

Vijai Pat Vs. State

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Court : Delhi

Decided On : Sep-01-1971

Reported in : 1972CriLJ543; ILR1972Delhi107

Judge : V.D. Misha, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 435

Appeal No. : Criminal Revision Appeal No. 233 of 1971

Appellant : Vijai Pat

Respondent : State

Advocate for Pet/Ap. : D.R. Sethi and; D.C. Mathur, Advs

Judgement :

V.D. Misra, J.

(1) A charge-under Section 392/506/34 Indian Penal Code having framed against the petitioner, he has come up in revision under Section 435/439 Criminal Procedure Code . to this Court. A preliminary objection has been raised by the learned counsel for the State that the petitioner should have approached the Court of Session before coming to this court in revision. He has drawn my attention to the High Court Rules and Orders, Volume 5, Chapter Ia, Rule 3, which lays down that the Deputy Registrar will not receive petitions for revision of orders of original

courts in non-appealable cases unless the applicant files with his petition a copy of the order of the Sessions Judge or District Magistrate as the case may be to show that he has applied to one or the other and his petition has been refused. Admittedly the petitioner did not go to the Sessions Judge in revision and has come directly to this Court.

(2) Mr. D. R. Sethi, learned counsel for the petitioner contends that this Court has a right to entertain the revision directly, and petition should not be dismissed because the petitioner has not approached the Sessions Judge first.

(3) It is no doubt true that this Court has got the power to entertain a revision petition despite the failure of the applicant to approach the Sessions Judge before coming to this Court. It is also true that the revisional powers can be exercised by this Court *sue moto* without any one applying for the same. However, Rule 3 referred to above was framed by this Court presumably to have the advantage of the opinion of the Sessions Judge in revisional matters. All the High Courts in India follow the practice of directing the petitioner to approach the Sessions Judge before invoking the revisional jurisdiction of the High Court. I see no reason to depart from that practice and set up an unhealthy precedence of allowing the petitioners to approach this Court directly in revision.

(4) A similar view has been taken in *Sukh Lal Versus State* AIR 1955 Raj177 which observed thus :-

'WHERE the revisional powers of a High Court are invoked, it will as a rule not exercise such jurisdiction unless the party concerned has applied to the Sessions Judge or the District Magistrate, as the case may be, in the first instance, and such Court had the opportunity to consider the case and record its opinion thereon. There is a good deal in favor of such a practice because it enables the High Court to have before it the opinion of the Sessions Judge in a case of this character when it is called upon to exercise its own authority. The Language of Section 438 is wide enough, for an application of the present character to be filed before him. as amply indicated by the words 'or otherwise' occurring therein. If the Sessions Judge comes to a conclusion in favor of the petitioner, the matter is very much simplified at the time it comes before the High Court. Should he, however, come to

a contrary conclusion, it would be still open to the aggrieved party to apply to the High Court to consider the application and the opinion of the Sessions Judge would be before it. Such a practice would be highly desirable and would generally tend to save the time of the High Court'.

(5) The same view was taken in *Municipal Board Bijnora Versus Bhim Singh* : AIR1962 All450 . It was also held that there would be no illegality if the High Court entertained a revision directly without the party having approached the Sessions Judge. Judgment of Madras High Court in *Narayanaswami and others Versus Esappa Reddi and others* : AIR1962 Mad443 shows that there is a practice in that court of entertaining revisions in cases falling under Section 145 Criminal Procedure Code . directly without the party being required to approach the Court of Sessions. In these circumstances, it was held that the High Court has the jurisdiction to entertain revision in the first instance. My attention has been drawn to an unreported judgment of this Court in *Shri Fayazuddin Versus Shri Wahabuddin* (Criminal Miscellaneous (M) No. 198 of 1967) decided on 29th August, 1968(4) wherein S. N. Shanker J. entertained the revision petition in the first instance. I find that it was a case under Section 145 Criminal Procedure Code . and reasons given were as under:-

'THE learned counsel for the respondent then urged that this revision was not competent because the petitioner had failed to apply to the Court of Session. There is no substance in this plea also. The powers of the High Court and of the Sessions Court, according to the provisions of section 435 of the Code of Criminal Procedure, are concurrent and not exclusive. Shri Sethi has rightly pointed out that under section 435 of the Code of Criminal Procedure, his client's recourse to the Court of Session could not be an adequate remedy, because the learned trial Magistrate in this case had not issued an order under sub-clause (1) of section 145 of the Code of Criminal Procedure and the whole proceedings would have been infructuous if the period of two months had expired before the final hearing of the case, and that the Court of Sessions was not competent under section 435 to issue any interim orders, like the one that had been passed by this Court on November 13,1971'.

This judgment is not a precedence for entertaining revisions in the first instance in all cases. It was confined to the peculiar facts of that case.

(6) The result is that though this Court has jurisdiction to entertain the revisions in the first instance, without the party having approached the Sessions Judge but it is a salutary practice to force the party to approach the Sessions Judge first in order to enable this Court to have the advantage of the judgment of the Sessions Judge.

(7) The result is that the revision is dismissed as not maintainable. The petitioner would be at liberty to approach the Sessions Judge if he is so advised.

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