

Abdul Hai Vs. State

Abdul Hai Vs. State

SooperKanoon Citation : sooperkanoon.com/476296

Court : Allahabad

Decided On : Feb-03-1971

Reported in : 1971CriLJ1367

Judge : S.D. Khare, J.

Appellant : Abdul Hai

Respondent : State

Judgement :

ORDER

S.D. Khare, J.

1. This is an application in revision directed against an order dated 22nd September, 1969, passed by the learned Sessions Judge, Bijnor, allowing the appeal, setting aside the conviction and sentence of the present applicant Under Section 5/26 of the Indian Forest Act and remanding the case to the court of the Magistrate to give the prosecution an opportunity to prove that the disputed land was part of reserved forest. The learned Sessions Judge in his order further directed that the finding of the Magistrate that the land had been freshly ploughed by the applicant was confirmed.

2. The court below was satisfied that plot No. 6/3 which was a portion of plot No. 6, measuring 253 bighas and 15 biswas had by means of a notification been included

in the reserved forest. It could not, however, be said with any amount of certainty that the land which had been freshly ploughed by the present applicant was part of plot No. 6, measuring 253 bighas 15 biswas in area. The learned Sessions Judge, therefore, remanded the case to the court of the Magistrate so that both the parties may have an opportunity to give fresh evidence on that limited point.

3. It has been contended by the learned Counsel for the applicant that while disposing of the appeal the learned Sessions Judge could take recourse only to Section 428, Criminal P.C. which reads as follows, and in the circumstances of the case no order for remand could have been passed:-

(1) In dealing with any appeal under this Chapter, the appellate Court, if it thinks additional evidence to be necessary, shall record its reasons, and may either take such evidence itself, or direct it to be taken by a Magistrate, or when the appellate Court is a High Court, by a Court of Session or a Magistrate.

(2) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

4. Reliance has been placed on the case of *Ukha Kolhe v. State of Maharashtra*, A.I.R. 1963 SC 1531 in which the following observation was made by the Supreme Court:-

If the Sessions Judge thought that in the interests of justice and for a just and proper decision of the case it was necessary that additional evidence should be brought on the record he should have, instead of directing a retrial and reopening the entire proceeding, resorted to the procedure prescribed by Section 428 (1) of the Code of Criminal Procedure. There is no doubt that if the ends of justice require the appellate court should exercise its power under the said section.

5. In my opinion the contention of the learned Counsel for the applicant is well-founded and no retrial should have been ordered in the circumstances of the present case. All that was necessary was to take resort to the provisions of Section 428 (1), Criminal P.C.

6. The revision application is allowed. The order passed by the learned Sessions Judge, Bijnor. on 26th September, 1969, is set aside. The appeal before the Sessions Judge will now be deemed to be still pending. It appears that the learned Sessions Judge was of the opinion that in the interest of justice and for a -just and proper decision of the case it was necessary that additional evidence should be brought on the record. He may, therefore, take resort to the procedure prescribed by Section 428 (1), Criminal P.C. if he thinks that the ends of -justice so require. The appeal shall be disposed of finally after following the procedure prescribed by Section 428 (1), Criminal P.C. The stay order passed on 5th November, 1969 is vacated.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com