

Krishnankutty Vs. State of Kerala

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SooperKanoon Citation : sooperkanoon.com/729227

Court : Kerala

Decided On : Dec-17-2004

Reported in : 2005CriLJ1866; 2005(1)KLT813

Judge : M. Sasidharan Nambiar, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 401

Appeal No. : Crl. R.P. No. 1055 of 2004

Appellant : Krishnankutty

Respondent : State of Kerala

Advocate for Def. : B. Raman Pillai, Adv. and; K.J. George, Public Prosecutor

Advocate for Pet/Ap. : G. Thampi and; S. Sanal Kumar, Advs.

Judgement :

ORDER

M. Sasidharan Nambiar, J.

1. First accused in C.C.179/91 on the file of the Judicial First Class Magistrate, Ramankary is challenging the order of the Sessions Judge, Alappuzha in Crl.R.P.40/93 whereunder the learned Sessions Judge set aside the order of acquittal passed by the learned Magistrate and remitted the case back to the

Magistrate for fresh disposal.

2. The charge against the petitioner and the second accused was that on 5.4.1991 at about 11 a.m. they trespassed into the property of P.W.2 Thankamma and the second accused committed mischief by cutting two trees and when P.W.2 attempted to obstruct it, petitioner/first accused beat her and both the accused thereby committed offences under Sections 447, 427, 323 read with Section 34 I.P.C. The second accused absconded and therefore case against him was split up and only the first accused was tried. Petitioner pleaded not guilty. The prosecution examined 8 witnesses and marked Exts.P1 to P5 and both identified M.O.I chopper. On this evidence, the learned Magistrate found the first petitioner not guilty and acquitted him under Section 255(i) Cr.P.C. P.W.2 the de facto complainant challenged the order of acquittal before the learned Sessions Judge in CrI.R.P.4093. The learned Sessions Judge on appreciating the evidence found that there is clear failure of justice as learned Magistrate has given importance to trivial matters and minor contradictions which do not go to the root of the case. Therefore the order of acquittal passed by the learned Magistrate is set aside and the case was remanded for 'reappreciation of evidence' and disposal of the case according to law. It is challenging that order the first accused preferred this revision.

3. The revision petitioner would contend that the Sessions Court grossly erred in exercising the revisional jurisdiction by interfering with the appreciation of evidence and therefore the order of remand is illegal. It is contended that the learned Sessions Judge omitted to note that the second accused was absconding and the case against him was not tried by the learned Magistrate and the facts and the evidence of the case was not properly appreciated by the learned Sessions Judge and in any event the learned Sessions Judge should not have interfered with the order of acquittal for the grounds stated in the order.

4. The learned counsel appearing for the petitioner and the learned Public Prosecutor were heard.

5. The argument of the learned counsel appearing for the petitioner is that the powers of the revisional Court in considering a revision filed by a de facto

complainant against an order of acquittal is very limited and this was omitted to be taken note of by the learned Sessions Judge and consequently an illegality is committed by ordering remand. The learned counsel further argued that the learned Sessions Judge remanded the case for reappreciation of the evidence and exercising the revisional jurisdiction, the Sessions Court could not have interfered with an order of acquittal for the reason that there is misappreciation of evidence and therefore for that sole reason the impugned order is to be set aside. The learned counsel appearing for the petitioner also relied on the decisions of the Apex Court in Logendranath Jha v. Polailal Biswas (AIR 1951 SC 316), in Chinnaswamy v. State of Andhra Pradesh (AIR 1962 SC 1788) in P.N.G. Raju v. B.P. Appadu (AIR 1975 SC 1854) and submitted that the impugned order is unsustainable. The learned Public Prosecutor argued that the learned Magistrate has committed illegality in ignoring the core of the prosecution case giving undue importance to trivial contradictions and the learned Sessions Judge is bound to correct them when it was brought to his notice by the de facto complainant by filing a revision and there is no illegality in the order of remand and hence the revision is only to be dismissed.

6. The legal position is now well-settled in catena of decisions of the Supreme Court. The revisional Court will not ordinarily interfere with an order of acquittal except in exceptional cases where interest of public justice requires for the correction of manifest illegality or the prevention of gross miscarriage of justice. The revisional Court will not be justified in interfering with an order of acquittal merely because the Trial Court has taken a wrong view of the law or has erred in appreciation of evidence. In exercise of revisional jurisdiction against an order of acquittal at the instance of a private party the Court exercises only limited jurisdiction and should not constitute itself into Appellate Court which has under jurisdiction to go into questions of facts and law and to convert an order of acquittal into one of conviction. One cannot lose sight of the fact that when a retrial is ordered the dice is heavily loaded against the accused and that itself cautions the Court exercising revisional jurisdiction.

7. The Apex Court in Logendranath Jha v. Polailal Biswas (AIR 1951 SC 316) has considered the limited power of the revisional Court against an order of acquittal.

In that case accused were tried for the offences under Sections 147, 148, 323, 324, 326 and 302 read with Section 149 of I.P.C. The learned Sessions Judge acquitted the accused. The order of acquittal was challenged by the State before the High Court. In the revision the High Court reappraised the evidence and disagreed with the Sessions Judge's finding of fact on the ground that it was perverse and the entire judgment displays a lack of true perspective in a case of that nature. The High Court expressed in very clear terms as to how perverse the judgment of the Court below was and indicated that discrepancy in the prosecution evidence and the circumstances of the case which led to the Sessions Judge to discredit the prosecution story afforded no justifiable ground for the conclusion that prosecution failed to establish their case. Construing Sub-section (4) of Section 439 (corresponding to Section 401 of Cr.P.C. 1973) which excludes the power to convert a finding of acquittal into one of conviction held:

'The High Court cannot, when dealing with a Revision Petition by a private party against an order of acquittal, in the absence of any error on a point of law, reappraise the evidence and reverse the findings of fact on which the acquittal was based by resorting to the device of stopping short of finding the accused guilty and passing sentence on him. This would be a subterfuge impermissible in our judicial process.'

The Apex Court in *D. Stephens v. Nosibolla* (AIR 1951 SC 196) considering the scope of the revision filed by a private party against an order of acquittal held:

'It could be exercised only in exceptional cases where the interests of public justice require interference for the correction of a manifest illegality or the prevention of a gross miscarriage of justice.'

Revisional jurisdiction is not ordinarily invoked or used merely because the lower Court has taken a wrong view of the law or misappreciated the evidence on the record. The Apex Court in *Chinnaswamy v. State of Andhra Pradesh* (AIR 1962 SC 1788) in the light of the previous decisions considered the aspect of converting a finding of acquittal into one of conviction by exercising the revisional jurisdiction against an order of acquittal cautioned the Court that revisional Court has to see that it does not convert the finding of acquittal into one of conviction by the indirect

method of ordering retrial when it cannot itself directly convert a finding of acquittal into a finding of conviction. The Apex Court held:-

'This places limitations on the power of the High Court to set aside a finding of acquittal in revision and it is only in exceptional cases that this power should be exercised. It is not possible to lay down criteria for determining such exceptional cases which would cover all contingencies. We may however indicate some cases of this kind, which would in our opinion justify the High Court in interfering with a finding of acquittal in revision. These cases may be: where the Trial Court has no jurisdiction to try the case but has still acquitted the accused, or where the Trial Court has wrongly shut out evidence which the prosecution wished to produce, or where the Appeal Court has wrongly held evidence which was admitted by the Trial Court to be inadmissible, or where material evidence has been overlooked either by the Trial Court or by the appeal Court, or where the acquittal is based on a compounding of the offence, which is invalid under the law. These and other cases of similar nature can properly be held to be cases of exceptional nature, where the High Court can justifiably interfere with an order of acquittal; and in such a case it is obvious that it cannot be said that the High Court was doing indirectly what it could not do directly in view of the provisions of Section 439(4).'

The Apex Court had to consider this question once again in *Mahendra Pratap v. Sarju Singh* (AIR 1968 SC 707). In that case exercising the revisional jurisdiction the High Court went into the evidence minutely and questioned every single finding of the Sessions Judge and gave its own interpretation of the evidence and the inference to be drawn from it. Justice Hidayatullah speaking for the Bench held:-

'As stated already by us, he seems to have gone into the matter as if an appeal against acquittal was before him making no distinction between the appellate and the revisional powers exercisable by the High Court in matters of acquittal except to the extent that instead of convicting the appellant he only ordered his retrial. In our opinion, the learned Judge was clearly in error in proceeding as he did in a revision filed by a private party against the acquittal reached in the Court of Session.'

8. Another Bench of the Apex Court considered the legal position once again in *Akalu Ahir v. Ramdeo* (AIR 1973 SC 2145) and held that the revisional power is an extraordinary discretionary power vested in the superior Court to be exercised in aid of justice; in other words, to set right grave injustice.

'The High Court has been invested with this power to see that justice is done in accordance with the recognised rules of criminal jurisprudence and that the subordinate Courts do not exceed their jurisdiction or abuse the power conferred on them by law. As a general rule, this power, in spite of the wide language of Sections 435 and 439, Cr.P.C. does not contemplate interference with the conclusions of fact in the absence of serious legal infirmity and failure of justice. This power is certainly not intended to be so exercised as to make one portion of the Code of Criminal Procedure conflict with another; as would seem to be the case when in the garb of exercising revisional power, the High Court in effect exercises the power of appeal in face of statutory prohibition.'

The Apex Court has also cautioned that the provision which empowers the revisional Court to satisfy itself as, to the correctness, legality or propriety of a finding, sentence or order and as to the regularity of any proceedings cannot be exercised arbitrarily but only judiciously. Judicial discretion, as has often been said, means a discretion which is informed by tradition, methodised by analogy and disciplined by system. The Apex Court also held that a private complainant can only claim a right in common with all aggrieved parties in a criminal proceeding, to invoke the revisional jurisdiction of the High Court for redress against miscarriage of justice arising from an erroneous order of acquittal and the power of the High Court is circumscribed by the provisions of Sections 417 and 439 of Cr.P.C. (corresponding to Sections 378 and 401 of the 1973 Code) and by the fundamental principles of criminal jurisprudence. It was therefore declared:

'It is only in glaring cases of injustice resulting from some violation of fundamental principles of law by the Trial Court in the course of trial, that the High Court is empowered to set aside the order of acquittal and direct the retrial of the acquitted accused persons. From the very nature of this power, it should be exercised in exceptional cases and with great care and caution. Trials are not to be lightly set

aside when such orders expose the accused persons to a fresh trial with all its consequential harassment.'

9. The learned Sessions Judge is not entitled to set aside an order of acquittal merely because the Trial Court has taken a wrong view of the matter or misappreciated the evidence. To set aside an order of acquittal, there should be some glaring defect in the procedure or a manifest error on a point of law and consequently there must have been a flagrant miscarriage of justice or the Trial Court should have no jurisdiction to try the case but has still acquitted the accused or the Trial Court has wrongly shut out evidence which the prosecution wished to produce or the Trial Court admitted evidence which are inadmissible or the acquittal is based on the compounding of the offence which is invalid under the law. Though these are only illustrative cases and not exhaustive, the revisional jurisdiction can be exercised only in exceptional cases that too with great care and caution. The question is whether the order of the learned Sessions Judge satisfies these conditions.

10. The charge against the petitioner and the absconding second accused was that on 5.4.1991 at 11 a.m. in furtherance of the common intention, they committed criminal trespass and entered the house compound of P.W.1 and cut two trees with a Chopper and when P.W.2 obstructed it, petitioners voluntarily caused simple hurt by beating and hitting her. Apart from the injured PW.2 prosecution examined P.W.1 her husband and P.W.3 an eye witness and P.W.4, the doctor who prepared Ext.P2 wound certificate. The learned Magistrate appreciated each of the evidence in minute detail and found that there are material discrepancies and therefore the prosecution case cannot be believed. He acquitted the first petitioner. It was challenging that order of acquittal P.W.2 filed CrI.R.P.40/93 before the Sessions Judge. The learned Sessions Judge discussed each of the aspect, which was taken into consideration by learned Magistrate to disbelieve the prosecution case and held 'the witnesses and the complainant speak in clear terms with minor contradictions. The Court shall not look for literary perfection in appreciation of evidence. On the other hand by going through the evidence in this case, there is clear failure of justice and a re-hearing and re-appreciation of evidence is necessary. For this purpose the case is to be

remanded to the lower court'. A reading of the order of the learned Sessions Judge would make it clear that the learned Sessions Judge exercised the revisional jurisdiction against an order of acquittal on the ground that the Trial Court misappreciated the evidence. The learned Sessions Judge has appreciated the evidence minutely as if it is an appeal and not a revision. The learned Sessions Judge also omitted to bear in mind that the revisional jurisdiction can be exercised to set aside an order of acquittal only in exceptional cases. The learned Sessions Judge did not notice any glaring defect in the procedure or manifest error on a point of law and consequential flagrant miscarriage of justice. Therefore it is absolutely clear that the learned Sessions Judge has wrongly exercised the revisional jurisdiction to set aside an order of acquittal and remanded the case to the Trial Court for re-appreciation of evidence. The order is illegal and has to be interfered. Criminal Revision is therefore allowed. The order of Sessions Judge, Alappuzha in Crl.R.P. 40/93 dated 5.8.1995 is set aside.

Crl. R.P. 40/93 stands dismissed.

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