**Gulam Ali Vs. State**

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**SooperKanoon Citation** : sooperkanoon.com/889157

**Court** : Himachal Pradesh

**Decided On :** Dec-07-1971

**Reported in** : 1972CriLJ551

**Judge** : M.H. Beg, C.J. and; Chet Ram Thakur, J.

**Appellant** : Gulam Ali

**Respondent** : State

**Judgement** :

**Chet Ram Thakur, J.**

1. The question referred to the larger Bench was whether this Court should also set up a practice for future not to entertain the revision petitions directly from the orders of the Magistrates unless some extraordinary or exceptional circumstances have been shown by the party coming in revision directly against the order of the Magistrate.

2. Ghulam Ali had filed the revision petition under Section 435, Criminal Procedure Code, direct to the High Court by-passing the Sessions Court which has got the concurrent jurisdiction with the High Court in matter of revision against the orders of the inferior Courts. The facts of the case have been stated in my order, dated 8th April. 1971. and need not be set out in detail.

3. There was a dispute with regard to the possession of the land between Ghulam Ali and Jagdish Kumar, who alleged himself to be the owner in possession of the land by virtue of a purchase made by him from Maharani of Sirmur. Proceedings under Section 145. Criminal Procedure Code, were initiated on the police report and the learned Magistrate found that Jagdish Kumar, the owner of the land, was in possession and that Ghulam Ali was not in possession and he. therefore, passed the order, which was assailed by a revision petition. A preliminary objection was raised in the revision petition which was heard by me sitting singly, that the revision having been filed directly to the High Court by-passing the Court of Session was not maintainable. He should have first approached the Sessions Judge and if he were unsuccessful then he should have moved this Court.

4. The practice in all the High Courts excepting Kerala and Manipur is that a revision should first be filed before the Sessions Judge and heard by him. If the same is rejected only then the aggrieved party must go in revision to the High Court. Since it was a new High Court a precedent had to be set up by this Court, I, therefore, thought it better to refer the matter to the larger Bench to decide for future whether this Court should also follow the practice of other High Court which insist that revision should ordinarily lie to the Court of Session except in rare and extra-ordinary cases.

5. We have heard the learned Counsel for the Parties. It is undoubtedly well-settled that the High Court, the Court of Session and the Court of the District Magistrate have concurrent jurisdiction to entertain a criminal revision, but the rule of practice as has been laid down by the majority of High Courts is that instead of approaching the High Court direct the lower Court must be first approached and to discourage direct approach to the High Court in criminal revision. I had quoted the numerous authorities, upholding this view, in my reference order. Those authorities are : (1) State v. Smt. Ramoo : AIR1960 All636 . (2) Dr. Lallubhai Dayaram Bhatt v. Karimbhai Dattakhan : AIR1958 Bom276 (3) Veera Ramayya v. Udavagiri Venkata Seshavatharam AIR 1956 Andhra 97. (4) Gobardhandas Khakalia v. Chaturbhui AIR 1950 Assam 165. (5) Sukh Lal v. The State AIR 1955 Raj 177. and (6) Indar Dass v. State .

Besides the aforesaid authorities the following authorities - (1) Mohammad Hashim v. Notified Area Moshal Sarai AIR 1933 All 283. (2) D.D. Nath v. Kanshi Ram AIR 1966 J & K 143 and (3) Alapati Sriramamurty v. State of Andhra Pradesh : AIR 1959 AP377 may also be referred in support of the view that direct approach to the High Court by way of revisions should be discouraged.

6. In the light of the aforesaid authorities which have discouraged the practice of approaching the High Court directly in revision by-passing the Court of Session, we also feel that this Court must also follow this salutary practice, whereby the High Court can also have the advantage of the opinion of the Court of Session. Secondly the work in the High Court in case revisions are entertained direct may be increased unduly and. in order to check an indiscriminate filing of applications for revision, it is desirable that revisions should not be entertained direct against the orders of the Magistrates except where there may be extraordinary circumstances.

7. In view of the above, we find that the petitioner has not chosen the proper forum for ventilating his grievance. He should have first approached the Court of Session and if he were unsuccessful in that Court then he should have come to this Court.

8. We have already gone into the facts of the case and we do not find anything extraordinary so as to permit the petitioner to approach the High Court direct in revision. In the view that we have taken this revision petition fails on this very score and is dismissed.

M.H. Beg, C.J.

9. I have gone through the opinion of my learned brother on the question referred by him for decision by a larger Bench.

10. I entirely agree that it is a salutary rule of practice to compel parties to approach the lowest Court of appropriate jurisdiction for a particular remedy so that the party exhausts its means of redress before coming to the highest Court in the State. The revisional powers of the High Court, exercisable under Section 439. Criminal Procedure Code, are made discretionary by statute. Whenever there is a

discretionary power conferred upon a High Court, it evolves its own rules for the exercise of its discretion judicially.

11. The powers of interference under Section 439 (11 Criminal Procedure Code vested solely in the High Court are judicial powers. The discretion is vested in the High Court to exercise any of the Powers conferred on a Court of Appeal by Sections 423, 426. 427 and 428 or 338 of the Criminal Procedure Code. Section 439 (5) makes it clear that no revision application shall be entertained at the instance of a Party which could have appealed. It is true that no similar Provision has been made, in Section 439, barring a revision application by a party which could have approached a Sessions Judge, or a District Magistrate, or a Sub-Divisional Magistrate under Section 435. Criminal Procedure Code, with an application to send for the record so that the case may be reported by a Sessions Judge. or an Additional Sessions Judge, or a District Magistrate. acting under Sections 438 (1). for appropriate orders of the High Court. Hence it could be urged that we should not lay down a rule of practice which may seem to curtail the powers of this Court to interfere in any case which comes to its notice by appropriate orders under Section 439 (1) Criminal Procedure Code. I do not. however, think that a mere rule of practice relating to the mode in which a judicial discretion has to be exercised really restricts the powers of this Court to act in appropriate cases even without an application made to a Sessions Judge or a District Magistrate to send for the record under Section 435. Criminal P. C.

12. The only power which the Sessions Judge and the District Magistrate has in common with this Court is to send for the record under Section 435, Criminal Procedure Code. After that. the Sessions Judge or the District Magistrate can only report the matter under Section 438 whereas this Court can interfere directly. Hence, the exercise of the power of reporting a case by a Sessions Judge or an Additional Sessions Judge or a District Magistrate would really help this Court in the exercise of its judicial discretion under Section 439 (1) of the Code. It would also enable a party which wants to invoke the exceptional discretionary powers of this Court under Section 439 (1) of the Code to know the extent of its rights better by first approaching a more easily accessible Court in the very district in which the case arose. The orders passed by the reporting authorities under Section 438,

Criminal Procedure Code, are also judicial orders. They afford considerable assistance to and save time of this Court. They can also be more easily and quickly passed as the record is on the spot and the party which desires to invoke the jurisdiction of this Court can more easily approach local authorities.

13. Another consideration which could justify the refusal to interfere under Section 439 (1). Criminal Procedure Code, is that the legislative intent must have been to enable the litigant to first approach the authorities in the district or else the power of sending for the record of a case under Section 435, Criminal Procedure Code, and reporting the case to this Court under Section 438. Criminal Procedure Code, may appear redundant Even assuming that the purpose of the legislature was merely to widen the scope of avenues through which this Court may exercise its revisional jurisdiction under Section 439 (1). Criminal Procedure Code, yet it appears desirable that in addition to the reasons mentioned above the Sessions Judges and District Magistrates should be kept informed of the illegalities, if any committed by Magistrates subordinate to them.

14. An argument which has not been put forward by the learned Counsel for the applicant may also be noticed here. This is that, although there was no time limit for a revision application before the Limitation Act of 1963. vet Article 131 in the Schedule to the Limitation Act of 1963 introduces a time limit of 90 days for such an application 'to any Court for exercising its powers of revision under the Code of Criminal Procedure, 1898.' The limitation runs from the date of the order or sentence sought to be revised. If the Sessions Judge or District Magistrate acting under Section 438 (1), Criminal P. C. have no power of revision but only of reporting with a recommendation, it may well be argued that the period of 90 days may well expire before an application to a Sessions Judge or a District Magistrate is decided. In such an event, the applicant will have to, in order to bring his case within the prescribed period of limitation, either contend that he is coming up to this Court in revision against the refusal of the Sessions Judge or District Magistrate to report the matter to this Court under Section 438 (1). Criminal P. C. or in the alternative, claim the benefit of Section 14 of the Limitation Act. This, it could be urged, would indicate that this Court should not adopt a rule of practice which may defeat the rights of parties to come up in revision to this Court within

the prescribed Period of limitation.

15. I have no doubt that if a case of such hardship arises, this Court could decide to interfere of its own accord, provided a suitable case for interference is made out. even if the applicant's right to invoke the jurisdiction of this Court is barred by limitation. In my opinion. Article 131 of the new Limitation Act merely imposes a bar of limitation against applicants who want to invoke the revisional jurisdiction of the Court. In cases in which applicants have spent all the time in proceedings under Section 435. read with Section 438. Criminal Procedure Code, the Court could and should condone delay and extend the period of limitation for making an application to this Court.

16. In any event, a power which is discretionary could not strictly speaking be spoken of as conferring a right upon a party to interference by this Court. This Court exercises its powers of interference on judicially sound principles so that parties which have suffered injustice could set the wrong set right by invoking the revisional jurisdiction of this Court. In this way Parties practically and substantially get a right because of the principles on which judicial discretion is exercised. Hence. High Courts have to evolve rules on which exercise of such judicial discretion must rest. They do so because among other reasons, they have to protect themselves against attempts by parties to abuse the processes of Court, and Courts should indicate, with some degree of certitude the principles of interference.

17. It is because of this well recognized power of the Court, when exercising a judicial discretion to frame its own rules of practice that High Courts have formulated that rule of practice that they will not ordinarily interfere with concurrent findings of fact. There may however, be cases in which the conscience of the Court is touched so as to compel it to interfere even with findings Of fact. The existence of such exceptional cases does not, however, impair the soundness of the rule that this Court should not ordinarily interfere with findings of fact as a Court of revision. Similarly, we think that there should be a rule of practice that a Party must exhaust his remedies by approaching the District authorities under Section 435/438, Criminal Procedure Code, before it approaches this Court. This

Court can, however in the exercise of its Judicial discretion, depart from this rule of the practice in exceptional cases. This seems to me to be the view of my learned brother, I therefore, respectfully concur entirely with the opinions expressed by him.

18. I may observe that, in the the case before us there seems no reason to depart from the other rule of practice indicated above, that this Court will not ordinarily interfere with findings of fact. The finding here relates to possession in proceedings under Section 145. Criminal Procedure Code. The applicant's right to get questions of right and title decided by a Civil Court are preserved. The application before us is liable to be dismissed on this ground also. I, therefore, concur with my learned brother that it be dismissed on both grounds.