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Bhupendra Kumar Vs. State of Rajasthan

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Court : Rajasthan

Decided On : May-03-1996

Reported in : 1996CriLJ3180; 1996(2)WLC710; 1996(1)WLN167

Judge : R.R. Yadav, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 24, 205, 397(1), 397(2), 446, 482 and 483; Code of Civil Procedure (CPC) - Sections 151

Appeal No. : Criminal Revn. Petn. No. 170 of 1996

Appellant : Bhupendra Kumar

Respondent : State of Rajasthan

Advocate for Def. : K.L. Thakur, Public Prosecutor

Advocate for Pet/Ap. : N.P. Gupta, Adv.

Disposition : Petition allowed

Judgement :
ORDER

R.R. Yadav, J.

1. Heard learned counsel for the petitioner as well as learned Public Prosecutor who accepts notice on behalf of the State. In order to avoid delay; in dipsosal of

trial, the present petition is finally disposed of at admission stage with the consent of learned counsel for the partie Disposal of the present petition at admission stage would be in consonace with the mandatory provisions contemplated under Section 483, Cr. P. C. which clearly provide that High Court shall so exercise its superintendance over sub-ordinate courts so that cases are disposed of expeditiously.

2. I have perused the order impugned dated 12-4-96 passed by learned District and Sessions Judge, Hanumangarh whereby he set aside the order dated 24-2-96 passed by learned Chief Judicial Magistrate dispensing with the personal attendance of the accused-petitioner for one day under Section 205, Cr. P. C.

3. Learned counsel for the petitioner conceded that in the facts and circumstances of the present case, he ought to have filed petition under Section 482, Cr. P. C. instead of filing a revision. He made a request to convert the present revision in a petition under Section 482, Cr. P. C.

4. In my considered opinion, the request made by learned counsel for the petitioner is genuine and the same is liable to be allowed. Therefore, the present revision is converted in a petition under Section 482, Cr. P. C. in order to secure the ends of justice.

5. Learned counsel for the petitioner contended that the order impugned passed by the learned Magistrate dispensing with the personal attendance of the accused-petitioner for one day under Section 205, Cr. P. C. was an interlocutory order, therefore, no revision was maintainable before learned District and Sessions Judge as contemplated under Sub-section (2) of Section 397, Cr. P. C. Secondly, the prosecution is being launched by the State, therefore, against the discretionary order passed by the learned Magistrate under Section 205, Cr. P. C. the complainant has no locus standi to file a revision before the learned Sessions Judge. Lastly, it is contended by the learned counsel for the petitioner that learned Sessions Judge has no authority in law to pass such adverse order against the present accused-petitioner without impleading him as a party and without affording him an opportunity of being heard.

6. Learned Public Prosecutor Mr. K. L. Thakur appearing on behalf of the State, was called upon to justify the order passed by the learned District and Sessions Judge. He candidly expressed his inability to justify the order impugned passed by the revisional court.

7. I am of the opinion that the order impugned passed by learned Sessions Judge is per se illegal, without jurisdiction and amount (to) abuse of the process of court. It is mystery in the present case as to how the mandatory provisions contemplated under Sub-section (2) of Section 397, Cr. P. C. escaped notice of the learned Sessions Judge, which clearly provides that the powers of revision conferred under Sub-section (1) of Section 397, Cr. P. C. shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding It goes without saying that order dated 24-2-96 passed by the learned Chief Judicial Magistrate dispensing with the personal attendance of the accused-petitioner for one day was an interlocutory order passed in trial which does not decide any rights between the parites conclusively, hence, learned Sessions Judge has no jurisdiction to entertain revision against such order within the meaning of Sub-section (2) of Section 397, Cr. P. C.

8. Against the interlocutory orders which amount (to) abuse of the process of court only petition under Section 482, Cr. P. C. are entertairiable by the High Court, A bare look at the various provisions of Criminal Procedure Code would show that no inherent powers are confirmed upon learned Sessions Judges to interfere with interlocutory orders passed in any inquiry, trial or other proceedings whereas all Civil Courts are ronferred with inherent powers under Section 151, C. P. C. In this regard, it is not possible for this Court to afford to go behind the wisdom of legislature denuding the subordinate criminal courts with inherent powers in criminal cases under Criminal Procedure-Code.

9. It is amusing to note that the learned Sessions Judge did not address himself at whose instance, his revisional jurisdiction was invoked. It is to be imbided that once in a particular case, criminal investigation and prosecution is launched by the State, then, complainant in his individual capacity cannot be allowed to interact with courts of law by filing appeals or revisions subject to only one exception in

cases of acquittal in rarest of rare cases, the complainant has locus standi to file a revision. Suffice it to say that the State is ultimate custodian of peace within its territory and criminal machinery cannot be allowed to be used by the complainant in such cases to satisfy his bleeding ego or to wreak his vengeance with the accused-persons creating vicious circle in the society. The courts of records i.e. Supreme Court and High Courts have evolved principle of filing revision by the complainants in rarest of rare cases of acquittal as measure of extra precaution so that public criminal justice system may not suffer owing to the bad faith and divided loyalties on the part of criminal redressal machinery under the Code of Criminal Procedure.

10. I am of the view that learned District and Sessions Judge ought to have kept in his view the principle of audi alteram partem which mandates that no one shall be condemned unheard or no adverse order could be passed against any one without affording him an opportunity of hearing is part of the Rules of natural justice. It is admitted by learned P. P. that the present accused petitioner was neither impleaded as a party in the revision before the learned District and Sessions Judge nor he was afforded an opportunity of hearing yet the impugned adverse order was passed against him having serious consequences i,e. forfeiture of his personal bonds and security bonds, initiation of proceedings under 446, Cr. P. C. by opening a separate case and issuance of non bailable warrant against him.

11. A moot question may arise in the present case on the basis of discussion made in the preceding paragraph whether in the present case complainant was also a necessary party to be impleaded and order passed by learned Sessions Judge can be set aside only after giving him an opportunity of hearing. A deeper understanding would show that in the present case prosecution is launched by State and State is party before learned Magistrate, therefore, the complainant cannot be allowed to interact with court by filing revision. In a case where prosecution against an accused is launched by State the complainant has no locus standi to file an appeal or revision against the expressed mandatory provisions envisaged under Cr. P. C. Any order passed in any appeal, inquiry, trial or other proceedings such as revision it is State which can move to the Court in those cases where investigation is done by police and prosecution is being carried on by

Public Prosecutors appointed under Section 24 of Cr. P. C. In the class of cases mentioned above an accused person is pitted against State and not against complainant. Such prosecution before criminal courts are to be treated between State and accused and not between complainant and accused. In such cases impleadment of complainant is not required.

12. Indisputably in the present case investigation had been done by police and learned Magistrate has taken cognizance on the basis of charge sheet submitted by police and prosecution is being carried on by a prosecutor appointed under Section 24 of Cr. P. C. hence before setting aside the order passed by learned District and Sessions Judge only State is entitled to be impleaded as a party and also entitled to be heard and not the complainant.

13. In my considered opinion the order impugned passed by learned District and Sessions Judge is perse illegal, without jurisdiction and the complainant had no locus standi to file revision before him against an interlocutory order. I am also of the view that if the order impugned is allowed to stand, it would amount abuse of the process of court within the meaning of Section 482, Cr. P. C. For the reasons stated above, the instant petition is allowed and the order impugned dated 12-4-96 passed by learned District and Sessions Judge, Hanumangarh is set aside and consequential orders passed by the learned Magistrate in pursuance of the impugned order dated 12-4-96 are also hereby quashed in order to secure the ends of justice.

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