

Queen-empress Vs. Balwant

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Court : Allahabad

Decided On : Dec-31-1969

Reported in : (1887)ILR9All134

Judge : John Edge, Kt., C.J., ;Straight, ;Oldfield, ;Brodhurst and ;Tyrrell, JJ.

Appellant : Queen-empress

Respondent : Balwant

Judgement :

Edge, C.J., Straight, Oldfield, Brodhurst, and Tyrrell, JJ.

1. We are of opinion that the first question put to us by this reference must be answered in the affirmative.

2. By the first paragraph of Section 439 of the Criminal Procedure Code, which confers revisional jurisdiction on the High Court, it is in terms declared, among other matters, that in its exercise we may use any of the powers entrusted to a Court of appeal by Section 423 id. Now, by clause (a) of this section,--a clause, be it observed, which concerns High Courts alone,--we can in appeal from orders of acquittal, either (i) reverse the order and direct that further inquiry be made, or (ii) that the accused be tried, or (iii) committed for trial, or (iv) find him guilty and pass sentence according to law. The terms of Section 439, paragraph 1, therefore, unless barred or limited by anything to be found in the latter portion of that section, or in any other part of the Act, leave no room for doubt that this Court may revise

orders of acquittal, and may do on the revision side exactly what it can do in its appellate jurisdiction. By the last paragraph of Section 439, however, one limitation is placed upon our powers, which has reference to the fourth of those mentioned above: that is to say, we are forbidden to 'convert a finding of acquittal into one of conviction.' It was argued before us that this is a clear and conclusive intimation that the Legislature intended to restrain us from entertaining applications to revise orders of acquittal. But it appears to us that the presence of these words in the section indicates that, short of determining the questions of fact in the case when revising such orders, as we may do when sitting as a Court of appeal, all the other powers conferred by clause (a) of Section 423, read in conjunction with the first paragraph of Section 439, are left unimpaired. We are then of opinion that the High Court has power to revise an order of acquittal made by any of the Courts exercising original or appellate jurisdiction subordinate to us.

3. Proceeding to the second branch of the reference, we are asked what order can be made with reference to a person convicted by a Magistrate, but acquitted by the Court of Session in appeal, such order of acquittal being reversed by the High Court under Section 439 of the Criminal Procedure Code. Clearly, the order must be one directing the re-trial of the proceedings wherein the final order has been found to be bad, and has in consequence been reversed. And as to the Court to which our order of re-trial should be sent, the scope for selection is limited to three tribunals, that is to say, the High Court, the Sessions Court of appeal, or the Magistrate.

4. It cannot be the High Court, because the limitation imposed by the last clause of Section 439 would restrict the result to a re-affirmation of the finding of acquittal. Similarly it would be idle, as well as unreasonable, to direct a retrial by the Magistrate, whose proceedings, the order of the Appellate Court having been reversed, so far stand good, and who would, presumably, as a matter of course, re-affirm the conviction.

5. The Sessions Court of appeal then is the proper tribunal for re-trial of the appeal, or such other Court of equal jurisdiction as we might entrust, under Section 526 of the Code, with the trial of the appeal. This is our answer to the

second question.

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