

Hari Sahu Vs. Pasori Sahu

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Court : Orissa

Decided On : Jul-21-1950

Reported in : AIR1951Ori30; 16(1950)CLT200

Judge : Narasimham, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 522(3)

Appeal No. : Criminal Revn. No. 26 of 1950

Appellant : Hari Sahu

Respondent : Pasori Sahu

Advocate for Def. : B.K. Pal, Adv.

Advocate for Pet/Ap. : S.N. Dasgupta, Adv.

Disposition : Revision petition dismissed

Judgement :

ORDER

Narasimham, J.

1. This petition is for revising an order under Schedule 22 (3), Criminal P. C., passed by the Sessions Judge of Cuttack under the following circumstances.

2. The petitioner was tried for the offence of house trespass Under Section 448, Penal Code and convicted by a Magistrate on 27-6-1949. His appeal to the Sessions Judge was disposed of 10-8-1949 and though the conviction was maintained the sentence of fine was reduced. A criminal revision to this Hon'ble High Court was dismissed on 16-9-1949. Till then the opposite party did not apply to any of the three Courts for action under Schedule 22, Criminal P. C. On 24-11-1949 for the first time the opposite party applied to the appellate Court (the Sessions Judge, Cuttack) praying for an order for restoration of possession of a portion of the house which the petitioner was said to be occupying forcibly. The Court passed an ex parte order allowing the petition. Thereupon, the petitioner filed an application for reconsideration of the ex parte order and on 17-1-1950 the Sessions Judge refused to reconsider the same. This revision petition has been filed against that order dated 17-1-1950.

3. The sole question of law for consideration is whether the Court of appeal can pass an order under Schedule 22 (3), Criminal P. C, long after the disposal of the appeal. In the present case the appeal was disposed of on 10-8-1949 and the order Under Section 522 (3), Criminal P. C. was passed more than three months later on 24-11-1949. Mr. Dasgupta's contention is that the Court of appeal became functus officio after disposing of the appeal on 10-8-1949 and that it had no jurisdiction to pass an order under Schedule 22 (8), Criminal P. C. on any subsequent date. He further argued that even if it be held that the Court had any such jurisdiction that jurisdiction was limited to the period of 30 days from the date of the disposal of the appeal and that it cannot be extended beyond that period. In support of this argument he has relied on a single Judge's decision of the Calcutta High Court reported in *Abdul Mannan v. Taiyab Ali*, A. I. R. (84) 1947 Cal. 390 : (48 Cr. L. J. 908).

4. Mr. Pal has, however, relied on a series of decisions of almost all other High Courts taking a contrary view. In *Fida Bussain v. Sarfaraz Hussain*, A. I. R. (20) 1933 Pat. 617 : (34 Cr. L. J. 940), a single Judge relying on an earlier decision of the Patna High Court held that there was nothing in Schedule 22 (3), Criminal P. C., to limit the jurisdiction of an appellate Court to the passing of an order within one month either of the original conviction or of the appellate order. It was left to

the discretion of appellate and revisional Courts not to exercise their powers under this section in cases where there has been undue or excessive delay in moving the Court for its use. The same view has been taken in a later Division Bench decision of the Patna High Court reported in *Gudri Mahton v. Jangi Mahton*, A. I. R. (21) 1984 Pat. 154 : (35 Cr. L. J. 1188). The Nagpur High Court has taken the same view in *Namdeo Atmaram v. Emperor*, A. I. R. (25) 1938 Nag 316 : (39 Cr. L. J. 342) which has been followed in *Ramnath Sheonarayan v. Sonaji Krishanji*, A. I. R. (85) 1948 Nag 260 : (49 Cr. L. J. 383). Similarly the Lahore High Court in *Roda v. Autar Singh* A. I. R. (261) 1938 Lab. 839; (40 Cr. L. J., 380) and the Allahabad High Court in *Nihal Singh v. Emperor*, A. I. R. (26) 193 & ALL. 662 : (40 Cr. L. J. 958) have taken the same view. My attention has not been drawn to a decision of any High Court which has taken the view of the single Judge of the Calcutta High Court in *Abdul Mannan v. Taiyab Ali*, A. I. B. (34) 1947 Cal. 390 : (48 Cr. LJ. 908).

5. Apart from the overwhelming authority against the Calcutta view, the provisions of Sub-section (3) of Section 522, Criminal P. C. do not appear to warrant such a limitation on the powers of the appellate Court. Unlike Sub-sections (1), (3) of Section 522, Criminal P. C does not expressly say that the power of the Court of appeal or revision, as the case may be, to pass an order under that section must be exercised either at the time of passing the order or within one month from the date of such order. When the section is entirely silent as regards the law of limitation which should control the superior Court's action under Sub-section (3), there seems to be no justification for importing the same rule of limitation prescribed for the trial Court in Sub-section (I) of that section. I would, with respect agree with Rowland J.'s observation in *Fida Hussain v. Sarfaraz Hussain*, A I. R. (20) 1933 Pat. 617: (34 Cr. L. J. 940) to the effect that in the absence of any such express provision, the matter should be entirely left to the discretion of the Court of appeal or revision as the case may be and though such a Court may not care to interfere and pass an order under Sub-section (3) of Schedule 22, Criminal P. C. where there has been undue delay there is nothing in the section prohibiting it from exercising such power in exceptional cases.

6. I am therefore of the opinion that the lower Court has committed no illegality in passing an order Under Section 522 (3), Criminal P. C. more than three months

after the date of the appellate order.

7. The revision petition is dismissed.

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