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Debi Bux Singh Vs. Rex

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Court : Allahabad

Decided On : Nov-08-1949

Reported in : AIR1950All299

Judge : Harish Chandra, J.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 369, 439 and 561A

Appeal No. : Criminal Misc. No. 1754 of 1949

Appellant : Debi Bux Singh

Respondent : Rex

Advocate for Def. : D.P. Uniyal, Asst. Govt. Adv.

Advocate for Pet/Ap. : J.N. Mukerji, Adv.

Disposition : Application dismissed

Judgement :
ORDER

Harish Chandra, J.

1. A revision application was filed on behalf of the applicant on 3rd August 1949. At the request of learned counsel for the applicant, an order was made that the record be sent for at the applicant's expense. When the case was listed again on

10th August 1949, it was discovered that the cost had not been paid. Counsel was also not present. I then examined with care the judgment of the Court and came to the conclusion that there was no force in the application and rejected it. Later on, an application was made on behalf of the applicant for the restoration of the revision application. That was rejected by me on 8th September 1949. Thereafter, a second revision application was filed on behalf of the applicant and that too was rejected by me on 19th September 1949.

2. A fresh application has now been presented praying that the revision application be restored. I have perused the affidavit which shows the circumstances in which counsel for the applicant had no information of the fact that the case had been listed for hearing on 10th August 1949, and was consequently unable to appear at the time when the case was called on for hearing.

3. Section 369, Criminal P. C. provides that:

'No Court when it has signed its judgment, shall alter or review the same except to correct a clerical error.'

4. My attention has, however, been drawn to a number of cases in which the High Court interfered acting under Section 661A, Criminal P. C. and re-heard a case which had once been disposed of in the absence of the accused and disposed of it according to law, ignoring- the previous judgment that had been passed in his absence.

5. In the case of Chandrika v. Rex : AIR1949 All176 , a Judge of this Court acting under Section 561A, Criminal P. C., set aside the order dismissing the appeal which had been previously passed, and directed that the appeal be re-heard. It appears that when the appeal was first heard, counsel for the appellant had, in fact, no notice of the date of hearing of the appeal which had therefore bean heard and decided in his absence.

6. It appears that Section 423, Criminal P. C., requires the appellate Court, before deciding the appeal, to hear the appellant or his pleader. It was for this reason that the order which had been previously passed in the appeal in the absence of the

appellant was considered as null and void and the appeal was directed to be re-heard. My attention has also been drawn to a Madras case and a Calcutta case. Both these cases were concerned with references which had been made to the High Court for the enhancement of the sentences passed upon the accused persons.

7. Section 439, Sub-section (2), Criminal P. C., provides that :

'No order under this section shall be made to the prejudice of the accused unless he has had an opportunity of being heard either personally or by pleader in his own defence.'

8. For this reason it was considered that the previous order dismissing the reference without an opportunity being given to the accused to be heard personally or by pleader, was without force. The High Court, therefore, set aside that order and directed a re-hearing of the reference.

9. In the present case we are concerned with a revision application. Section 440, Criminal P. C. provides that: 'No party has any right to be heard either personally or by pleader before any Court when exercising its powers of revision.' That section further provides that: 'The Court may, if it thinks fit, when exercising its powers, hear any party either personally or by pleader.'

10. In these circumstances, the order passed by me on 10th August 1949, cannot be regarded as having been illegally passed. The revision application was rejected by me on the merits after looking carefully through the judgment of the learned Sessions Judge. In the circumstances, my view is that this Court has no power to set aside that order acting under Section 561A, Criminal P. C., and to direct that the application be re-heard.

11. The application is, accordingly, rejected.

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