

Deepak Kumar Garg Vs. State of Jharkhand and Anr

Deepak Kumar Garg Vs. State of Jharkhand and Anr

SooperKanoon Citation : sooperkanoon.com/76350

Court : Jharkhand

Decided On : Jul-05-2016

Appellant : Deepak Kumar Garg

Respondent : State of Jharkhand and Anr

Judgement :

ACQUITTAL APPEAL NO. 9 OF2012 Against the judgment of acquittal dated 24.11.2011 passed by the learned Sri K.K. Jha, J.M. 1 St Class, Dhanbad in C.P. Case No. 1602 of 2010 Deepak Kumar Garg, son of Mulchand Agarwal, Resident of Station Road, Bhaga, P.O.- Bhaga, P.S.- Goalgora, District- DhanbadAppellant Vs.

1. The State of Jharkhand 2. Umesh Kumar Singh, Proprietor of M/s Mobil, Doctor at Ganpati Complex, Opposite S.B.I. (A.T.M.) City Centre, Sector IV Bokaro Steel City, P.O. & P.S. B.S. City, District- BokaroRespondents For the Appellant : Mr. Shailesh, Advocate For the State : Mr. Tapas Roy, APP For the Resp. No. 2 : Mr. Ranjan Kumar PRESENT HON'BLE MR. JUSTICE RATNAKER BHENGRA By Court: The instant appeal is preferred challenging the correctness of the judgment of acquittal dated 24.11.2011 passed by the learned Court of Sri K.K. Jha, J.M. 1St Class, Dhanbad in C.P. Case No. 1602 of 2010, whereby and whereunder the said learned trial court has been pleased to acquit the opposite party no. 2 under the provisions of section 256 of the Cr.P.C. on the ground of non appearance of the complainant, appellant herein.

2. The facts leading to the case is that the appellant herein during the course of his business and while dealing with the opposite party no. 2 received payment vide four cheques total amounting to Rs. 1,83,265.00/- which are also on record. A complaint case vide C.P. Case No. 1602 of 2010 was preferred by the appellant on 31.08.2010 as against the respondent or opposite party no. 2 before the court of the CJM Dhanbad. The complaint case was transferred to the court of Sri K.K. Jha on 31.8.2010 for disposal in accordance with law. On 08.12.2010, the learned trial court was pleased to hold that a prima facie case under section 138 of the N.I. Act was made out as against the opposite no. 2 , as such summons was issued to the opposite party no.

2. On 11.08.2011, 12.09.2011, 18.10.2011 and 18.11.2011 complainant was absent or did not take any step. However on 18.11.2011 the opposite party no. 2 preferred a petition under section 256 and 258 of the Cr.P.C. On 24.11.2011, again complainant/ appellant herein was absent and no step was taken by the advocate of this appellant. The learned trial court allowed the petition of the opposite party no. 2 ex party by acquitting the opposite party no. 2 under section 256 of the Cr.P.C. on the ground of non appearance of the complainant.

3. Being aggrieved, the appellant has filed Cr. Appeal (SJ) No. 7 of 2012, thereafter the nomenclature has been changed to -2- Acquittal Appeal No. 09 of 2012.

4. Learned counsel for the appellant has sought to distinguish the order passed under section 256 of the Cr.P.C. as preferred by the opposite party no.

2. He has submitted that the action under section 256 of the Cr.P.C. was not suo motu taken by the lower court itself but it was made subject to the application moved by opposite party therein and on the basis of such application made under section 256 of the Cr.P.C. the motion was set and under such situation there is requirement of a valid notice to the complainant under such application under section 256 of the Cr.P.C. He has submitted that the complainant in complaint case no. 1602 of 2010 in the court of CJM, Dhanbad was represented by or through a lawyer and the complainant himself was not physically able to present himself on the required dates. He has then submitted that on four dates from

11.08.2011 to 18.11.2011 the complainant was absent because of the absence of his lawyer. On 18.11.2011, the petition under section 256 and under section 258 of the Cr.P.C. was filed , a copy of which was supplied as has been indicated in the petition itself through an advocate. Learned counsel for the appellant herein has stated that the signature of the receiving lawyer on such application is not the signature of the complainant's advocate as in the complaint case no. 1602 of 2010. Receiving of such application by another lawyer, who is not on record, has raised the questions as to the lack of opportunity being allowed to the complainant/appellant herein. It also raises the question whether it was proper, correct and legal to decide the matter on the basis of another lawyer receiving the application under section 256 of the Cr.P.C.. He has submitted that by such an action, fraud can be made out. He has further submitted that this matter of handing over or giving the copy to another lawyer could have been settled at earlier stage itself. If notice had been given, the opportunity would have been given to the complainant pursuant to the application under section 256 and 258 of the Cr.P.C.. If notice was given and the complainant had duly appeared, pursuant to the application under section 256 and 258 of the Cr.P.C. then the matter would have been exposed therein itself and most probably settled at that stage itself. However, the complainant/appellant herein was denied such opportunity and his complaint was dismissed leading to the acquittal of the opposite party entailing civil consequences in the nature of the financial detriment of the complainant/appellant. It was not the case of simple dismissal for non prosecution or dismissal for default but rather a clear acquittal by which the complainant/appellant has been wrongly put at a loss for the amount of money. He has submitted that when the application under section 256 and 258 of the Cr.P.C. was filed since step taken was not suo motu by the court, a -3- notice should have been given properly or correctly. Therefore he has submitted that it was done behind his back. He has also referred to the order of the High Court dated 11.12.2014 wherein it was also mentioned regarding the point of notice. He has pointed out that he has tried to make out a ground of misconduct and lackadaisical approach of the lawyer in the lower court concerned and even asserted that ground of fraud can be raised at any stage, that one should not be entitled to get benefit from a fraud and the issue of fraud is being pointed out from the records of the case.

5. Learned counsel for the opposite party herein has submitted that nowhere in the petition, appellant has stated that the application under section 256 and 258, was not received by his advocate or lawyer or that it was received by someone else. In the grounds taken in para IX and X, it only referred to lackadaisical approach and inadvertent, reasons best known to the conducting lawyer but he has not mentioned that his advocate has not received the copy. He has referred to order dated 24.11.2011 and highlighted the different stages of the proceeding when Opposite Party herein was granted bail, substance was gone into, when the order for evidence was also given and from the date of 11.08.2011 to 24.11.2011 wherein for at least five dates, the complainant was absent and how on 18.11.2011 the application under section 256 and 258 of the Cr.P.C. has been filed pursuant to which on 24.11.2011 the impugned order was passed. He has tried to point out that the order itself contains the sufficient reasons and grounds wherein a dismissal was made and hence the acquittal of the opposite party herein. Lastly, he has said that the absence on the required dates has been admitted on the record, nothing has been said about not receiving of the application under section 256 and 258 of the Cr.P.C. or about the fraud and he has further said that section 256 of the Cr.P.C. provides for acquittal.

6. Having gone through the arguments and the details of the case, it is submitted by the counsel for the appellant that in most cases under section 256 of the Cr.P.C. when the matter is dismissed, it is normally done so at the instance of the court itself. However, it seems that in this case there was an application made under section 256 and 258 of the Cr.P.C. and then the process was set in motion. So there is some difference that is required to be addressed. It is also seen in the matter that in the initial stage or stages of the complaint case no. 1602 of 2010 that affidavits on behalf of the complainant had already been filed on 19.11.2010 and 26.10.2010 so the court had proceeded further on that basis. It is first noticed that though the conducting lawyer of the complainant had appeared in the earlier stages, may be regularly, he seems to have -4- stopped appearing in those five dates through lawyer, so the appellant has raised the issue herein that the signature of the receiving advocate on the application under section 256 and 258 of the Cr.P.C. is of another person and not of the advocate on record in the complaint case and hence that is the issue that has to be addressed. He in fact

raises the question about the authenticity of the signature and validity of such application and based on this along with the fact that since the process under section 256 Cr.P.C. was done at the instance of the Opposite Party and no notice of being heard on such application was given. He has said that he will be grossly prejudiced and put at a tremendous unjust financial loss . Taking all the situations , it is seen that under section 256 of the Cr.P.C. there are three steps that can be taken; (I) to acquit the accused; (ii) to adjourn the date for future date or ; (iii) to dispense with the attendance of the complainant and go ahead with the case. Given the three alternatives that can be taken and going to the arguments that have been advanced and the reasons that I have been able to see, such a dismissal would require adequate hearing and I think the distinction which has sought to be made though appearing small is nevertheless there and that is why he has insisted that the court take note of it and decide the matter accordingly.

7. So having gone through the entire gamut of argument and particularly the reasonings that has been advanced by the appellant herein, it seems that the complaint should not have been dismissed at that stage itself giving the benefit of dismissal but an opportunity should have been given to the complainant/appellant herein, in the application filed under section 256 and 258 of the Cr.P.C..

8. Therefore, on the basis of the aforesaid observation and reasonings, the impugned order dated 24.11.2011 is set aside. Hence, the matter sent back or remanded to the concerned court below to hear the matter afresh from the stage just before the order of dismissal or rejection.

9. Hence, this Acquittal Appeal is allowed. (Ratnaker Bhengra,J.) Jharkhand High Court, Ranchi Dated 05/07/2016 Sharda/NAFR

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com