

Mahesh Kumar and anr. Vs. the State

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Court : Allahabad

Decided On : Nov-25-1977

Reported in : 1978CriLJ390

Judge : P.N. Harkauli, J.

Appellant : Mahesh Kumar and anr.

Respondent : The State

Judgement :

ORDER

P.N. Harkauli, J.

1. Mahesh Kumar and Mohd. Abbas, applicants were convicted by the learned Tehsildar-Magistrate Second Class, Naraini, district Banda Under Section 160 read with Section 34 I.P.C. and sentenced to a fine of Rs. 50/- each. In default of payment of fine the defaulter was ordered to undergo one month's simple imprisonment. This order was passed on 10th of January 1973.

2. On the 15th of January 1973 the applicants moved an application for revision before the learned Sessions Judge. When this revision application came up for hearing on 9-3-1973 the applicants moved an application before the learned Sessions Judge praying that the application for revision might be treated as an appeal on the ground that the revision was filed in a hurry and at that time it was

not noticed that the impugned order was passed by a Magistrate of the Second Class and not by a Magistrate of the First Class and because of this mistake a revision had been filed instead of an appeal. It was opposed on behalf of the State and the learned Sessions Judge rejected the application on the ground that there was no provision in the Cr.PC permitting him to do so; he possessed no inherent power to treat the revision as an appeal.

3. Thereupon, the applicants filed an appeal accompanied by an application for condonation of delay Under Section 5 of the Limitation Act. The condonation of delay was sought on the ground that it was on account of a mistake of the counsel that a revision was filed and not an appeal. The learned Sessions Judge dismissed the application for condoning the delay on the ground that the mistake was due to the negligence of the counsel and it could not be said that the counsel who gave wrong advice acted in good faith which term signified that the party should have acted with due care and attention. When this application for condonation of delay was dismissed by the learned Sessions Judge, naturally he rejected the memorandum of appeal also.

4. Feeling aggrieved by these orders the applicants filed the present application for revision which is directed against both the abovementioned orders of the learned Sessions Judge.

5. I have heard learned counsel for the parties and I am of the opinion that the learned Sessions Judge ought to have allowed the applicants' prayer that the revision may be treated as an appeal, It will be seen that the applicants had challenged the order of the trial court within five days of the passing of the order of conviction i. e. within the period of limitation for filing an appeal. It is also clear that they had filed the application in the same court in which an appeal should have been filed. It is true that they framed their application as an application for revision and not as an appeal and gave a wrong nomenclature to their application. But in my opinion that could not bar the learned Sessions Judge from allowing the applicants to suitably amend the application and make the proper prayer. The purpose of all rules of procedure obviously is to enable justice to be done. As such every procedure which advances the dispensation of justice should be considered

permissible unless it is prohibited. So in a purely procedural matter like the present one what has to be seen was not whether there was a specific provision in the Code of Criminal Procedure authorising the learned Sessions Judge to treat a revision application as an appeal but whether there was anything in the Cr.PC to bar him from doing so. It is not disputed that there is nothing in the Cr.P.C. to bar a revision application being treated as an appeal or vice versa. As such I am of the opinion that the learned Sessions Judge could and ought to have allowed the application for treating the revision as an appeal after allowing the applicants to suitably amend their application.

6. Even assuming for the sake of argument that the learned Sessions Judge did not have the power to do so there can be no doubt that this Court has such power Under Section 482 Cr.P.C. in order to secure the ends of justice. As already pointed out the revision application was filed within the limitation provided for an appeal and in the same forum in which the appeal should have been filed. I have no doubt that when the convicted persons had moved the proper court within the limitation prescribed for an appeal for setting aside the trial court's order then the interests of justice demand that the should be allowed to correct the mistake in the form which they gave to their prayer and convert the revision into an appeal.

7. In this view of the matter, it is not necessary to go into the question whether there was sufficient cause for condoning the delay and admitting the appeal subsequently filed by the applicants. However, I may say that it is clear from the circumstances that the revision was filed instead of an appeal only because, by an oversight, the learned counsel for the applicants did not ascertain whether the Tahsildar Magistrate who had passed the impugned order was a Magistrate of the second class or of the first class and it was because of this mistake of the counsel that revision was filed. In my opinion this was a sufficient cause for condoning the delay in the filing of the appeal. However, as already stated this question does not arise when I am of the opinion that the applicants should be allowed to suitably amend their revision application and convert it into an appeal.

8. Accordingly, I allow this application and set aside the orders dated 30-5-1973 and 4.7.1973 passed by the learned Sessions Judge and remand the case to the

learned Sessions Judge with the direction that he shall allow the applicants to suitably amend their application for revision and then hear and decide it as an appeal.

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