

Rajan Behl Vs State

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Court : Delhi

Decided On : Aug-16-2010

Judge : Mr. Shiv Narayan Dhinrga, J

Appeal No. : C R P.No.264 of 2010

Appellant : Rajan Behl

Respondent : State

Advocate for Def. : Mr. O.P. Saxena, Adv.

Advocate for Pet/Ap. : Mr. Rajiv Duggal , Mr. S.K. Duggal, Advs.

Judgement :

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

1. By present revision petition, the petitioner has assailed judgment dated 18th May, 2010 and order on sentence dated 21st May, 2010 passed by the appellate court. The petitioner was convicted by the court of learned Metropolitan Magistrate under Section 63 of Copyright Act and under Sections 78 and 79 of Trademarks and Merchandise Act and sentenced to six months rigorous imprisonment under Section 63 of Copy Right Act and 78 and 79 of Trademarks Act apart from fine of

Rs.50,000/- under Section 63 of Copyright Act and Rs.1,000/- each under Section 78 and 79 of Trademarks Act.

2. On an appeal preferred by the petitioner, the learned Sessions Judge maintained the conviction of both the accused persons, however, while sentencing, the learned Sessions Judge reduced the sentence of imprisonment from six months' rigorous imprisonment to 45 days simple imprisonment both under Section 63 of Copyright Act as well as under Section 78 and 79 of Trademarks Act with the fine as awarded by the trial court. The petitioner in this revision petition has assailed the order of learned Sessions Judge on the ground that findings of court below were against the weight of evidence. There was nothing on record to show that the goods allegedly recovered from front of the shop of the petitioner bearing fake and spurious mark were stocked by the petitioner. There was no evidence on record to show that marks on the goods were fake or spurious. The other grounds raised by the petitioner in the petition show that the petitioner had assailed the order of learned Sessions Judge on merits.

3. Section 393 Cr.P.C. specifically provides that the judgment and order passed by the appellate court in an appeal shall be final except in cases provided under Sections 377, 378 and 384 (4) or Chapter XXX. Section 377 Cr.P.C. provides for appeal by State Government against sentence, Section 378 provides for appeal in case of acquittal and Section 384 (4) is in respect of the jail appeals dismissed summarily. The case of the petitioner does not fall under these three cases. Thus, the judgment of appellate court has attained finality and the High Court can interfere under Section 397 Cr.P.C. only if there was an issue of correctness, legality or propriety of any finding, sentence or order recorded or passed by the Sessions Court or there was any irregularity of the proceedings of the Sessions Court. The High Court in its power under Section 397 cannot act as a court of second appeal and cannot re-appreciate the entire evidence to substitute its own opinion against the opinion of the appellate court. The scope of revision against the concurrent finding of fact is very limited and ordinarily the concurrent finding of fact cannot be challenged unless and until there is gross misreading of evidence or there is manifest error of law or miscarriage of justice. The revisional jurisdiction

does not confer power on the revisional court to re-appreciate the evidence on record. The revisional court can examine the record only to satisfy itself that the court below had conducted the proceedings in an appropriate manner and had taken into account entire evidence before passing the judgment. The judgment is not to be resorted to as a second appeal.

4. During arguments, counsel for the petitioner had only been agitating that the conclusion arrived at by the trial court as well as by the appellate court was not correct conclusion and he wanted this court to re-appreciate the entire evidence. I consider that this court in view of Section 393 Cr.P.C. cannot re-appreciate the entire evidence to arrive at a different conclusion than the one arrived at by the appellate court. I, therefore, find no force in this revision. The revision petition is hereby dismissed. The bail bond of the revisionist/petitioner is cancelled. The revisionist/petitioner shall surrender and undergo the remaining sentence as awarded.

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