

Prithi Vs. State Etc.

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Court : Delhi

Decided On : Mar-07-1974

Reported in : 1974RLR479

Judge : Pritam Singh Safeer, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 435; Limitation Act - Sections 3; High Court Rules and Orders - Rule 3

Appeal No. : Criminal Revision Appeal No. 115 of 1973

Appellant : Prithi

Respondent : State Etc.

Advocate for Pet/Ap. : Ramesh Chandra,; R.N. Dixit and; Anoop Singh, Advs

Judgement :

Pritam Singh Safeer, J.

(1) This petition has been filed u/s, 435 & 561A of the Criminal Procedure Code, hereafter called 'the Code'. At the very outset an objection has been raised by Shri Anoop Singh on behalf of respondent No. 2 to the maintainability of the petition. It is urged that the petition is directed against the order made by Shri M.K. Chawla Additional Sessions Judge, Delhi on 18.4.73 and that order having been made on a petition preferred u/s 435 of code the jurisdiction provided by it stood exhausted.

The instant petition could not have been preferred under section 435. It is then emphasised that in the presence of section 439 which provides for invoking the revisionary jurisdiction and settling its scope section 561A of the Code cannot be resorted to. Continuing the objection it is urged that even if the petition is treated as having been preferred under section 439 of the Code it is barred by time. It is pointed out that when the petition came up for admission on the 20th of April, 1973, the Court took into consideration Crl. Misc. 267/73 which had been filed along with the petition and the order passed was that certified copies be filed within the period permitted by law and since no certified copy of any order had been filed within the period prescribed by Article 131 of the Limitation Act, 1963, hereafter called 'the Act' the petition apart from being barred by limitation suffers from the infirmity that there is no competent petition before the Court. Reliance in this behalf is placed on two provisions. The first one is section 3 in the Act. (.....) Article 131 in the Act prescribes the period of 90 days as from the date of the decree or order or sentence sought to be revised within which any Court may be moved under the Code of Civil Procedure or the Code of Criminal Procedure for the exercise of its power of revision. The submission is that a competent petition for revision could be taken to have been preferred within the period of limitation in case the petitioner had complied with the imperative requirements of rule 3-A in Chapter 1-A(b) Vol. V of the High Court Rules and Orders which demanded that every petition for revision was to be imperatively accompanied by a copy of the order in respect of which it may have been preferred. Rule 3-A deserves to be reproduced along with rule 3. Both of them, are :- 'R. 3. As regards petitions under section 436 and section 439, Criminal Procedure Code, 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. The Sessions Judge or District Magistrate can release a prisoner on bail or suspend a sentence pending a reference to the High Court. R. 3-A. Every petition for revision of an order shall be accompanied by a copy of the order in respect of which such application is made. In the case of petition for revision of the order of an appellate Court a copy of the order of the Court of first instance shall also be filed. In the

case of a petition for revision of an order of an appellate Court a copy of the order of the Court of first instance has also to be filed.

(2) The counsel for respondent No. 2 vehemently urges that the copy of the impugned order sought to be revised has of necessity to be a certified copy. He relies upon the observations contained in *State of Uttar Pradesh V. Tobit and others*, : 1958 CriLJ809 . There the Supreme Court was concerned with interpretation of the word 'copy' as occurring in section 419 of the Code. It was held that the copy required to be filed with the petition of appeal must be a certified copy. In this case it is apparent from the record that although Along with the petition the petitioner had filed Crl. Misc. 267 of 1973 stating that he was attaching uncertified copies of the impugned orders and grounds of revision and that he had applied for preparation of the certified copies he did not at any time after the institution of the petition file the certified copy of any order whatsoever. Mr. Anoop Singh combines in his argument his reliance on section 3 and Article 131 in the Act with Rule 3-A reproduced above. Rule 3 which precedes rule 3-A contains a prohibition. The Deputy Registrar in case of petitions preferred under section 439 of the Code is not to receive them unless the applicant files a copy of the order of the Sessions Judge or the District Magistrate as the case may be to show that he had applied to one or the other and that his petition had been refused. The provision postulates that before invoking section 439 of the Code, the petitioner has necessarily to avail of the remedy provided by section 435 of the Code.

(3) The question arises whether a petitioner can by-pass sections 435 and 439 of the Code and move the High Court under section 561 A thereof. The Code contains specific provisions which provide precise remedies. Section. 435 allows that the High Court or any Sessions Judge or the District Magistrate or any sub-divisional Magistrate empowered by the State Government in that behalf may call for and examine the record of any proceedings before any inferior criminal court and then act in accordance with the rest of the provision. On examining any record under section 435 of the Code, the Sessions Judge or the District Magistrate may make any of the directions permitted by that provision. Under section 438 of the Code, the Sessions Judge or the District Magistrate if he thinks fit may submit a report to the High Court for its. orders. Section 439 in sub-section (1) deals with

the powers of the High Court to revise the orders passed by the Courts of inferior jurisdiction. Sub-sections 2 to 6 regulate the exercise of that jurisdiction. The object which the legislature achieved by enacting section 439 in detail was to settle precisely the revisionary power of the High Court and its scope. The provision, is:- (...) S. 561A. is : (-) Section 561 A declares that nothing in the Code would be deemed to limit or affect the inherent power of the High Court to make such orders as may be necessary to give effect to any order which may have already been made under the Code. The High Court can also pass orders to prevent abuse of the process of any Court. It may pass orders otherwise to secure the ends of justice. The Courts possess various kinds of jurisdiction. The Code gives jurisdiction in section 190 to take cognizance of cases. There is the jurisdiction to try the cases. There is the appellate jurisdiction. The Code then contains provisions which deal with revisionary jurisdiction which may be exercised by the various Courts. The extent to which the Sessions Judge or the District Magistrate or any Sub-divisional Magistrate empowered by the State Government in that behalf may exercise the revisionary jurisdiction is limited. The High Court can exercise the revisionary jurisdiction by exercising any of the powers conferred on a Court of appeal by sections 423, 426, 427 and 428 or on a Court by section 338 of the Code. While allowing the exercise of that jurisdiction the High Court has been empowered to exercise the power of a Court of appeal. The power which the appellate Court may exercise are enumerated in section 424 of the Code. These powers are exercised when a proper petition of appeal in accordance with section 419 is preferred. Section 561-A which is being invoked Along with section 439 does not provide for the exercise of revisionary jurisdiction. The High Court exercises the jurisdiction under that provision which is inherent in its own constitution. Section 551-A merely declares that no provision in the Code will be deemed to be limiting or affecting the inherent power of the High Court to make any order for the three purposes mentioned therein. Where it becomes necessary to pass an order to give effect to an order already passed under the Code the High Court may pass such an order. Such an order would not be an order passed in exercise of 'revisionary jurisdiction'. The order to prevent abuse of process of any Court will also be an order passed directly in exercise of inherent jurisdiction. It would not be an order passed in exercise of the revisionary

jurisdiction. An order passed otherwise to secure the ends of justice would also be an order passed by the High Court in the given circumstances of a case where either on being moved for it or of its own volition, it considers it necessary to pass such an order. The exercise of the inherent power postulates that it must be exercised with judicial caution. The wide power which the High Court has to pass such orders as may be necessary to secure the ends of justice contains the concept that the orders will be occasioned where prevention of injustice may call for it. The power is to be exercised to do justice. That would mean that the order will not suffer from any taint of arbitrariness and will not infringe any law or any principle of natural justice. The power declared by section 561-A is neither the appellate nor the revisionary power. Apart from other jurisdictions a Court may exercise reviewary jurisdiction. It may exercise such a jurisdiction as is provided by Article 227 of the Constitution of India which is supervisory in its nature. Where an order can be interfered with in exercise of the revisionary jurisdiction and where such a rule as rule 3 reproduced above has been made to regulate it, the aggrieved party has first to approach the Sessions Judge or the District Magistrate and can then take recourse to section 439 of the Code. As required by rule 3-A all petitions which may be filed for the revision of an order have to be accompanied by a copy thereof.

(4) Mr. Ramesh Chandra appearing for the petitioner submits that the copy to be filed with a petition under section 439 of the Code need not be a certified copy. He points out that in section 419 of the Code the requirement is that the petition of appeal is to be accompanied by a copy of the judgment or order and if the framers of the Code so intended they could have used similar terms in section 439. I do not find merit in the submission. Section 439 expressly enumerates the composition of the revisionary jurisdiction. It contains the powers conferred on a Court of appeal by the various sections mentioned therein. Section 423 is one of them. Section 419 and 421 which precede it in the Code, are :- (...) Why is the petition of appeal required to be accompanied by a copy of the judgment or order appealed against The reason is obvious. Section 421 provides that on receiving the petition of appeal and the copy filed Along with it the Appellate Court shall peruse the same. The power given is that if on perusal the Appellate Court considers that there is no sufficient ground for interfering it may dismiss the appeal

summarily. The copy for that purpose is of necessity to be such a copy which may bear out that it is correct and can be acted upon. Keeping in view that the revisionary jurisdiction in section 439 imbibes the exercise of the powers conferred on a Court of Appeal, Rule 3-A in Chapter 1-A(b) of Vol. V of the High Court Rules and Orders prescribes that the petition shall be accompanied of a copy of the impugned order. The observations in : 1958 CriLJ809 clarify that the word 'copy' occurring in a particular provision has to be interpreted in its context. Where the 'copy' required to be filed is to be acted upon for the purpose of adjudication it must be a certified copy. A combined reading of sections 419, 421 and 439 of the Code Along with Rule 3-A in Chapter 1-A(b) of Vol V. in the High Court Rules and Orders leads to the conclusion that a competent petition under section 439 of the Code must contain a certified copy of the impugned order.

(5) Mr. Ramesh Chandra prefers two arguments. The first submission is that the High Court can exercise suo motu jurisdiction under section 439 of the Code and in that case there would be no need for a certified copy to be present on its record. The second submission is that Rule 3-A has no sanction of law in it. As to the first submission section 439(1) falls in three parts. The jurisdiction under the provision may be exercised by the High Court when the record of any proceedings has been called for by itself. There the initiative will be in its order calling for the record. In the second category will be the cases reported to the High Court for orders. In the third enumeration will be the cases which otherwise come to the knowledge of the High Court. The first kind would be the exercise of its sue motu jurisdiction. I may safely state that it may be exercised where :- (i) there is grave injustice and no other remedy is available. (ii) the concerned order is final but suffers from incurable irregularity or illegality and the injustice can be removed by exercising revisionary power. There cannot be any final enumeration. It may be observed that the High Court may exercise suo motu jurisdiction in extra-ordinary or exceptional circumstances. Even then the jurisdiction will be well demarcated in being revisionary in nature. It will remain within the ambit of section 439. The exercise of the jurisdiction will not be ordinarily involved with the exercise of the inherent powers. The suo motu jurisdiction provided by section 439 may not be exercised where :- (i) the real remedy which the party has to invoke lies elsewhere; (ii) where the concerned order is not final; and (in) where the exercise of such a jurisdiction

will cause serious prejudice to one of the parties protected by the order. These categories are only illustrative. The factor which will count in all contingencies will be the nature of the order. Where suo motu jurisdiction is exercised it will be initiated by the Court. It would not be a jurisdiction invoked by a litigant and no certified copy would be required to be filed by any one. Turning to the second argument raised by Shri Ramesh Chandra I find that the High Court of Judicature at Lahore had the rule making power under the Letters Patent by which it was created. The Code also gives the rule making powers in terms of section 554 thereof. In exercise of its powers the High Court made the Rules and Orders which contain Rule 3 and 3-A in Chapter I-A(b) in volume V thereof. A reference made to the Lahore Law Times 1962 Notification section page 4 reveals that rule 3-A was added by Cs No. 26-Rules/XIII-C6 dated 22-5.1961. The rule has been in vogue since then. The High Court of Delhi was created by Act 26 of 1966 and Section 7 therein, is :-(-) All rules of practice and procedure which were in vogue at the time of the creation of this Court became applicable and it does not lie with the counsel for the petitioner to urge that at the time of the institution of the present petition rule 3-A had no sanction of law in it. I come to the conclusion that where the High Court is moved by a regular petition under section 439 of the Code, the petition will be competent only where it contains a certified copy. Where initially an uncertified copy is filed accompanied by an application seeking permission to file the certified copy later on the certified copy of the impugned order must be filed within the period prescribed by Article 131 in the Act otherwise section 3 therein will call for the dismissal of the petition. Section 3 and Article 131 in the Act and Rule 3-A in Chapter 1-A (b) of Vol. V of the High Court Rules and Orders are not dormant provisions. They are alive and effective. Their demands are vigorous. If their obligations are not met then the litigant is to suffer. The statutory provisions impose their consequences. A regular petition filed under section 439 of the Code which does not fulfill the requirements indicated above would ordinarily deserve to be dismissed as being out of time.

(6) I may, however, observe that it is inherent in the applicability of law that the administration of justice should be apparently superior to it. The promulgation of the rule of law is to be maintained, by doing justice. These judicial concepts are the basis of the preservation of suo motu jurisdiction in various remedial provisions

like section 439 of the code where remedies are provided allowing a wide discretion to the Court to exercise reviewary, revisionary or supervisory jurisdiction in exceptional circumstances the intendment is that the determination of a cause by doing justice should give superior assurance to the litigants that justice has been done. Even where a petition is barred by time if the impugned order causes exceptional grave prejudice and injustice and the party aggrieved thereby has no other remedy the High Court may still in an extra-ordinary situation exercise its suo motu jurisdiction.

(7) I may now turn to the merits of the subject matter in controversy. The petition arises out of the proceedings under section 145 of the Code. The preliminary order was passed on the 22nd of September 1972. The bone of contention was the land comprised khasra No. 29 min situated in village Azadpur. In compliance with the preliminary order both the parties filed their written statements and documents as well as the affidavits in support of their claims. The petitioner's claim was that he had been ploughing and harvesting the land and had constructed three houses therein out of which 2 houses had been given on rent. It was contended by him that the land in dispute was his ancestral property but that after the death of his father in 1965 mutation had not been effected in his name. As to the claim by respondent No. 2 that he had filed a civil suit for permanent injunction and had obtained the injunction on the 22nd of July, 1972 the present petitioner conceded that having obtained the mutation in collusion with the revenue authorities the opposite party had obtained an injunction from the Civil Court. If it be taken that the land in dispute belonged to the father of the present petitioner and that he had constructed three houses in the plot two of which had been given on rent, the petitioner was to establish through a civil suit that he was the owner of the land in dispute on which he had built some houses. If it was not open to the petitioner to establish his ownership by contesting the civil suit filed by or on behalf of respondent No. 2 then he was to institute a suit by himself. Section 145 of the Code gives exceptional emergent jurisdiction. The Criminal Court can step in to deal with the immovable property and can make the determination within the ambit of section 145 subject to the final adjudication of the rights of the parties by a civil Court. It was found by the Courts below that the second respondent had been in possession of the land in dispute on the date of the preliminary order and within

two months next before it. In exercise of the revisionary jurisdiction contained in section 439 the High Court is not to once again appreciate the evidence for itself. The findings of fact by the Courts below are against the petitioner. The petition is barred by time. Apart from that it has no merit in it. It is dismissed on both counts.

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