

Rinzing Choda Vs. State and ors.

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Court : Sikkim

Decided On : Jan-10-1978

Reported in : 1978CriLJ1270

Judge : Man Mohan Singh Gujral, C.J. and; A.M. Bhattacharjee, J.

Appellant : Rinzing Choda

Respondent : State and ors.

Judgement :

A.M. Bhattacharjee, J.

1. We have heard Mr. G. L. Subba, the learned Advocate appearing for the petitioner-complainant and the accused-respondents appearing in person and the learned Advocate-General appearing for the State and have perused the records of the case and we are of opinion that we cannot accept the reference and the recommendations made by the learned Sessions Judge and must decline to interfere.

2. The case of the petitioner-complainant is that he lodged a complaint against the accused-respondents and two other accused persons and that after investigation the police submitted a charge-sheet under Sections 325/34, of the I.P.C. against the two accused-respondents in the Court of learned Judicial Magistrate, West Sikkim. The learned Magistrate thereafter recorded the statements of all the

witnesses produced by the prosecution numbering five in all and then without framing a charge and without giving the accused-respondents any further opportunity to cross-examine the witnesses, proceeded to examine the accused-respondents under Section 342 of the Cr. P.C. and on a consideration of the prosecution evidence so recorded and the statements of the accused-respondent, the learned Magistrate passed the impugned order of acquittal.

3. Against this order a revisional application was filed before the learned Sessions Judge by the petitioner-complainant challenging the order of acquittal passed by the learned Magistrate and the learned Sessions Judge has reported the case to this Court with his recommendations that the impugned order be quashed and the case be remanded for trial afresh.

4. This is a case of revision at the instance of a private complainant in a case which has proceeded on a police report. After the decision of the Supreme Court in *Thakur Ram v. State of Bihar* : 1966 CriLJ700 , it has become the usual argument of the learned Counsel opposing revisional application at the instance of a private party that a private party has really no locus standi to move a criminal Court in revision. But as we shall presently show, though a perfunctory reading of the said decision may at the first blush give rise to such impression, yet, reading it carefully, as one should and keeping in mind the long catena of cases on this point both prior and subsequent to the said decision, one would have no doubt that it neither was nor could be intended by the Supreme Court to lay down as law that a private party can in no case even move a criminal Court in revision in a case proceeding on a police report.

5. In *Thakur Ram v. State of Bihar* : 1966 CriLJ700 it has been observed by the Supreme Court (at page 911) as under:

In a case which has proceeded on a police report, a private party has really no locus standi. No doubt, the terms of Section 435...are very wide.... The Criminal Law is not to be used as an instrument of wreaking private vengeance by an aggrieved party against the person who, according to that party, had caused injury to it.

6. Relying on the observations quoted above, it has often been urged that the Supreme Court has put a blanket embargo on the right of a private complainant to move in revision. But if one bears in mind, as one should, the earlier as well as the later decisions of the Supreme Court spreading over a period of about 25 years, it would be clear that no such all-embracing embargo was ever intended to be laid down in Thakur Ram's case 1966 Cri LJ 700 (SC). The right of a private party to move in Criminal Revision has been recognised by the Supreme Court in Bissu Maghoo v. State of Uttar Pradesh : AIR 1954 SC714 and Dhirendra Nath v. Mukunda : 1955 CriLJ1299 . Such a right has also been clearly recognised by the Supreme Court in the earlier cases of Stephens v. Nosibolla : 1951 CriLJ510 and Harihar v. State of West Bengal : AIR 1954 SC266 and in the later case of Chinnaswamy v. State of Andhra Pradesh : [1963]3SCR412 . The principle laid down in these cases appear to be that the Revisional Jurisdiction can be invoked by the private complainant against an order of acquittal; but it can be exercised only in exceptional cases where the interest of public justice requires interference for the correction of manifest illegality or the prevention of gross-miscarriage of justice. As to what would constitute such 'exceptional cases' the Supreme Court observed in Chinnaswamy's case : [1963]3SCR412 , as here-under:

It is not possible to lay down the criteria for determining such exceptional cases which would cover all contingencies. We may however, indicate some cases of this kind, which would in our opinion justify the High Court in interfering with a finding of acquittal in revision. These cases may be : where the trial Court has no jurisdiction to try the case but has still acquitted the accused, or where the trial Court has wrongly shut out the evidence which the prosecution wished to produce, or where the appeal Court has wrongly held evidence which was admitted by the trial Court to be inadmissible, or where material evidence has been overlooked either by the trial Court or by the appeal Court, or where the acquittal is based on a compounding of the offence, which is invalid under the law. These and other cases of similar nature can properly be held to be cases of exceptional nature, where the High Court can justifiably interfere with an order of acquittal.

7. As to the decision of the Supreme Court subsequent to Thakur Ram's case noted above : 1966 CriLJ700 , we may refer to the decision in Chaganti Kotiah v.

Goginemi Venkateshwar Rao : 1973 CriLJ978 , where after considering the earlier decisions in Mahendra Pratap v. Sarju Singh : 1968 CriLJ665 , in Khetrabasi v. State of Orissa : [1970]1SCR880 and in Amarchand v. Santi Bose : 1973 CriLJ577 , it has been held that the extent of jurisdiction of the High Court in the matter of interfering in revision against an order of acquittal, which may be invoked even at the instance of private parties, is what has been laid down in Chinnaswamy's case : [1963]3SCR412 , noted and quoted above. It is true that in the decision in Thakur Ram's case : 1966 CriLJ700 , the earlier decisions of the Supreme Court were not considered; it is equally true that the decision in Thakur Ram's case has not also been referred to in any of the later decisions noted above. But in view of the long catena of consistent authorities, both prior and subsequent to the decision in Thakur Rama's case, it would have been really startling if it was found that in Thakur Ram's case the Supreme Court has laid down a straight-cut and all-comprehensive embargo on the right of a private party to invoke the criminal revisional jurisdiction; but it should be noted that notwithstanding the observations quoted hereinabove, the Supreme Court in that Thakur Ram's case itself stated (at page 917); (of AIR SC) : (at page 706 of Cri LJ) that there may be and are exceptions to the general principle that in a case proceeding on a police report, a private party is not to invoke revisional jurisdiction. As we have already noted, all the earlier and later Supreme Court decisions have also laid down that such jurisdiction can and is to be exercised in exceptional cases where there is some glaring defect in the procedure or there is some manifest error on a point of law, resulting in flagrant miscarriage of justice and some illustrations of such exceptional circumstances have been given in Chinnaswamy's case noted above. : [1963]3SCR412 .

8. Applying these tests to the case at hand let us see whether there is any glaring defect in the procedure or any manifest error on a point of law and further, whether such defect or error has resulted in any flagrant or gross miscarriage of justice,

9. As we have already noted, after the statements of the witnesses for the prosecution were recorded, the learned Judicial Magistrate, without framing any charge and without giving the accused-respondents any further opportunity to cross-examine the prosecution witnesses, straightway proceeded to examine the

accused-respondents under Section 342, Cr. P.C. and after considering the evidence and the statements so recorded, acquitted the accused. This is no doubt a manifest error of law and a glaring defect of procedure.

10. In Sikkim the law relating to Criminal Procedure still is what was contained in the Code of Criminal Procedure of 1898 with certain modifications as noted in the schedule to the Sikkim Criminal Procedure Act, 1976. We have, however, noticed that some confusion exists in the Subordinate Courts as to the applicability of the special provisions contained in Section 251-A, inserted by the Cr. P.C. (Amendment) Act of 1955, providing for procedure to be adopted in cases instituted on police reports and that even in such cases, the procedure laid down in Section 252 and other succeeding sections of Chap. XXI of the Code has been followed in many cases. As the latter procedure gives the accused better and more detailed opportunity to defend, such procedure, even if followed in a case instituted on police report, will not vitiate the trial.

11. If the procedure laid down in Section 251-A of the Cr. P.C. was intended to be followed by the learned Judicial Magistrate, he ought to have satisfied himself that the documents referred to in Section 173 were furnished to the accused and after such satisfaction, ought to have considered the question of framing of charge and after framing, reading over and explaining the charge, if any, to the accused, ought to have asked them if they pleaded guilty or claimed to be tried and on their refusing to plead and/or claiming to be tried, should have proceeded to record evidence on the date fixed therefor. From the record it is apparent that the learned Judicial Magistrate did not take any of these steps mentioned above before he proceeded to record evidence. These are no doubt grave errors of law and procedure.

12. If, however, the learned Magistrate intended to follow the other procedure as contained in Section 252 and the succeeding sections, he ought to have, after taking all the evidence as was produced by the prosecution and after making such examination of the accused, if any, as he thought necessary ought to have considered the question of framing of charge and after framing, reading over and explaining the charge, if any, to the accused, ought to have asked them if they

pleaded guilty or claimed to be tried and on their refusing to plead and/or claiming to be tried, should have proceeded to give them due opportunity to cross-examine the prosecution witnesses and after such examinations were over and the prosecution case was closed, ought to have proceeded to have examined the accused-respondents under Section 342 of Cr. P.C. But as we have already noted, the learned Judicial Magistrate, without framing any charge and without giving the accused any opportunity to cross-examine after the framing of charge, proceeded to examine the accused under Section 342 of the Cr. P.C. and then straightway proceeded to record the judgment. We must not be understood to say that examination of an accused by the Court before the charge is framed is illegal and irregular; under Section 253 of the Cr. P.C.; the Court may, if necessary, examine the accused even before framing of charge to enable it to properly consider the question of framing charge; under Section 342 of the Code also, the Court may examine the accused at any stage of the trial and as such before the framing of charge also; but while such examination by the Court has been left to the discretion of the Court itself, the examination of the accused after the close of the prosecution evidence and before the accused is called on for his defence is mandatory. It may, however, be noted that in spite of such mandate it has been held by the Supreme Court in *Bibhuti v. State of West Bengal* : 1969 CriLJ654 that 'mere non-examination or defective examination under Section 342 is not a ground for interference unless prejudice is established.' But that is a different matter.

13. Be that as It may, there is no doubt that whichever procedure relating] to warrant-cases was intended to be followed by the learned Judicial Magistrate, the failure on the part of learned Judicial Magistrate to frame the charge, to ask the accused to plead to the charge and to give the accused due opportunity to cross-examine the prosecution witnesses after the framing of the charge were flagrant defects of procedure amounting to manifest illegalities with-in the meaning of the Supreme Court decisions noted above.

14. The learned Advocate-General appearing for the State has submitted that though ordinarily if there are serious illegalities and defects in procedure in a criminal prosecution, the prosecution will have to suffer, yet if in a given case, the Court makes a mess of the procedure on a deplorable misapprehension of the

provisions of the law and acquits the accused, the prosecution also has a claim for justice and right to claim retrial as a corollary to such claim. Mr. G. L. Subba, the learned Advocate for the petitioner, also adopted the arguments of the learned Advocate-General. We have given our serious thought to this submission.

15. There can be no doubt that the criminal revision jurisdiction is not to be exercised for the correction of mere errors of law or procedure, however, grave or substantial, the anxiety and the purpose of the revisional Courts always being to correct injustices and not illegalities or irregularities. Whether one refers to the decision in Chinnaswamy's case : [1963]3SCR412 or to the much earlier decision in Stephen's case : 1951 CriLJ510 or to the much later decision in Kotaiah's case : 1973 CriLJ978 , one will find the law to be that manifest error on a point of law or glaring defect in procedure will not by itself attract revisional jurisdiction and justify revisional interference unless there is a consequential flagrant miscarriage of justice and requirement of public justice to prevent such miscarriage,

16. We have, therefore, examined the evidence recorded in this case and have found that the statement of the witnesses, far from implicating the accused in any way, rather show that it was the complainant who tried to assault and assaulted the accused. P. W. 1, Dhan Maya Limbuni, has only stated that she did not see the complainant and the accused persons fighting with one another. P. W. 2, Dinanath Sharma, has stated that he saw the complainant carrying stones and throwing them to the accused. P. W. 3, Chandralal Sharma, has also stated that the complainant began to throw stones and the stones hit the accused. Two other witnesses were police persons who took part in the investigation and had to say nothing directly about the facts or against the accused. Whether these witnesses were really truthful or were interested or were gained over to become hostile is a different matter. But there cannot be any doubt for a moment that when on this evidence no charge could be framed against the accused the learned Judicial Magistrate should have forthwith discharged the accused. That being so, any direction from us for retrial, whether from the stage of considering framing of the charge or otherwise, would, far from being in the interest of justice, be an abuse of powers vested in this Court as a Court of Revision even though, as already stated, the learned Judicial Magistrate committed manifest illegality or grave error at

procedure in disposing the cases in the manner he did. We, therefore, decline to interfere and to accept the recommendations of the learned Sessions Judge.

17. Before parting with this case we will like to observe on another aspect From the order-sheet it appears that the case was fixed for recording evidence on 9-10-1975 and on that day the learned Judicial Magistrate passed the following order:

Party is present

They pray for adjournment as they say that they are asked to be present in Gyalshing Bazar to welcome the Governor of Sikkim who is visiting West District. Accepted. To : -17-11-1975.

18. On 17-11-1975 the case was again adjourned after the learned Judicial Magistrate passed the following order:

Accused present. P. Ws. : - SI Roka who is presently working as O/C Rangpo has sent a W/T message praying for adjournment on the ground that he is busy with Prime Minister's visit to Sikkim.

Accepted.

M. O. Dr. S. Mukherjee too prays adjournment on the same ground. Accepted.

PW SI Pratiman Sharma absent. Issue, therefore, fresh summons on the P.Ws.

To : - 22-1-1976.

19. There can be no doubt that criminal cases should be proceeded with and disposed of with utmost promptitude and not with the air of leisure and luxury and we are afraid that we shall be failing in our duty to act as a Court of Superintendence if we do not draw the attention of the Subordinate Courts or the prosecution authorities that these are not the grounds on which the adjournment should either be prayed or allowed and the prosecution authorities must see that witnesses, whether public or police, summoned or required to attend the Court in Criminal Case do not fail to attend Courts simply because dignitaries are visiting or are expected to visit any particular State or locality. A copy of this judgment will

obviously be reaching the lower Court; but let a copy be also sent to the police authorities for their future guidance,

Man Mohan Singh Gujral, C.J.

20. I agree.

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