one rule to a complainant and another rule to the State in the matter of preferring appeals against acquittals. The difference in language in Sub-section (3) and Sub-section (4) of Section 378 is comparable to the difference in language between Section 417 or Section 417 (1) and Sections 419 and 420. The mere presentation of an appeal against an

acquittal by the Public Prosecutor under Section 417 or Section 417 (1) as the case may be was not sufficient to have the appeal heard under Section 423, for the Criminal Rules of practice provided for such an appeal being posted for admission. So, in effect and practice, there was no difference in the procedure adopted, whether it was iu appeal against an acquittal by the State or by a complainant. The words 'the leave of the High Court' occurring in Sub-section (3) of Section 378 have special significance and meaning. 'Leave of Court' means 'permission obtained from a Court to take some action which, without such permission, would not be allowable as to sue a receiver, to file an amended pleading to plead several pleas' (see Black's Law Dictionary, De Luxe Fourth Edition, page 1036). That is to say that the Public prosecutor must apply or move the Court in order to satisfy the Court that he has a reasonably good or prima facie case on merits and disclose sufficient grounds to have the appeal entertained. The leave of the Court could only be obtained by making an application in that behalf. It could be even on an oral application, provided the Court so permits. Unless leave is granted the appeal cannot be entertained.

10. In Lakshmiratan Engineering Works Limited v. Asst. Commr., Sales Tax, : [1968]1SCR505 , Hidayatullah J. (as he then was) construed the expression ' entertained' occurring in the proviso to Section of the U. P. Sales Tax Act, 1948 thus:

'A question thus arises what is the meaning of the word 'entertained' in this context?

Does it mean that no appeal shall be received or filed or does it mean that no appeal shall be admitted or heard and disposed of unless satisfactory proof is available? The dictionary meaning of tbe word 'entertain' was brought to our notice by the parries, and both sides agreed that it means either to 'to deal with or admit to consideration.'

11. Again in Lala Ram v. Hari Ram, : 1970 CriLJ1014 the Supreme Court construed the expression 'shall Be entertained' occurring in Section 417 (4) of the Criminal Procedure Code 1898 as meaning 'filed or received by the Court' and it has no reference to actual hearing of the application for special leave to appeal.

The learned Judges after referring to the earlier case, : [1968]1SCR505 , observed.

'It seems to us that in this context 'entertain' means 'file or receive by the Court' and it has no reference to the actual hearing of the application for leave to appeal; otherwise the result would be that in many cases applications for leave to appeal would be barred because the applications have not been put up for hearing before the High Court within 60 days of the order of acquittal.'

12. It was held by one of us (Obul Reddi J.) (as he then was) sitting singly in V. Narasimha Rao v. State of Andhra Pradesh, (1967) 1 Andh WR 441, that:--

'The mere fact that an application under Section 417 (3) was pending will not give the complainant a right of appeal unless that application is allowed by this Court... .... It is only when special leave is granted it can be said that proceedings against the respondents are pending. In other words the institution of the proceedings against the respondents will take effect only from the date when the application for special leave is granted. ....The right to prosecute or proceed against the respondents could arise only in the event of a Special Leave application being allowed and not otherwise and when a complainant died even before the Special leave application comes up for hearing, the question of further prosecuting the proceedings will not arise.'

13. It therefore, follows that leave has to be obtained for the appeal being entertained, that is to say, that the petition of appeal must be heard with the leave of the Court.

14. The question that still remains is whether the public prosecutor, in order to have the appeal 'entertained', should come up once with an application seeking leave or permission of the Court to present the appeal and again, if leave is granted, present the petition of appeal seeking entertainment of the appeal. While we are of the view that the public prosecutor must seek the leave of the Court before the appeal can be entertained, we do not see any force in the view put forth by Mr. K. Jagannatha Rao that the public prosecutor will be entitled to present a petition of appeal only after leave is granted, that is to say, he must cross one

hurdle after the other. We do not think that it was the intention of the Parliament to prescribe two separate stages. The object of the new Code is to see that there are no avoidable procedural delays and at the same time ensure a fair trial to the accused. It should be borne in mind that Section 378 lays down only the procedure in the matter of presentation of appeals against orders of acquittal. There is nothing in Sub-section (3) which is susceptible of being construed as providing two stages: (1) making an application for leave; and (2) then, if leave is granted, presenting the petition of appeal Sub-sections (1) and (3) of Section 378 when read together, will make it clear that there are no two stages and that the Court can grant leave and entertain the appeal at one and the same time. It will be open to the public prosecutor, in the appeal petition itself which he presents, to seek leave of the High Court without having to file another application in that behalf. There is no prohibition in seeking two prayers in one and the same petition.

15. While we are in agreement with the learned Judge, Kondaiah, J. that leave of the Court has to be obtained for the appeal being entertained, we are, however, unable to endorse his opinion that there should be a separate application for leave under Sub-section (3) of Section 378. It will be open to the public prosecutor to file a separate application for leave along with the memorandum of grounds or seek both the prayers in the appeal petition, We must express our thanks to Mr. K. Jagannatha Rao for the assistance given by him.

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