

M.K. Thampi Vs. Sadanandan

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Court : Kerala

Decided On : Nov-24-1997

Reported in : 1998CriLJ784

Judge : B.N. Patnaik, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 256(1), 378(1), 378(2), 378(4), 378(5), 378(6), 397 and 401(4)

Appeal No. : Cri. R.P. 414 of 1993

Appellant : M.K. Thampi

Respondent : Sadanandan

Advocate for Pet/Ap. : K.T. Sankaran, Adv.

Disposition : Petition allowed

Judgement :

ORDER

B.N. Patnaik, J.

1. The accused in C.C. No. 361 of 1990 on the file of the Judicial Magistrate of the First Class, Ottapalam who was the respondent in Cri. R.P. 21 of 1992 on the file of the Sessions Court, Palakkad has preferred this revision against the order dated

18-3-1993 in Cri. R. P. 21 of 1992. By the impugned order, learned Sessions Judge allowed the revision filed by the complainant in the said C.C. case. By the order dated 29-11-1991, learned Magistrate acquitted the petitioner/accused under Section 256(1) of the Code of Criminal Procedure on the ground of absence of the complainant when called. Learned Sessions Judge entertained the revision petition filed by the complainant (respondent herein) and found that the order passed could not be sustained on facts. He held that 29-11-1991 was a Bandh day for which the complainant could not attend the Court. The circumstances under which he could not attend the Court were beyond his control. He therefore allowed the revision and restored the case to file.

2. Learned counsel for the petitioner has contended that the Sessions Judge has no jurisdiction to entertain the revision petition and as such it was not maintainable under Section 397 of the Cr.P.C. None appeared for the respondent although due notice was served on him.

3. The only point for consideration is whether the Sessions Judge had exercised the jurisdiction illegally in entertaining the revision petition filed against an order of acquittal passed by the Magistrate.

4. Sub-sections (4), (5) and (6) of Section 378 of the Code of Criminal Procedure lays down as follows:

Appeal in case of acquittal :-

(1) to (3)....

(4) If such an order of acquittal is passed in any case instituted upon complainant and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.

(5) No application under Sub-section (4) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of six months, where the complainant is a public servant, and sixty days in every other case, computed from the date of that order of acquittal.

(6) If, in any case, the application under Sub-section (4) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal, shall lie under Sub-section (1) or under Sub-section (2).

There is no doubt that with the leave of the High Court an appeal can be preferred before it against an order of acquittal passed by a subordinate criminal Court in a case instituted upon complaint. Section 401(4) lays down that where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed. Admittedly, in this case, no petition for leave to appeal had been filed in the High Court against the order of the Magistrate. Such a question came up for consideration before this Court in *Krishanlal Oberoi v. Corporation of Cochin* 1979 Ker LT 75 : 1979 Cri LJ (NOC) 117. In that case the accused was acquitted in a complaint case. No appeal was filed by the complainant against the order of acquittal. This Court by referring to Sections 378(4) and 401(4) of the Code of Criminal Procedure, 1973 laid down as follows :

An appeal does lie against an order of acquittal in any case instituted upon complaint. Of course an appeal lies only when special leave is obtained. The requirement that the complainant has to seek special leave and only if it is granted he can present the appeal, does not mean that no appeal lies against the order of acquittal. Appeal does lie, but subject to special leave. The contention that appeal must lie as a matter of right in order to attract the bar of Section 401(4) of the Code is, to read in place of the words, 'where under the Code an appeal lies as a matter of right'. No revision would lie in such cases.

It therefore follows that the revision filed before the Sessions Judge was not maintainable and the impugned order of the learned Sessions Judge is without jurisdiction.

5. For the reasons stated above, the revision is allowed. The order of the learned Sessions Judge dated 18-3-1.993 in Cri. R.P. 21 of 1992 is quashed. No costs.