

Chandrapal Vs. State and ors.

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Court : Allahabad

Decided On : Mar-09-1979

Reported in : 1979CriLJ1437

Judge : P.N. Bakshi, J.

Appellant : Chandrapal

Respondent : State and ors.

Judgement :

ORDER

P.N. Bakshi, J.

1. Opposite Parties Dori, Deep Chand and Lohrey were convicted under Section 323/34, Indian Penal Code and sentenced to a fine of Rupees 100/- each by the Additional Munsif Magistrate, Mathura on 27-6-1978. Complainant Chandra Pal filed a revision before the Sessions Judge, Mathura under Section 397, Criminal P.C. praying that the sentence of fine imposed upon the opposite parties be enhanced. The Sessions Judge being in doubt whether the Court of Session has the power to enhance the sentence while hearing revision petitions had made a reference to this Court under Section 395(3), Criminal P.C. seeking its directions.

2. I have heard counsel for the State and have also perused the referring order. I have also perused the various provisions of the Cr. P.C. and a decision of the

Gujarat High Court reported in 1977 Cri LJ 1666 Prabhudas Chhanganlal v. Babubhai Virabhai Miseria.

3. In the aforesaid decision of the Gujarat High Court the view taken was that the Sessions Judge has powers to enhance the sentence while exercising revisional jurisdiction. This decision is based mainly on the ground that under Section 402, Criminal P.C. 1973 (Act 2 of 1974) the powers of the High Court are the same as those of a Court of Appeal conferred by Sections 386, 389, 390 and 391 or on a court of session under Section 307, Criminal P.C. and since the powers of the Court of Session are identical to the powers of the High Court under Section 388, Criminal P.C. and since the High Courts have powers to enhance the sentence under Section 376 read with Section 377, Criminal P. C; the Sessions Judge would also be deemed to have been invested with similar powers.

3-A. This view of the law does not appear to be correct. In the old Code of Criminal Procedure, Section 439 Indian Penal is equivalent to Section 401 of the new Criminal P.C. In the old Code the power of enhancement of sentence was specially conferred on the High Court in revision. This word is conspicuously absent in Section 401 of the new Code. It will be pertinent at this stage to quote the relevant provisions of both the Codes of Criminal Procedure: (Relevant provisions are given below)

Section 439(1) of old Section 401(1) of new Cr. P.C. Cr. P.C. In the case of In the case of any proceeding the record proceeding the record of which has been called of which has been for by itself or which has called for by itself been reported for orders, or or which otherwise comes which otherwise comes to its to its knowledge, the knowledge, the High Court may, High Court may, in its discretion, exercise any its discretion exercise of the powers conferred on a any of the powers conferred Court of Appeal by Sections 423, 426, on a court of Appeal by 427 and 428 or on a Court by Sections 386, 389, 390 and Section 338 and may enhance 391 or on a Court of the sentence.... Session by Section 307 and ...

4. In the Gujarat decision recourse was taken to Section 386 of the new Criminal P.C. which empowers the High Court to enhance the sentence while exercising appellate jurisdiction. On its basis that court was of the view that this power of

enhancement of sentence exercised by the High Court in appeal was available in revisions also. Section 386 of the new Code runs as follows:

After perusing such record and hearing the appellant or his pleader, if he appears, and the public prosecutor if he appears, and in case of an appeal under Section 377 or Section 378, the accused, if he appears, the appellate Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may-

(a) and (b)

(c) in an appeal for enhancement of sentence:

(i) reverse the finding and sentence and acquit or discharge the accused or order him to be tried by a court competent to try the offence, or

(ii) alter the finding maintaining the sentence, or

(iii) with or without altering the finding, alter the nature or the extent, or the nature and extent of the sentence, so as to enhance or reduce the same:

(d)

(e)

Provided that the sentence shall not be enhanced unless the accused has had an opportunity of showing cause against such enhancement,

Provided further that the Appellate Court shall not inflict greater punishment for the offence which in its opinion the accused has committed than might have been inflicted for that offence by the Court passing the order or sentence under appeal.

5. A close scrutiny of the provisions of Section 386, Criminal P.C. indicate that it refers to the powers of the appellate court in general, without any particular reference to the court of session. The power conferred under Section 377, Criminal P.C. does not find place in Section 386, Criminal P.C. Section 377, Criminal P.C. runs as follows:

1. Save as otherwise provided in Sub-section (2), the State Government may, in any case of conviction on a trial held by any court other than a High Court, direct the Public Prosecutor to present an appeal to the High Court against the sentence on the ground of its inadequacy.

In this connection it may also be mentioned that Section 378(1), Criminal P.C. refers to appeals to High Court against orders of acquittal. The said section runs as follows:

(1) Save as otherwise provided in Sub-section (2) and subject to the provisions of Sub-sections (3) and (5), the State Government may, in any case, direct the public prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court.

Reading both these sections together it is clear that appeals on the question of sentence on the ground of inadequacy and against acquittal passed by the original or appellate court lie only to the High Court. Appeals against convictions on the other hand lie to the sessions court, High Court and the Supreme Court depending upon the nature of each case. It is thus clear that when Section 386, Criminal P.C. refers to the powers of the appellate court in general; it speaks of the powers of the High Court as well as of the court of session without specifically mentioning those courts in that section. Nevertheless, if the powers of the appellate court are to be exercised with respect to matters which arise out of enhancement of sentence or acquittal then by virtue of Sections 377 and 378, Criminal P.C. it would be the High Court alone which would be empowered to exercise this jurisdiction. The Supreme Court has even gone to the extent of holding in *Nadir Khan v. State (Delhi Administration)* 1976 Cri LJ 1721 that:

The fact that the new Code of Criminal Procedure has expressly given a right to the State under Section 377, Criminal P.C. to appeal against inadequacy of sentence which was not there under the old Code, does not exclude the revisional jurisdiction of the High Court to act suo motu for enhancement of sentence in appropriate cases. What is an appropriate case has to be left to the discretion of the High Court....

It is thus clear that the Court of Session does not possess the power to enhance the sentence while exercising appellate jurisdiction. Such a power to enhance the sentence can only be exercised by the High Court.

6. This reference is answered accordingly.

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