

Kailash Nath Vs. State

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Court : Delhi

Decided On : Sep-12-1968

Reported in : ILR1968Delhi486

Judge : J.D. Dua, C.J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 426

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 124 of 1968

Appellant : Kailash Nath

Respondent : State

Advocate for Pet/Ap. : K.L. Sharma and; V.D. Misra, Advs

Judgement :

I.D. Dua, C. J.

(1) This application has been presented in this Court on behalf of Shri Kailash Nath under section 528, Criminal Procedure Code ., praying for the transfer of the case from the Court of Shri J. N. Verma, Additional Sessions Judge, to some toher competent Court.

(2) It is unnecessary to go into the details of the facts and, circumstances giving rise to the controversy. Suffice it to say that Shri D. N. Kaul and Smt. Kaul started proceedings against the petitioner under section 406, Indian Penal Code . and the

petitioner filed a complaint against Smt. Tuisi Kaul and Shri D. N. Kaul in the Court of Shri H. L. Sikka, Sub Divisional Magistrate, under section 420 Indian Penal Code . On 19/3/1968 Shri Sikka convicted the petitioner under section 406, Indian Penal Code . and sentenced him to rigorous imprisonment for one year. The same learned Magistrate dismissed the petitioner's complaint under section 420 Indian Penal code

(3) It is averred in this application for transfer that arguments in the revision petition against the dismissal of the petitioner's complaint under section 420, Indian Penal Code ., were heard; without the judicial record being before the learned Additional Sessions Judge and. this fact became known to the petitioner only on 31/7/1968 when the Court below recorded the following order:--

'INthis case there is one appeal filed by K. N. Chawla against the order of Shri H. L. Sikka dated 19/3/1968 and. a revision for enhancement of the sentence filed by Smt. Tuisi Kaul. Antother revision filed on behalf of K. N. Chawla in respect of a complaint filed by him which was dismissed by the said Magistrate on the same day was nto available at the time of writing the judgment. The same be sent for forthwith so that the appeal and revision filed by K. N. Chawla and the revision of Tuisi Kaul be decided together. Adjourned to 26/8/1968 for judgment'.

(4) I may point out that this order actually bears the date 19/8/1968 and nto 31/7/1968, as has been wrongly averred in the application for transfer. From this the petitioner apprehends that the learned Additional Sessions Jud.ge has already made up his mind on the merits of these two cases and he is likely to maintain the petitioner's conviction as also the order of dismissal of his complant. The petitioner has also added, in his application that he had applied for inspection of the record on 31/8/1968. but he was nto allowed inspection thereof and it was observed that the file was lying at the house of the learned Additional Sessions Judge. However, pursuant to oral directions, the record was inspected on 2/9/1968.

(5) I have sent for the record for examining the same myself. It appears that an appeal was presented in the Court of the learned Sessions Judge by K. N. Chawla from his conviction under section 406, Indian Penal Code . by Shri H. L. Sikka, Sub-Divisional Magistrate, New Delhi. On 1/4/1968, Smt. Tuisi Kaul filed an

application in the Court of the learned Sessions Judge praying for enhancement of the sentence imposed on Shri K. N. Chawla by the trial Magistrate. The appeal presented by K. N. Chawla (Crli. A. 223 of 1968) had apparently been entrusted to the Court of Shri J. N. Verma, Additional Sessions Judge, and was registered in his Court on 20/3/1968. The appellant was enlarged on bail and the appeal was directed to come up on 8/4/1968 for awaiting the records. Below this order, someone has written in pen and ink 'file received', though it is not clear as to who has recorded this note. On 8/4/1968, K. N. Chawla appellant appeared in person and the Presiding Officer being absent. The case was adjourned to 7/5/1968 for arguments. On 7/5/1968 again, the appellant appeared in person, but, according to the court's order, the records of the lower Court had not been received. The same were directed to be summoned for 5/6/1968.

(6) There is, however, also another note, apparently in the hand writing of someone other than the presiding officer, which shows that the records had been received. On 5/6/1968, in the presence of the appellant, the Court adjourned the case for arguments to 25/7/1968. The Court of course noted that the lower Court's record had been received. On 25/7/1968, arguments were heard and the case was adjourned to 31/7/1968 for orders. On the date fixed, the orders not being ready, the case was adjourned to 19/8/1968, on which date the order, already reproduced, was recorded in the presence of the appellant in person and the A.P.P. for the State. On 26/8/1968, the file having not been received, the case was adjourned to 30/8/1968. On that date, the following order was made:-

'PRESENT:As before. The file ordered to be summoned could not be brought even today. The Appellant is directed to go personally to bring the file by the next date.

(7) The case is now fixed up for bringing the file and for orders on 3/9/1968'.

the order recorded on 3/9/1968 reads as under:- 'PP for the State.

SHRIR. P. Chawla, younger brother of K. N. Chawla, appellant has presented an application praying for adjourning on account of the ailment of K. N. Chawla, appellant. In support of his application, he has attached a medical certificate. The file of the lower Court relating to the revision of K. N. Chawla has now been

received. The case was today fixed for orders but on the basis of medical certificate, orders cannot be pronounced. The case is now fixed for 9/9/1968 on which date the appellant should be produced when the orders will be pronounced.

Announced.'

(8) The orders in the revision for enhancement of sentence are of little relevance, but I may briefly advert to the career of Criminal Revision No. 109 of 1968 preferred by K. N. Chawla against the order dated 19/3/1968 dismissing his complaint and discharging both the accused under section 153, Criminal Procedure Code. This revision was transferred to the Court of Shri J. N. Verma, Additional Sessions Judge, on 15/4/1968 because it was noted at the bottom of the grounds of revision that an appeal in the corresponding challan case was pending in the Court of the said learned Additional Sessions Judge and was fixed for 29/4/1968. On 19/4/1968, this revision was registered in the Court of the learned Additional Sessions Judge and notices were directed to the opposite party for 7/5/1968 on payment of process-fee. It appears that the opposite party was served before 7/5/1968 as seems to be apparent from a note above the order dated 7/5/1968 on the date fixed, the presence of K. N. Chawla with his counsel was noted and it was ordered that the case should come up, with Criminal Appeal 218-A of 1968, on 5/6/1968. On that date, again after noting the presence of K. N. Chawla, the case was directed to come up with the said criminal appeal on 25/7/1968, on which date the presence of the counsel for the parties is noted and arguments are recorded to have been heard. The case was adjourned to 31/7/1968 for orders. On the next date, the presence of the parties with their counsel was recorded and it was ordered 'to come up with the connected appeal on 19/8/1968', on which date after noting the presence of the parties with their counsel, the following order was recorded :--

'The file of this case does not appear to have been received. The same be summoned for 26/8/1968.'

(9) On the next date, the presence was noted as before and; the case was directed to come up on 30/8/1968 with the connected appeal, on which date again, the case was directed- to come up with the connected appeal on 3/9/1968 and It

was ordered that the file be summoned at once. On 3/9/1968, the following order was made: -

'PRESENT: P.P. for the State.

SHRIR. P. Chawla, younger brtoher of K. N. Chawla petitioner, has presented an application praying for adjournment on account of the illness of his brtoher K. N. Chawla. The L. C. file has been received. Detailed order passed in the connected appeal. To come up on 9/9/1968'.

(10) It is in these circumstances that the present transfer application has been presented in this Court. It is obvious that the learned Additional Sessions Judge had heard arguments shri K. N. Chawla's revision against the order of Shri H. L. Sikka, Sub-Divisional Magistrate, dated 19/3/1968 discharging btoh the accused under section 153, Criminal Procedure Code . without the record of the case being before the Court and obviously thereforee, without referring to and examining that record at the time the arguments were addressed before him. The learned counsel for the State, Shri V. D. Misra, has expressed his inability to justify this procedure adopted by the Court below. The power of revision vested in the Sessions Judge lies in calling for and examining the record of proceedings before the inferior criminal Courts for the purpose of satisfying himself as to the correctness, legality or propriety of the finding, sentence or order recorded or passed by the inferior Court. In the case in hand, the revision was nto dismissed in liming and it was ordered to be registered on 19/4/1968 when ntoices were issued to the opposite party. Unfortunately, the learned Additional Sessions Judge did nto make any express order calling for the record of this case and even his office does nto seem to have adverted to this aspect in order lo secure orders for summoning the record of the trial Court. On 25/7/1968, when arguments in all the three cases (the appeal and the two revisions) were heard, the records of C.R. 109 of 1968 were nto in the Court of the learned Additional Sessions Judge and it is nto understood why the Court did. nto enquire from his reader about the record of the trial Court. The counsel appearing in support of that revision has nto appeared in this Court in the present transfer proceedings and I am nto in a position to form any opinion as to what arguments were actually addressed by him in support of the revision. In the

grounds of revision, however, I do find' a challenge against the order of discharge based on the averment of suppression and misquotation of facts by the trial Court and a grievance has also been made of the trial Court having given no reason for disbelieving the prosecution witnesses. I am, therefore, assuming that arguments were in all probability addressed by the counsel for the complainant by reference to the evidence on the record. How these arguments could be appreciated or evaluated without the record being before the Court, is difficult for me to understand. This case does betray a lapse both on the part of the Presiding Officer and on the part of his Reader in not taking care to see that the record was before the Court when arguments were addressed. In any event, when the learned Additional Sessions Judge discovered that the record was not in the Court, it was incumbent on him to post the case for re-hearing so that the arguments could be re-heard with the record before the Court. Even after the discovery of the fact that the records were not there, to adjourn the case only for orders, was far from justified.. Either the arguments addressed required the presence of the record or they did not. If they did not, then there was no point in looking for them for the purpose of preparing the order, but if they did, then the Court below should have secured the record before it when the arguments in the revision were addressed. In any event, arguments should have been re-heard after the receipt of the records.

(11) I am also somewhat surprised at the complainant's counsel having not cared to verify whether or not the records had arrived in the Court.

(12) I am also somewhat surprised at the complainant's counsel having not cared to verify whether or not the records had arrived in the Court.

(13) But be that as it may, the question which confronts this Court now is whether or not it is a fit case in which the revision against the order of discharge should be transferred to some other Court. There is no grievance in regard, to the appeal and the revision seeking enhancement of the sentence and it is not urged before me that the learned Additional Sessions Judge is otherwise inimically inclined towards K. N. Chawla. The only ground urged is that the learned Additional Sessions Judge having heard the arguments in CrI Rev. No. 109, without the

record being before him, it has given rise to a reasonable apprehension 'in the mind of Shri K. N. Chawla that he would not get fair and impartial justice from his Court. It is true that in dealing with an application for transfer, the Court has to consider not merely the question whether there has been any real bias in the mind of the presiding Judge against the applicant, but also the further question whether incidents may not have happened which, though they may be susceptible of explanation, and may have happened without there being any real bias in the mind of the Judge, are nevertheless such as are calculated to create in the mind of the applicant a justifiable apprehension that he would not have impartial justice. The susceptibilities of the litigating parties are perhaps the real test, because, as has often been said, one important object in the administration of justice is to clear away everything which might engender suspicion and distrust of the Tribunal so that feeling of confidence in the administration of justice is promoted. Such feeling must inevitably be considered to be essential to social order and security.

(14) In the present case, I have given my most anxious thought, to the circumstances of the arguments having been heard in this revision without the record being in the Court. But, for this defective hearing, the complainant's counsel cannot completely disown the lapse on his part in not checking up the presence of the record, in the Court of the learned Additional Sessions Judge. Indeed, he had also failed to secure an express order for summoning the record of the trial Court. After considering all the attending circumstances, I have not been able to persuade myself to hold that the lapse-the seriousness of which should not be minimised- on the part of the Court below and its staff is sufficient to give rise to a reasonable apprehension in the mind of the complainant that he would not get fair and impartial justice from the Court of the learned Additional Sessions Judge. If any infirmity occurs in the final order, then the aggrieved party would certainly have a right to redress from the superior Court. Every irregularity or error in procedure need not necessarily be held to give rise to a reasonable apprehension in the mind of the aggrieved party that the Court is inimically inclined towards him or that he will not get a fair and impartial deal from it. because of some reason collateral to the merits of the case. This transfer application: must, therefore, be dismissed and. I order accordingly.

(15) Before concluding, however, I cannot help expressing my complete disapproval of the language used in ground No. 1 of the Grounds of Revision in Crl. Rev. 109 of 1968. However glaring or serious the mistake committed by a Court in the decision of a case, the language in which such decisions are challenged in the superior Courts, must be dignified, worthy of the sobriety and cultured restraint associated with the Courts of justice and the profession of law. Use of strong and unnecessarily offensive language with reference to the impugned orders, does not add strength to the argument. On the contrary, it may some times have an adverse effect on the mind of the superior Court. This Court hopes that in future more restraint and dignified language would be used by the members of the bar when commenting on the orders challenged in the higher Courts.

(16) As observed earlier, this application fails and is dismissed. 7, however, direct in the interests of justice that the learned Additional Sessions Judge should re-hear the arguments in Crl. Rev. No. 109 of 1968 preferred against the order of discharge. This Court is quite obviously competent to make such an order on scrutinising the entire record of the case. This order should not be construed to contain any expression of opinion on the merits either way and I have no doubt that the learned Additional Sessions Judge would judiciously come to his own decision on the merits after hearing both sides. Parties are directed to appear in the Court below on 23/9/1968 when another date, preferably within 10 days, would be given for re-hearing the arguments in the said criminal revision. As arguments in the other two cases have already been heard, it is eminently desirable that the decision in all the three connected cases desired by the parties concerned to be heard together, is given expeditiously and without any further undue delay.