

Anil Kumar Biswas Vs. the State

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Court : Kolkata

Decided On : Aug-13-1953

Reported in : AIR1954Cal29

Judge : Guha Ray and ;Debabrata Mookerjee, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 371, 424 and 548

Appeal No. : Criminal Misc. Case No. 108 of 1953 and Revn. No. 761 of 1953

Appellant : Anil Kumar Biswas

Respondent : The State

Advocate for Def. : N.K. Sen, Adv.

Advocate for Pet/Ap. : A.C. Roy and ;Sunil Mookerjee, Advs.

Judgement :

Guha Ray, J.

1. This is an application by Anil Kumar Biswas for a copy of judgment of acquittal passed by this Court in exercise of its criminal revisional jurisdiction. The applicant was convicted under Section 409, I. P. C. and his conviction was upheld on appeal. On revision however that conviction was set aside and the applicant was acquitted.

2. The matter was argued at some length before us on behalf of the applicant by Mr. Ray and on behalf of the State by Mr. Sen. Thres cases of this Court were referred to in the office note. The earliest was -- 'Govt. Appeal No. 4 of 1922 (Cal)' (A) and Greaves and Panton JJ. passed the following order:

'Under the provisions of Section 371 of the Code of Criminal Procedure the accused is entitled to the copy free of cost.'

No reasons whatever were assigned nor was any attempt made to explain what Section 371, Cr. P. C. really meant.

3. The next case was -- 'Misc. Case No. 184 of 1952 (B)', but this, however, does not relate to the grant of a copy of a judgment of this Court on appeal or revision. A reference was made by the Sessions Judge of Coorh Behar as to whether the accused was entitled to a copy of a judgment on appeal passed by the Sessions Judge and it was decided that Sections 371/424 left no room for doubt that the accused was entitled to a free copy thereof.

4. In the last case, viz., -- 'Ref. No. 8 of 1952' (C), it was decided by Mitter and Sen JJ. that in view of Sections 424 and 371, Cr. P. C. the accused was not entitled as a matter of right to a free copy but Section 548 entitled the court to allow a copy free of cost at its own discretion and in that case a copy was allowed free of cost.

5. None of these decisions, although they are entitled to great respect, are really helpful because none of them tries to construe the relevant Sections. The first of these Sections to be considered is Section 371 occurring in Chapter 26 of the Code, the Chapter being headed 'Of the Judgment'. It has been argued by Mr. Bay that this Section does not apply merely to a copy of the judgment of the trial Court but also to a copy of the judgment of the appellate Court and Section 424 really relates to the contents of the judgment and to the production of the accused in court at the time of delivery of the judgment and to nothing else in Chap. 26.

6. He next refers us to Section 490 and argues that although this Section applies in terms to a copy of the original order under Section 488, it must cover an appellate order under Section 488 because unless that were so, there is actually

no provision in the Code under which a copy is to be made over to the person in whose favour or against whom the order is made although for its enhancement by another Magistrate under Section 490 such a copy is necessary and although the law requires a copy of this order to be filed along with a petition for revision.

7. Section 371 of the Code, as already stated, occurs in Chap. 26 which bears the heading 'Of the Judgment.' The Criminal Procedure Code is divided into 9 parts, each part consisting of a number of Chapters and each Chapter consisting of a number of Sections. Chap. 26 occurs in Part 6, and the general heading of this Part is 'Proceedings in Prosecutions.' Section 424 occurs in Chapter 31 which again is in Part VII of the Code and this Part bears the heading 'Of Appeal, Reference and Revision.' Sections 488 and 490 occur in Chap. XXXVI which is in Part 8 bearing the heading 'Special proceedings.' In addition there is another Section to which we shall have occasion to refer viz., Section 548 occurs in Chap. XLVI which is in Part IX bearing the heading 'Supplementary provisions.'

8. The scheme of the Code therefore makes it clear that Part 6 in which Chap. 26 occurs relates to proceedings before the trial court and it is only in Part 7 that appeals, references and revisions are dealt with. Part 8 where Sections 488 and 499 occur, relate to special proceedings and the last or the 9th Part deals with supplementary provisions. If one proceeds to examine the provisions in question with this scheme of the division of the Code in mind, one will be at once able to see that Section 371 can only refer to a copy of the judgment of the original court. Of course Section 371 does not expressly say that it relates to a copy of the judgment of the original court only but if one examines side by side with the provision of this Section, the terms of Section 424, it will be clear at once what really Section 371 means. Section 424 is in the following terms:

'The rules contained in Chapter 26 as to the judgment of a Criminal Court of original jurisdiction shall apply, so far as may be practicable, to the judgment of any Appellate Court other than a High Court:

Provided that, unless the Appellate Court otherwise directs, the accused shall not be brought up, or required to attend, to hear judgment delivered.'

Section 424 therefore makes it clear that the rules contained in Chap. 26 are as to the judgment of a criminal Court of original jurisdiction and the entire scheme of the division of the Code bears it out.

9. Mr. Ray's contention is that Section 424 refers merely to the contents of a judgment and to provisions in Chap. 26 regarding the production of the accused in court at the time of delivering of judgment and to nothing else. Chapter 26 consists of Sections 366 to 373. Section 366 deals with the mode of delivery of judgment, Section 367 deals with the language of the judgment, its contents, Section 368 deals with the sentence of death and transportation, Section 369 prohibits, after it has Signed its judgment, a court altering or reviewing the same except to correct a clerical error. Section 370 deals with the contents of a judgment recorded by a Presidency Magistrate, Section 371 deals with copies of judgments to be given to the accused on application, Section 372 provides when the judgment is to be translated and Section 373 directs the Court of Session to forward to the District Magistrate a copy of its finding and sentence in a case tried by itself.

10. According to Mr. Ray Section 424 cannot refer to the provisions of Section 371 or Section 373. His argument is that Section 371 which occurs between Section 370 relating to the manner of a Presidency Magistrate's recording judgment and Section 373 which provides that the original judgment of a court shall be filed with the record of the proceedings and that where the original is recorded in a different language from that of the court and the accused so requires, a translation thereof into the language of the court shall be added to such record, cannot be confined in its application to the judgment of the original court.

But, as pointed out already, all these provisions occur in. a part of the Code which has nothing to do with the judgment, in appeal or revision, and there is no reason whatever to restrict the meaning of Section 424 to the provisions of Chap. 26, other than Section 371. All the sections in that Chapter relate to judgments and, as already stated, they relate to judgments of the original court. That being so, Section 424 makes all these rules in Chap. 26 relating to judgments of criminal courts of an original jurisdiction applicable, as far as practicable to the judgment of an appellate court other than a High Court. It is thereforej clear that an exception is

made in the case of a High Court.

11. Mr. Ray argues that even when the High Court passes a judgment in its appellate or original jurisdiction, a copy of the judgment has to be filed with a petition of appeal to the Supreme Court in cases where such an appeal lies and therefore unless Section 371 and Section 424 are liberally construed parties aggrieved by the judgment of the High Court in its appellate or revisional jurisdiction would not be entitled to a copy as a matter of right.

12. Section 548, to our mind, provides a complete answer. Section 548, is much wider in its scope than either 371 or 424; because, in the first place, it entitles any person affected by a judgment or order passed by a criminal court which includes, of course, the accused in a criminal case, to have a copy of the judgment, charge to the jury or of any order or deposition or other part of the record of which he wants to have a copy. Thus Section 548 entitled any such party to have a copy of not merely the judgment but also of other parts of the record including any other order or deposition.

If it is contended that a judgment is not included in the word 'Order' used here in Section 548 it is bound to be included in the phrase 'other part of the record', So that there can be no manner of doubt that under this Section at any rate, a party will be entitled to a copy of the judgment in a case even of the High Court. The proviso to this Section says that the party asking for a copy has to pay for the same unless the court for some special reasons thinks fit to furnish it free of costs. Thus, as far as the High Court is concerned, any aggrieved party is entitled on payment to have a copy of the judgment or order etc. But it is only where the Court for special reasons thinks fit to furnish it free of costs, that the person asking for a copy would get it free.

13. In this connection Mr. Ray referred us to a Notification No. 2332 J, dated 4-3-1938, of the Government of Bengal, Judicial Dept., by which the fees were remitted for a copy or translation of a judgment in a case other than a summons case, and a copy of the heads of the Judge's charge to the Jury, when the copy or translation is given under Section 371 of the Code to an accused person. This Notification, in our opinion, does not carry the matter any further than Section 371,

and is really a measure calculated to give effect to the provisions of that Section.

14. As regards Mr. Ray's contention based on Sections 488 and 490 all that is necessary for us to say is that Section 442 requires the High Court to certify its decision or order passed in its revisional jurisdiction to the court by which the finding, sentence or order revised was recorded or passed, and the court or Magistrate to which the decision or order is so certified has thereupon to make such orders as are conformable to the decision so certified, and if necessary, the record has to be amended in accordance therewith.

15. It is enough for a party to ask for a copy of the order as corrected or amended under Section 442 and there is a similar provision as regards appeals and that is Section 425. There is thus no difficulty whatever such as was envisaged by Mr. Ray.

16. It is therefore clear to us that a party affected by a judgment of this Court in its revisional jurisdiction or its appellate jurisdiction is not entitled to a free copy as a matter of right. He is entitled to a copy of Such a judgment on payment, but Section 548 gives the court enough discretion in the matter to grant a copy free of costs whenever it thinks fit to do so for any reasons specially to be recorded.

17. In this case the applicant Says the cost of the copy in question is likely to be pretty heavy and in any event it is too heavy for him because he is poor. That he is too poor to be able to pay for a copy, we can readily believe, because he was under suspension for a long time and then discharged. In our discretion therefore under Section 548, Cr. P. C. we allow a free copy to be granted to the applicant in this case, on the ground of his poverty.

Debabrata Mookerjee, J.

I agree.