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Chandrabir Singh Vs. Samresh Singh

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Court : Allahabad

Decided On : Dec-06-1950

Reported in : AIR1952All461

Judge : Kidwai, J.

Acts : Indian Penal Code (IPC) - Sections 408; Code of Criminal Procedure (CrPC) , 1898 - Sections 439

Appeal No. : Criminal Revn. No. 136 of 1950

Appellant : Chandrabir Singh

Respondent : Samresh Singh

Advocate for Def. : S.D. Misra, Adv.

Advocate for Pet/Ap. : I.A. Abbasi, Adv.

Disposition : Application allowed

Judgement :
ORDER

Kidwai, J.

1. Chandrabir Singh applicant filed a complaint against Kumar Singh and his son Samresh Singh, who are his Ziledars and general agents, charging them with

embezzlement of certain monies. Kumar Singh was acquitted bythe trial Court; and an application in revision against his acquittal was dismissed by the Additional Sessions Judge of Bahraich. There has been no farther application against him.

2. Samresh Singh was convicted by the learned Magistrate of Bahraich under Section 408, Penal Code and sentenced to rigorous imprisonment for three months and was directed to pay a fine of Rs. 200. He appealed and Chandrabir Singh applied in revision for enhancement of sentence.

3. The learned Additional Sessions Judge of Bahraieh dismissed the revision application of Chandrabir Singh and allowed the appeal of Samresh Singh. The findings that the learned Judge gives are very confused and he does not seem to have applied his mind to the real points for determination. In the view which I have taken and the order which I propose to pass I do not wish to enter into the merits of the case, but the judgment certainly does not make clear what the Additional Sessions Judge has actually found. In these circumstances the course which is most desirable is that the ease should be remanded to the Additional Sessions Judge of Bahraich for re-hearing.

4. In Abdul Hamid v. Juman : AIR1950 All266 my learned brother Desai J., is of the opinion that, even though injustice is done to a person by an order of acquittal, the High Court is powerless to provide a remedy. In his judgment he refers to the decisions of the Calcutta, Nagpur, Madras, Rangoon and Allahabad High Courts in which a contrary view was taken, but has expressed his inability to follow those decisions. As against this judgment, we have the decisions of my learned brother Wanchoo J., in Bishun Saroop v. Bachhu, 4 Dom. L. R. (ALL-LUCK) 3, in which he held that a re-trial could be ordered by the High Court, but that in ordering re-trial the High Court should not express an opinion which would result in conviction by a subordinate Court becoming a certainty and thus circumventing the provisions of Section 439 Sub-section (4) of the Criminal Procedure Code by which a High Court is not authorised to' convert a finding of acquittal into the one of conviction. Thus my learned brother Wanchoo J. was of the opinion that, even in the case of an acquittal a revision application could be entertained and allowed in certain cases.

5. A question also arose as to whether if a revision is allowed, a re-trial can be ordered or whether it is possible to direct the Court of appeal to re-hear the appeal. In Smt. Ram Kali v. Gaya Prasad, 5 Dom. L. B. (ALL-LUCK) 258, my learned brother Misra J., has held that it is possible to direct the re-hearing of the appeal by the Sessions Judge and he remanded the case for such re-hearing. This decision is in accordance With the view of a Bench of the Oudh Chief Court in Ram Lal v. Bam Piare A. I. R. (28) 1941 Oudh 182 in which also the Court allowed a revision against an acquittal and remanded the case to the lower appellate Court to re-hear the appeal taking care not to express any view of its own with regard to the matters involved.

6. Having regard to the fact that there is no error in the trial of the case by the trial Court and also to the fact that two persons were originally charged and tried together, while the case of one only is now before me, it would not be proper to direct a re-trial of this ease and it would be sufficient to direct a re-hearing of the appeal by the lower appellate Court.

7. The result is that I allow this application, set aside the order of the learned Additional Sessions Judge of Bahraich and direct him to restore Samresh Singh v. State, Cri. Appeal No. 43 of 1950 to its original number and to dispose of it in accordance with law after re-hearing.

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