

Ramniwas Vs. the State and anr.

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SooperKanoon Citation : sooperkanoon.com/755236

Court : Rajasthan

Decided On : Sep-25-1953

Reported in : 1954CriLJ997

Judge : Nigam, J.C.

Appellant : Ramniwas

Respondent : The State and anr.

Judgement :

ORDER

Nigam, J.C.

1. Jamnalal was found guilty of offences under Sections 366 and 376/511, I. P. C. and was sentenced by the learned City Magistrate to rigorous imprisonment for three years on each count. He was also sentenced to five stripes under 8. 376/511, I. P. C. He preferred an appeal and the learned Sessions Judge set aside -the conviction and sentence under 3. 366, I. P. C. The conviction under Section 376/511, I. P. C. was however maintained. The sentence of whipping was set aside and the substantive sentence of imprisonment reduced to rigorous imprisonment for 1 1/2 years. Then Jamnalal came up in revision to this Court (Criminal Revision No. 112 of 1952). The relevant portion of my order, dated 9-1-1953, reads as follows:

In the event, I set aside the order of the learned Sessions Judge and direct him to examine the parents of the girl and Gulab Chand under Section 428, Criminal P. C. and also to give an opportunity to the defence and the prosecution to examine the Chemical Examiner on commission at Agra and to put such further question to the medical witnesses already examined in the case or to examine the Civil Surgeon, Ajmer, in the case and then to give judgment according to law.

2. The learned Sessions Judge recorded the evidence of Sm. Shanti Devi and Ramniwas, the parents of the girl, Kumari Sushila. He also examined Gulab Chand and recalled two medical witnesses. Then he delivered judgment in the appeal acquitting the accused. Against that Order of acquittal dated 28-4-1953, Ramniwas, the father of the girl, has come up in revision. I have heard the learned Counsel for the applicant, the learned Counsel for Jamnalal and the learned Assistant Public Prosecutor, who has opposed the revision application.

3. The contention of the learned Counsel for the applicant is that the order of the learned Sessions Judge is without jurisdiction inasmuch as it is in compliance with this Court which was not a legal order. The learned Counsel has, however, specifically stated that he is not requesting that this Court should review its order dated 9-1-1953. No appeal, has I am informed, as yet been preferred against that order. There being no request that the Court should review its order, I am of opinion that it is not open to the learned Counsel for the applicant to challenge the legality or the correctness of the order of this Court passed on 9-1-1953.

4. The learned Counsel for the applicant has next urged that this Court, in fact, directed the recording of additional evidence under Section 428(2), Criminal P. C. and the learned Sessions Judge exceeded his jurisdiction in passing an order on the appeal. He should have merely certified the evidence to this Court.

5. The learned Counsel urges that it was open to this Court to get evidence recorded under Section 428, Criminal P. C. The learned Counsel also urges that the learned Sessions Judge could have himself exercised powers under Section 428, Criminal P. C. and could after recording reasons either take evidence himself or get it recorded and certified by the trial Magistrate. The suggestion of the learned Counsel is that this Court could not have given a direction that the learned

Sessions Judge should record evidence under Section 428, Criminal P. C. That raises the question of legality and correctness of this Court's order. I am clear that the language used does not permit of any doubt. The order of the learned Sessions Judge was definitely set aside and he was directed to examine certain witnesses in exercise of his powers under Section 428, Criminal P. C. and then to give judgment according to law. The question before this Court was whether the learned Sessions Judge had committed a mistake in not taking evidence under Section 428, Criminal P. C. and I was apparently of the view that the learned Sessions Judge was wrong in not exercising his powers under Section 428, Criminal P. C. and examining certain additional evidence. I, under Section 423(1) (b)(1) ordered that the accused be retried by the learned Sessions Judge, i.e., his appeal be re-heard and under Section 423(1) (d) directed that the learned Sessions Judge should exercise his powers under Section 428, Criminal P. C. and examine certain specified witnesses. This is exactly what the learned Sessions Judge has done. He could have himself examined these witnesses when he was hearing the appeal and I do not see how he has exceeded the powers conferred on him by Criminal P. C. or failed to comply with the directions of this Court.

6. No other point has been pressed before me. I, therefore, see no force in this revision application and dismiss it.