In Re: Kamakshamma

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SooperKanoon Citation : sooperkanoon.com/795012

Court : Chennai

Decided On : Sep-10-1913

Reported in : (1915)ILR38Mad498

Judge : Sadasiva Ayyar, J.

Appellant : In Re: Kamakshamma

Judgement :
ORDER

1. There seems to be no provision of law which empowers the High Court to quash the conviction and sentence by a Sessions Judge and order a new trial because some of the material records of the sessions trial have been lost. If the convicted prisoner appeals, then, it will be time enough to interfere, if necessary. There is no provision of law (so far as I know), which enacts that, unless all the records of a case are in the court-house at the time of convicting and sentencing, the conviction and sentence are void, and should be quashed or that the Sessions Judge's trial has been held without jurisdiction or the sentence was passed without jurisdiction. If the convicted prisoner is satisfied that justice has been meted out to her, there is no ground for interference of this Court. Section 366 of the Criminal Procedure Code only imposes the condition that the judgment should be pronounced in open court and imposes a few other conditions, but such conditions do not include the condition that the record should not have been lost or that, if only a portion of the judgment (that relating to the conviction and sentence alone) is pronounced, the conviction is illegal. In Re Venkataramanayya (1898) 2 Wei Cr.

711 , it was held that the omission to read a portion of the judgment was a mere irregularity covered by Section 537. In Queen-Empress v. Chendu Kalya (1899) 1 Bom. L.R. 117 , the learned Judges refused to interfere, on the District Magistrate's reference, where a Magistrate had not written any judgment at all, but had convicted and sentenced five accused persons who had not themselves chosen to appeal. The High Court afterwards interfered on the application of one of the five accused persons (see Queen-Empress v. Kamthia Girdharia (1899) 1 Bom. L.R. 161. I think the more appropriate course for the learned Additional Sessions Judge is to re-write the judgment from memory and from the materials before him and place it on the record. Section 537-A, Criminal Procedure Code, cures all omissions in proceedings, and the omission to pronounce the judgment before convicting and sentencing is also cured under the new Code, though it might be different if no judgment had been written. In Narasingh Narain Singh v. Harkhu Singh (1908) 8 C.L.J. 521, it was held that where a judgment has been lost, it was open to the Judge to re-write from memory the substance of it. In Raj Gir Sahaya v. Iswardhari Singh (1910) 11 C.L.J., 243 authorities are quoted for the proposition that 'a Court has an inherent power in the case of loss or destruction of a judicial record to restore such record,' and it was held in that case that execution might issue even before the reconstruction of the record. According to Black on Judgments (volume I, Section 125), 'the power of supplying a new record, where the original has been lost or destroyed, is one which pertains to courts of general jurisdiction independent of legislation.'

2. Even if I am wrong in my opinion that the learned Additional Sessions Judge is entitled to replace the lost judgment by a new judgment and that the conviction and sentence passed by him without pronouncing the whole of the written judgment do not make them void, I think (as I said already) that it is more advisable to wait till an appeal is preferred against the conviction and the sentence by the accused in the case before the High Court takes any action.

3. Let the records be returned.