

Parbati Devi Vs. the State

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Court : Kolkata

Decided On : Sep-04-1951

Reported in : AIR1952Cal835; 1952 Cri LJ 1672

Judge : R.P. Mookerjee and ; Lahiri, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 411A, 423, 439 and 561A; ; Indian Penal Code (IPC) - Sections 120B and 366

Appeal No. : Criminal Appeal No. 30 of 1950

Appellant : Parbati Devi

Respondent : The State

Advocate for Def. : S. Banerjee, Standing Counsel and ; A. Dutt, Adv.

Advocate for Pet/Ap. : J.M. Banerjee, Amicus Curie

Judgement :

R.P. Mookerjee, J.

1. After we had heard Criminal Appeal No. 30 of 1950, Parvati Devi v. The State, and came to the conclusion that the evidence on the record was not sufficient to substantiate a charge as against Parvati Devi under Section 120B read with Section 366, Penal Code, it led us to consider the case of Shew Nath Shaw, the

alleged conspirator with Parvati Devi. As Shew Nath had not appealed, we thought it proper to issue a Rule suo motu on the State to show cause why the conviction and sentence passed on Shew Nath should not be set aside or such further or other order or orders made as to this Court might seem fit and proper.

2. The case as made before the Criminal Sessions was that there had been criminal conspiracy between Shew Nath and Parvati. There was no allegation, far less any evidence of any conspiracy between either of these persons with any other or more persons. We have already delivered our judgment in Parvati Devi v. The State, Criminal Appeal No. 30 of 1950 (cal.), and we have found on the evidence that there is nothing on the record to substantiate a charge under Section 120B read with Section 366, Penal Code, so far as Parvati is concerned. In this state of things, it is impossible to substantiate a charge of conspiracy against Shew Nath alone. There is no evidence under which Shew Nath can be found guilty of the offence charged and for which he is now undergoing sentence.

3. On behalf of the State, cause has been shown by the learned Standing Counsel, and it has been contested that this Court has no jurisdiction to issue any Rule in respect of a conviction and sentence after a trial in the Sessions in the Original Side of this Court.

4. The principal argument advanced on behalf of the State is that this High Court must be taken to be one Court, and if jurisdiction is exercised in different branches of the same Court, such branches or sections of the Court are not different Courts. There is no question of a trial in the Original Sessions of this Court being a trial by a Subordinate or by an inferior Court.

5. In support of the above contention, reference was made to the observations in Debendra Nath v. Bibudhendra Mansingh, 43 Cal. 90, where Jenkins, C. J. was considering the position of a single Judge in the Appellate Side of the High Court from whose decision a Letters Patent Appeal was allowed. The suit had been filed in the Cuttuck Court, and had come up on second appeal to this Court, and had been disposed of by a single Judge as under the Rules of this Court. Against the decision of the single Judge, there was a decision by a Division Bench in which the judgment passed by the Subordinate Judge was affirmed after reversing the

judgment of the single Judge of this Court. While dealing with an application for leave to appeal to His Majesty in Council, it was observed that the judgment of the single Judge, apart from and independent of the judgment of the Division Bench, could not be regarded as the Judgment of a Court, subordinate to High Court. Leave was, however, granted as there was a substantial question of law involved in the case. We do not think that the casual observation in this case can be referred to as any authority for the broad proposition for which the learned Standing Counsel is contending.

6. It was farther urged on behalf of the State with reference to the various provisions of the Code of Civil Procedure and the Code of Criminal Procedure that if one particular section of the High Court be deemed to be a Court subordinate to or inferior to the High, Court various complications would arise; further, the powers which the High Court have admittedly got over subordinate Courts cannot be exercised over such different sections of the High Court. As for instance, it is competent for the High Court to direct, under Section 24, Civil P. C., the transfer of a suit pending in one subordinate Court to another Court, or to transfer it to be heard by the High Court itself. Can this power be exercised by the High Court in respect of a proceeding which is pending before the Original Side of this Court or before a single Judge who is entitled to hear such matter under the Rules of the Court? Prima facie this Court has not exercised that jurisdiction and cannot have that power. Similarly about the provisions contained in Section 526, Criminal P. C. It is, however, not necessary for us to refer to the other provisions to determine the powers of this Court in relation to the decisions made or the convictions after a Sessions trial in the Original Side of this Court as we have to refer to certain particular and special provisions in the Code of Criminal Procedure for this purpose.

7. Under Section 439, Criminal P. C., the High Court may in its discretion exercise any of the powers conferred on a Court of appeal by Sections 423, 426, 427 and 428 or on a Court by Section 838 and may enhance the sentence. It is contended that Section 439, does not vest any jurisdiction in this Court to call for the records or to make any orders in revision of an order passed in the Original Side of this Court after a Sessions trial had been held. It is contended that so far as the

conviction and sentence by the Court of Session in the Original Side of this Court is concerned, specific provision is made under Section 4L1A, Criminal P. C., and the powers of the High Court are circumscribed by the provisions contained in that section.

8. It may immediately, be pointed out that Section 411A, Criminal P. C., does not refer to the procedure to be followed by the Court, but merely promulgates the rule that without prejudice to the provisions contained in Section 449, Criminal P. C., any person convicted after a trial by the High Court in the exercise of its original criminal jurisdiction may, notwithstanding anything contained in Section 418, or Section 423, Sub-Section (2), or in the Letters Patent of the High Court, appeal to the High Court. And then follows the scope of the appeals in particular cases. The powers which are to be exercised thus are not to be found in Section 411A, but reference has to be made to the provisions contained in Section 423, Criminal P. C.

9. Under Sub-Section (1) of Section 423, Criminal P. C., the appellate Court can send for the records of the case if such records are not already in Court. After perusing such record, and hearing the appellant or his pleader, if he appears, and the Public Prosecutor, if he appears, and in case of an appeal under Section 411A; Sub- Section (2), or Section 417, the accused, if he appears, the Court may, if it considers that there is not sufficient ground for interfering, dismiss the appeal, or may give certain other directions, as may be appropriate in the particular case.

10. Mention of Section 411A, Criminal P. C. in Section 423 of that Code unmistakably indicates that this Court, while hearing an appeal from the conviction of an accused by the Court of Session in the Original Side of this Court has in relation to the latter Court powers and jurisdiction in certain respects over the latter Court which a superior Court has over a subordinate Court. This is so though the relationship between the two branches of this Court is not in all particulars the relationship of a superior and inferior tribunal.

11. Particularly, reference may be made to clause (b) of Sub-Section (1) of Section 423, Criminal P. C. which is in the following terms:.

'The Court.....may in an appeal from a conviction, (1) reverse the finding and sentence, and acquit or discharge the accused, or order him to be retried by a Court of competent jurisdiction subordinate to such Appellate Court or committed for trial, or (2) alter the finding, maintaining the sentence, or with or without altering the finding, reduce the sentence, or (3) with or without such reduction and with or without altering the finding, alter the nature of the sentence, but subject to the provisions of Section 106, Sub- Section (8), not so as to enhance the same.'

Whatever might be the position technically speaking the decision given in the Original Side of this Court after a trial by the Court of Session is deemed for this limited purpose as the decision of a subordinate Court, though it may not be of an inferior Court.

12. Preference was made to *Emperor v. Krishnaji Vithal*, 50 Bom. L. R. 293, where it had been held that an application in revision did lie from an order made by the Judge presiding over the Sessions in the Original Side of the High Court, even before the introduction of Section 411A, Criminal P. G. The Bombay High Court referred to old decision of this Court in *Nobin Kristo v. Rasiklal Laha*, 10 Cal. 268, where it was laid down that the test for determining whether a Court was inferior to another or not would depend on the fact whether it was judicially inferior, i. e., it was a Court over which the particular Court was exercising appellate or revisional jurisdiction. We do not think that the interpretation put by the Bombay High Court on the observations in *Nobin Kristo's* case was quite apposite. The test which was applied in that case may not be strictly speaking attracted in the case of the High Court exercising its jurisdiction over the Court of Session in the Original Side of this Court. We do not think that the very observations of the Bombay High Court may be accepted.

13. It is sufficient for our present purpose if we come to the conclusion that under the specific provisions of the Code of Criminal Procedure, certain jurisdiction is given to the Bench dealing with criminal matters, and particularly when an appeal under Section 411-A is being heard to exercise jurisdiction under the revisionary powers. There are certain anomalies no doubt, as have been pointed out by the learned Standing Counsel.

14. Even if there be any doubt about the extent of the jurisdiction of this Court under the revisionary powers, there is no doubt that under the inherent jurisdiction of the Court, it has the power to pass a proper order when a manifest injustice is being done. Therefore, even if there had been any doubt as to the applicability of Section 435, Criminal P. C., of can have no doubt whatsoever that the Court has, in the absence of any direct provisions in the Code, the inherent power to adopt a procedure to secure the ends of justice. This inherent power had always been recognised even before the introduction of Section 561-A in Criminal P. C. Section 561-A merely gives recognition to the existence of the inherent power of the Court in criminal matters. Vide *Pratul Chandra v. Commandant, Hijli Detention Camp*, 61 Cal. 197, *Bogers v. Srinivas*, 42 Bom. L. R. 478 and *Emperor v. Nazir Ahmed*, 47 Bom. L. R. 245 (P. c).

15. When we were considering the appeal by Parvati Devi who came to the definite conclusion that there was no evidence on the record which would justify a conviction for conspiracy as between Parvati Devi and Shew Nath. It is not only in the exercise of the inherent power, but we consider it to be the duty of the Court to exercise jurisdiction in such a manner that manifest injustice may not be continued to be perpetrated. It does not matter that Shew Nath has not appealed. This matter having come to the notice of the Court, we think that we have got sufficient jurisdiction under the inherent powers of the Court under Section 561-A, Criminal P. C. to pass appropriate orders in the case of Shew Nath also.

16. For the reasons given above, we make this Rule absolute. We direct that Shew Nath Shaw be acquitted and set at liberty.

Lahiri, J.

17. I agree.