

Subhashchandra Vs. State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Jan-24-2002

Reported in : RLW2003(1)Raj292; 2002(3)WLN34; 2002(3)WLN34

Judge : Sunil Kumar Garg, J.

Acts : Evidence Act - Sections 145 and 146; Indian Penal Code (IPC) - Sections 302

Appeal No. : S.B. Criminal Revision Petition No. 301 of 2001

Appellant : Subhashchandra

Respondent : State of Rajasthan and ors.

Advocate for Def. : P.C. Solanki, Adv. for K.L. Thakur, Adv.,; D.K. Gaur,; S

Advocate for Pet/Ap. : M.A. Bhurat, Public Prosecutor; Manish Dadich, Adv.

Disposition : Revision allowed

Judgement :

Garg, J.

1. This revision petition has been filed by the petitioner-complainant against the order dated 11.5.2001 passed by the learned Special Judge, SC/ST Cases. Bikaner is Sessions Case No. 74/2001 for the offence under Section 302 IPC by

which he rejected the prayer of the APP as to re-examination of PW-2 Jetharam.

2. It arises in the following circumstances :-

In the above noted sessions case, the trial was going on before the learned Special Judge, SC/ST Cases, Bikaner and during trial, PW-2 Jetharam was examined on 5.5.2001 and he was also cross-examined on that day and since court time ended, therefore, the court adjourned his further cross-examination for 11.5.2001. But, when on 11.5.2001, he was being further cross-examined by the learned counsel on behalf of the accused respondents, this witness spoke in the tune of defence and started to give answer favouring to accused respondents. Therefore, when the cross-examination of PW-2 Jetharam was over, an oral prayer was made by the APP of that Court that since contradictions had come in the cross-examination of PW-2 Jetharam about the role of the accused respondents, therefore, he may be allowed to re-examine PW-2 Jetharam so that he could get explanation from this witness. On that prayer of App, the learned counsel for the accused respondents put objections and the learned Special Judge rejected the prayer of APP holding that there was no jurisdiction for that and that rejection order was passed at the conclusion of statement of PW-2 Jetharam.

It may be stated here that there is no dispute on the point that the learned APP did not file any written application before the learned Special Judge for re-examination of PW-2 Jetharam, but oral prayer was made by him.

Aggrieved from the said order dated 11.5.2001 passed by the learned Special Judge, SC/ST Cases, Bikaner rejecting one prayer of APP for re-examination of PW-2 Jetharam, the complainant in this case has filed this revision petition.

3. The main submission of the learned counsel appearing for the petitioner-complainant is that rejection of prayer of the learned APP for re-examination of PW-2 Jetharam has resulted in miscarriage of justice and, therefore, learned APP should have been allowed to re-examine PW-2 Jetharam. Hence, it was prayed that this revision petition be allowed and the learned Special Judge, SC/ST Cases, Bikaner be directed to re-call PW-2 Jetharam so that learned APP may re-examine him.

4. On the other hand, the learned counsel appearing for the respondents supported the impugned order dated 11.5.2001 passed by the learned Special Judge, SC/ST Cases, Bikaner.

5. I have heard the learned counsel for the petitioner complainant, the learned Public Prosecutor and the learned counsel appearing for the respondents and perused the material available on record.

6. Before appreciating the contentions raised at the bar, one prayer is that a revision petition especially in a State case by a private complainant is not maintainable.

7. The Hon'ble Supreme Court in K. Chinnaswamy Reddy v. State of Andhra Pradesh and Ors. (1), has held that a revision can be made entertainable at the instance of private parties, but this jurisdiction should be exercised by the High Court only in exceptional cases, where there is some glaring defect in the procedure or there is a manifest error on a point of law and consequently there has been a flagrant miscarriage of justice.

8. The above view was again reiterated by the Hon'ble Supreme Court in Ramu @ Ram Kumar and Ors. v. Jagannath (2), and it was further held that revisional jurisdiction conferred on the High Court should not be lightly exercised particularly when it was invoked by a private complainant.

9. In Kishan Swaroop v. Govt. of NCT of Delhi (3), the Hon'ble Supreme Court though observed that a private party has no right to file revision/appeal in a case instituted upon a police report, all the same, the Hon'ble Supreme Court placed reliance on its earlier decision in Chinnaswamy Reddy's case (supra) and the observations made in that case were also quoted meaning thereby law laid down in Chinnaswamy Reddy's case (supra) was found correct law.

10. Thus, the legal position may be enumerated in the following manner:-

'In a case which has proceeded on a police report the revisional jurisdiction can be invoked by the private complainant, but it can be exercised only in exceptional cases where the interest of public justice requires interference for the correction of

manifest illegality or the prevention of gross miscarriage of justice.'

11. Keeping the above legal position in mind, the propriety and legality of the impugned order passed by the learned Special Judge have to be seen.

12. There is no dispute in this case that the accused respondents were facing trial for the offence under Section 302 IPC, meaning thereby the trial of serious offence was going on. There is also no dispute that as per the examination-in-chief of PW-2 Jetharam, he was an injured witness and eye witness of the occurrence and in that incident, one Prem Singh died. There is also no dispute on the point that in his cross-examination, which took place on 11.5.2001, he has rescind to his previous statement to some extent.

13. The question that arises for consideration in the above facts and circumstances is whether re-examination of PW-2 Jetharam should have been allowed by the learned Special Judge at the request of APP or not.

14. The Hon'ble Supreme Court in *Dahyabhai Chhaganbhai Thakkar v. State of Gujarat* (4), has held that the Court can permit calling a witness to put questions in the nature of cross examination at the stage of re-examination. Adverse party must be given further opportunity to cross-examine witness in such case.

15. The viva voce examination consists generally of three stages; first of all, the witness is examined by the party who calls him; this is called examination-in-chief. He is next examined by the adverse party; this is called cross-examination. Finally he is examined again by the party who called him; this is called re-examination.

16. The objects of cross-examination are to impeach the accuracy, credibility and general value of the evidence given in chief; to sift the facts already stated by the witness, to detect and expose discrepancies, or to elicit suppressed facts which will support the case of the cross-examining party.

17. The object of re-examination is to afford the party calling a witness an opportunity of filling in the lacuna or explaining the inconsistencies which the cross-examination has discovered in the examination-in-chief of the witness. It is accordingly limited to the explanation of matters referred to in cross- examination.

It partakes of the nature of examination-in-chief inasmuch as no leading question can be asked.

18. The party who called a witness has the right to re-examine him on all matters arising out of the cross-examination for the purpose of reconciling any discrepancies that may exist between the evidence on the examination-in-chief and that which has been given in cross-examination; or for the purpose of removing or diminishing any suspicion that the cross-examination may have cast on the evidence in-chief; or to enable the witness to state the whole truth as to matters which have only been partially dealt with in cross-examination.

19. Not only this, if new matter through re-examination comes before the court, the adverse party with the permission of the court may further cross-examine upon the matter.

20. In my considered opinion, if the whole statement of PW-2 Jetharam is read, the prayer of APP should have been allowed by the learned Special Judge, as the trial of serious offence was going on before the learned Special Judge. Since in re-examination, the party has right to ask all questions which may be proper to draw forth an explanation of the meaning of the expressions used by the witness on cross-examination and furthermore re-examination is intended to reconcile the discrepancies which have arisen out of the cross-examination, therefore, from this point of view also, the prayer of APP should have been allowed by the learned Special Judge and since he has disallowed that prayer, therefore, by doing so, he has committed a manifest error on point of law which has consequently resulted in flagrant miscarriage of justice to prosecution and of which a complainant is an integral part. From this point of view, the present petition filed by the complainant should be treated as maintainable. Apart from this, interference by a private party can be allowed when the Court finds out misreading of evidence, overlooking important materials or perversity which had led to great miscarriage of justice.

21. Had there been trial of trivial offence, the position would have been different. But, in the present case, since PW-2 Jetharam is the star witness of the prosecution and being an injured as well as eye witness of the incident, therefore, to remove inconsistency, which has arisen in his cross-examination, re-

examination of PW-2 Jetharam was must in the present case. Thus, in rejecting the prayer of the APP for re-examination of PW-2 Jetharam, the learned Special Judge has committed a manifest error on point of law, which has resulted into flagrant miscarriage of justice and thus, impugned order passed by the learned Special Judge cannot be sustained.

22. For the reasons stated above, the impugned order passed by the learned Special Judge rejecting the prayer of the APP for re- examination of PW-2 Jetharam is liable to be set aside and this revision petition deserves to be allowed.

Accordingly, this revision petition filed by the petitioner-complainant is allowed and the impugned order dated 11.5.2001 passed by the learned Special Judge, SC/ST Cases, Bikaner is set aside and the learned Special Judge is directed to re-call PW-2 Jetharam so that learned APP may re-examine him.

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