

Chanan Singh Vs. Hari Singh and anr.

Chanan Singh Vs. Hari Singh and anr.

SooperKanoon Citation : sooperkanoon.com/468050

Court : Allahabad

Decided On : Aug-07-1970

Reported in : 1971CriLJ989

Judge : D.D. Seth, J.

Appellant : Chanan Singh

Respondent : Hari Singh and anr.

Judgement :

ORDER

D.D. Seth, J.

1. This application in revision is directed against an order passed by the learned Sessions Judge of Kumaun, dated 5th October, 1968, and arises out of the following circumstances:

There had been on two previous occasions proceedings Under Section 145, Criminal P.C. between the parties in the court of the learned Sub Divisional Magistrate, Tarai, Kumaun. The first proceedings Under Section 145, Criminal P.C. were in respect of the same land which is in dispute in the present revision and the number of that criminal case was 11/2 of 1962. In those proceedings, Chanan Singh was given possession over plot Nos. 2 (30 Bighas 10 Biswas), 4 (37 Bighas) and plot No. 15/1 (5 Bighas). The total area of the three plots of which

possession was given to Chanan Singh by the learned Sub Divisional Magistrate comes to 72 Bighas 10 Biswas land of the three plots on 30th April, 1964. Thereafter, another proceeding Under Section 145, Cr.PC took place between the parties and by an order passed on 24th March, 1965, the learned Sub Divisional Magistrate. Tarai, Kumaun, held that Chanan Singh was entitled to possession over plots Nos. 2, 4, 15/1.

2. On the basis of the earlier decision in 1964 by the learned Sub Divisional Magistrate, proceedings Under Section 145. Criminal P.C. were decided in favour of Chanan Singh and a revision preferred by Hari Singh and another was also dismissed and it was conceded that they had no objection to Chanan Singh taking possession over plots Nos. 2, 4/2 (37 Bighas) and 15/1. In revision, however, it was contended on behalf of Hari Singh and another that the entire plot No. 4, which included plot No. 4/1 (90 Bighas) had been attached and the plot No. 4/1 did not belong to Chanan Singh, but belonged to Hari Singh and another. The revision preferred by Hari Singh and another was Criminal Revision No. 9 of 1965 and was decided by the learned Additional Sessions Judge. Kumaun, by his order dated 3rd December, 1966. Although the learned Additional Judge rejected the revision filed by Hari Singh and another, but in his order disposing of the revision, he came to the conclusion that a confusion had taken place because the land which had been attached in proceedings Under Section 145, Criminal P.C. had been attached by reference to the boundaries given by Chanan Singh and, in fact plot No. 4/1 (90 Bighas) was never intended to be attached and was never meant to be given to Chanan Singh.

The learned Additional Sessions Judge, therefore, directed that plots Nos. 2 (30 Bighas 10 Biswas), 4/2 (37 Bighas) and 15/1 should be given to opposite party Chanan Singh. Thereafter, Hari Singh and Kartar Singh filed an application before the learned Sub Divisional Magistrate Under Section 517, Criminal P.C. praying they may be given the price of the produce of sugarcane crop of plot No. 4/1 (90 Bighas) which was held in deposit by the Court. The learned Sub Divisional Magistrate by his order dated 9th July, 1968, dismissed the application of Hari Singh and Kartar Singh Under Section 517, Criminal P.C. and held that the fate of new plot No. 21-A already stands decided and there is nothing for me to decide in

this case. Against the order of the learned Sub Divisional Magistrate dated 9th July, 1968, Hari Singh and Kartar Singh preferred an appeal which was heard by the learned Sessions Judge of Kumaun and before the learned Judge, a preliminary objection was raised on behalf of Chanan Singh that the appeal was not maintainable because Under Section 520, Criminal P.C., a revision should have been filed since the original order in the case Under Section 145, Criminal P.C. was only revisable and not appealable. It was further urged by Chanan Singh that in view of the provisions contained in Section 438, Criminal P.C., such a revision could not be decided by the learned Sessions Judge but a reference should be made to the High Court. The learned Sessions Judge of Kumaun. it seems, converted the appeal into a petition. Although no written order is on the Order Sheet, but the order passed by the learned Sessions Judge shows that he entertained the application filed by Hari Singh and Kartar Singh as miscellaneous proceedings and not as an appeal, revision or reference.

3. The learned Sessions Judge, after quoting Section 520, Criminal P.C., held that a casual reading of that section indicates that the Court which is to be approached for alteration or modification of an order Under Section 517, Criminal P.C. has absolute powers to make such modifications or alterations and has further the powers to make such other order that may be just and no reference has to be made to the High Court. The learned Sessions Judge further observed as follows:

If that was the intention of the Legislature, it could be so stated in the section itself in unmistakable terms. The objection of the learned State counsel that a revision should have been filed by the applicants and that revision has to be referred to the Hon'ble High Court is, therefore, not tenable and cannot be accepted. It also seems to me that the Court of appeal, confirmation, reference or revision only indicates the forum to which the aggrieved party had to go and it does not imply that in certain orders Under Section 517, Criminal P.C. an appeal has to be filed, in certain other orders under the same section a reference has to be filed, in yet some other orders Under Section 517, Criminal P.C., a revision has to be filed, and in some orders Under Section 517, the aggrieved party has to move for confirmation. Obviously, four different kinds of proceedings cannot be initiated when a party is aggrieved by an order Under Section 517, Criminal P.C. In my

judgment, therefore. Court of appeal, confirmation, reference or revision, as mentioned in this section, only lays down the forum and indicates which Court the aggrieved party has to approach for correction of the order made Under Section 517, Criminal P.C. Such a Court which the aggrieved party approaches has then the powers to modify, alter or annul the order made by the learned Court Under Section 517, Criminal P.C. The proceedings in the superior Court initiated are, however, in the nature of Misc. proceedings and can neither be taken to be an appeal or revision or reference. I am, therefore, unable to find any fault with these proceedings as brought before me.

With these observations, the learned Sessions Judge allowed the application of Hari Singh and Kartar Singh and set aside the order passed by the learned Sub Divisional Magistrate and ordered the price of the crop of plot No. 4/1 (90 Bighas) held in deposit by the Court to be given to Hari Singh and Kartar Singh.

4. Aggrieved by the order passed by the learned Sessions Judge, Chanan Singh has come up in revision to this Court.

5. I have heard Shri J. D. Pradhan, learned Counsel appearing for the applicant, and Sri Gopal Behari, learned Counsel appearing for the opposite party. Both the learned Counsel for the parties have been of great assistance to me and have put their cases before me with great ability and after having made a deep study of the questions of law involved and have cited rulings before me which would be discussed later.

6. learned Counsel for the applicant urged that the order passed by the learned Sessions Judge, Kumaun, was illegal inasmuch as he could not entertain an appeal Under Section 520, Cri. P.C.-against an order passed Under Section 517, Criminal P.C. and even if the appeal could be treated as a revision, the learned Sessions Judge could not have passed final orders. He could only make a reference to this Court.

7. Section 520, Criminal P.C. is relevant in this connection and deals with stay order Under Sections 517, 518 or 519, Cr.PC and reads as follows:

520. Any Court of appeal, confirmation, reference or revision may direct any order Under Section 517, Section 518 or Section 519, passed by a Court subordinate thereto, to be stayed pending consideration by the former Court, and may modify, alter or annul such order and make any further orders that may be -just.

8. Sri J. D. Pradhan's first contention, that the learned Sessions Judge was wrong in entertaining an appeal against an order Under Section 517, Cr.PC has no substance, as the learned Sessions Judge allowed the appeal to be converted into miscellaneous proceedings. Sri J. D. Pradhan next contended that the order of the learned Sessions Judge is without jurisdiction, as he could not have passed any order as a Court of appeal and even as a Court of revision. He could only refer the matter to the High Court and could not have passed final orders himself.

9. In support of this contention, Sri J. D. Pradhan placed great reliance on the decision of Hon. Desai, J. in Talewar Jha v. Mool Chand : AIR1959 All96 .

10. Before Hon. Desai, J., two questions were advanced; one was whether Section 520, Criminal P.C. confers a right on the party to move an application before a Court of appeal, confirmation etc. for modification, alteration etc. of an order passed Under Section 517, Criminal P.C. or merely confers a power upon a Court exercising appellate, confirmatory etc. jurisdiction in the case to pass such an order. In other words, the question was whether the power of Section 520, Criminal P.C. can be exercised by any Court to which an appeal may lie or which may exercise the power of confirmation or by that Court which has already been seized of the matter in exercise of its appellate, confirmatory jurisdiction. According to Hon. Desai, J., the second question arose only if it was held that the power of Section 520, Cr.PC could be exercised by any Court to which an appeal may lie. The second question was whether the Court had the jurisdiction to question the principal order of the inferior Court and to modify, alter etc. an order Under Section 517, Cri. P.C. even though it was just and proper according to the principal order.

11. In Talewar Jha's case : AIR1959 All96 (supra), Hon. Desai, J-observed as follows:

Section 520, Criminal P.C. simply confers power upon a court exercising appellate, confirmatory etc. jurisdiction over the principal order passed by a subordinate court to modify, alter etc., an order passed by it Under Section 517 and does not confer a right upon a party aggrieved by the order to make an application in any court which may have the power of exercising appellate, confirmatory etc. jurisdiction to modify, alter, etc., the order even though it has not assumed appellate, confirmatory etc., jurisdiction over the case.' (Para 3).

No appeal has been expressly allowed from an order passed Under Section 517. On a plain reading, Section 520 confers certain powers upon certain courts. Any court of appeal may modify an order Under Section 517 means that it is the power of a court of appeal to modify such an order. A court must exist as a court of appeal before it could assume-power to modify it, i.e. it must have assumed appellate jurisdiction before being asked to modify the order. The language is similar to the language used in Section 423. (Para 6).

Therefore, where the Sessions Judge has not assumed jurisdiction as a Court of appeal, confirmation, reference or revision, there is no question of his modifying Under Section 520, the lower court's order regarding disposal of property. (Para 7).

The power conferred by Section 520 is in terms different from that conferred by Section 423 (1) (d). The power conferred by Section 423 (1) (d) is to be exercised only if the appellate court does not dismiss the appeal; if it dismisses the appeal, it cannot exercise that power. Moreover it does not deal with the powers of a Court of confirmation or reference and it is not correct to say that Section 520 would serve the same purpose as Section 423 (1) (d). Hence Section 423 (1) (d) does not authorise an appellate Court to modify or alter or annul an order passed, by the trial court Under Section 517.' (Para 8).

A Sessions Judge does not become a court of revision merely because an application Under Section 435, Cr.PC has been made to him and he has sent for the record. The High Court is the only court of reference or revision. The court of revision within the meaning of Section 520 is the court assuming revisional jurisdiction over the principal order passed in the case and not the court exercising

revisional jurisdiction over the consequential order Under Section 517. Since Section 520 does not confer a right of revision against an order passed Under Section 517, a court to which an application for revision against such an order is made is a court exercising jurisdiction Under Section 435, Cr.PC and not as a Court of revision. If a Sessions Judge assumes jurisdiction Under Section 435 over dismissal of a complaint Under Section 203 or 204 or discharge of an accused, he may exercise the power conferred Under Section 520 and modify an order regarding disposal of property passed by the trial court; but he cannot modify such an order in any other case. The provision that he cannot himself pass final orders but must refer the case to the High Court for revision of the principal order passed by the trial court would be repugnant to the provision that while reporting the principal order to the High Court for final orders he can himself modify the consequential order. The consequential order must follow the principal order and if he cannot modify the consequential order in revision, he certainly cannot modify the consequential order also. So the court that can finally dispose of an application for revision against the principal order is the court of revision.

A consequential order such as one for disposal of property Under Section 517, Criminal P.C. may be just and proper according to the principal order, however wrong the latter may be; if a superior court has no jurisdiction to interfere with the principal order, it cannot interfere with the consequential order. (Para 9)

The question involved in this revision is not free from difficulty.

12. On the broad question as to whether the powers Under Section 520, Criminal P.C. can be exercised by any Court to which an appeal may lie or to that Court which is already seized of the matter in its jurisdiction, there is some conflict of opinion between the various High Courts. As observed by Hon. Desai, J. himself at page 97 in Talewar Jha's case : AIR1959 All96 (supra), the weight of authority is against the view that was taken by Hon. Desai, J. The view taken by Hon. Desai, J., referred to above, was also taken by the Orissa High Court in Sharfuddin y. Sirajuddin : AIR1961 Ori121 and in Jahara Panigrahi v. Ula Panigrahi : AIR1965 Ori199 and also by a Division Bench of the Punjab High Court in Sheo Dan v. Pir Dan . In Duni Chand v. Smt. Bimla Devi A.I.R. 1960 J & K 103, a learned Single

Judge of that Court took the view that Under Section 520, Criminal P.C., a Court is concerned with possession and not the question of title or ownership. The view taken by Hon. Desai, J. in Talewar Jha's case : AIR1959 All96 (supra) was, however, not approved by a Division Bench of this Court in Ram Abhilakh v. The State : AIR1961 All544 . The Division Bench overruled Talewar Jha's case : AIR1959 All96 (supra) and held as follows:

The words 'a court of appeal, confirmation, reference or revision' in Section 520 refer to a Court to which appeals, references, confirmations or revisions ordinarily lie against the judgment and decision of the trial court and do not refer to a court to which an appeal etc. has in fact been preferred.

It was further held by the Division Bench in Ram Abhilakh's case : AIR1961 All544 (supra) that the court of appeal is a court in which appeals ordinarily lie and an appellate Court is the court which is seized of an appeal in a particular case.

13. In Dost Mohammad v. Emperor A.I.R. 1944 Oudh 310, Ghulam Hasan, J. (as he then was) held that an order by a Magistrate Under Section 517, Code of Criminal Procedure could be set aside Under Section 520 only by a Court of appeal, confirmation, reference or revision. The learned Judge held that the Court of reference or revision was the High Court. At page 547 of Ram Abhilakh's case : AIR1961 All544 (supra) a Division Bench of this Court observed as follows.

Inferentially the view taken was not the view that he appealed to us as it was held that the Sessions Judge could not have passed any final orders which could be passed only by the High Court. This decision was, however, taken relying on the decision of ILR 46 All 623 : A.I.R. 1924 All 675 (2) (supra) which, as we have already pointed out, was specifically overruled by the Division Bench.

14. It will thus be clear that the decision of Hon. Desai, J. in Talewar Jha's case : AIR1959 All96 (Supra) has been overruled by the Division Bench in Ram Abhilakh's case : AIR1961 All544 (supra) and is no longer good law.

15. There is another Division Bench case of this Court in Mst. Nabban Tawaif v. Shyam Lai Crl. Revn. No. 695 of 1932 (All). That case was referred to in the

decision in the case of Ram Dihal v. Badri : AIR1941 All143 . Hamilton, J. referred to that case in the following words:

Since that decision in Debi Ram v. Emperor, ILR 46 All 623 : A.I.R. 1924 All 675 (2) which was a single Judge decision, the same questions came up before a learned Single Judge of this Court in Criminal Revn. No. 695 of 1932 (All) and as he was doubtful as to the correctness of that earlier decision, reviewing the authorities, he directed that the case be laid before a Bench of two Judges, This was done and it was held that an appeal lies. The learned Judges who composed that Bench held that on a plain reading of Section 520, Criminal P.C., it would appear that any Court of appeal, confirmation, reference or revision may direct any order Under Section 517 passed by a Court subordinate thereto to be stayed and that Court of appeal may modify, alter or annul such order. The case before the Bench was one where an Assistant Sessions Judge had passed an order of acquittal and Under Section 517, Criminal P.C., had passed an order for disposal of property regarding which an offence had been committed. The learned Judges of the Bench went on to say that an Assistant Sessions Judge was subordinate to the Sessions Judge and appeals from the decisions of an Assistant Sessions Judge ordinarily lay to the Sessions Judge.

16. In view of the two Division Benches of this Court, referred to above, Hon. Desai, J.'s judgment in Talewar Jha's case : AIR1959 All96 cannot be taken to be good law any more. A Full Bench of the Bombay High Court in Walchand Jarai v. Hari Anant Joshi A.I.R. 1932 Bom 534 held as follows:

Section 520 means that any Court, which has powers of appeal, confirmation, reference or revision in respect of the trial Court, that being the Court subordinate thereto referred to in the section, can make any substantive order it thinks fit in respect of property dealt with by the trial Court Under Sections 517, 518 or 519.

If an application is made to the Sessions Court as the Court having powers of revision in respect of the trial Court in regard to orders relating to property made Under Sections 517, 518 or 519, then, the Sessions Court can itself make a proper order and need not refer the matter to the High Court.

17. In view of the clear pronouncements of the two Division Benches of this Court and the Full Bench of the Bombay High Court, referred to above, there is no force in the contention raised by Sri J. D. Pradhan. On merits also, there is no force in this revision because, as observed by the learned Sessions Judge, the Patwari's report and the Phard Mutabiqat shows that the new number of old plot No. 4/1 is 21/A and that the produce of that plot was wrongly attached and its price deposited in Court. Chanan Singh did not claim plot No. 4/1 (90 Bighas), because his total claim relating to the three plots claimed by him was in respect of 72 Bighas 10 Biswas only. Thus, it is clear that plot No. 4/1 (90 Bighas) was never claimed by Chanan Singh and was never given to him, and hence the learned Magistrate was wrong in not passing a suitable order Under Section 517, Cr.PC. The claim of Chanan Singh in respect of the three plots claimed by him and mentioned earlier related to the total area of 72 Bighas 10 Biswas, which could not have been included in plot No. 4/1 (90 Bighas). The learned Sessions Judge, therefore, was correct in ordering the price of the crop of plot No. 4/1, which was in deposit in Court, to be given to Hari Singh and Kartar Singh Under Section 517, Criminal P.C.

18. Under Section 520, Cr.PC a superior Court has absolute powers to make such modifications or alterations of an order passed Under Section 517, Criminal P.C. and has further the powers to make such other orders that may be just and it is not necessary for it to make a reference to this Court.

19. For the reasons, mentioned above, I do not find any force in this revision which is dismissed. The stay order dated 28th October, 1968, is discharged.