Asghar Khan and Others

Vs

State of Uttar Pradesh

Criminal Appeal No. 492 of 1981

(Syed M. Fazal Ali, R.B. Misra JJ)

01.05.1981

JUDGMENT

1. We have heard learned counsel for the parties.

2. It seems to us that in this case the High Court has taken a wrong view of law regarding the maintainability of the application filed by the appellants for revision under Section 397(1), Criminal Procedure Code (hereinafter referred to as 'the Code'). Section 397(1) is extracted below :

> The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

Explanation. - All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of Section 398.

In the instant case, as the sentence was below seven years, appeal would lie to the Sessions Judge under Section 374(2) of the Code and there was no question of the Sessions Judge exercising any revisional powers in respect of the judgment convicting the appellants. Since the Sessions Judge dismissed the appeal, revision would only lie under Section 397(1) of the Code to the High Court. A second revision would not be competent under Section 497(3) of the Code only where both the Sessions Judge and the High Court who have concurrent powers yet one or the other court has exercised its revisional powers. In the case before us, the Sessions Judge being the appellate court, it could not have exercised the power of revision and therefore the power of revision lay with the High Court alone under Section 397(1) of the Code.

3. The only bar contained in sub-section (2) of Section 397 of the Code is that no revision shall be exercised in relation to an interlocutory order passed in any appeal, inquiry, trial or other proceeding. In the instant case, indisputably the order passed by the Sessions Court was a final one. Therefore, Section 397(2) of the Code would have no application. Thus, sub-section (3) of Section 397 as indicated above, applies only in a case where an application in a revision has been filed either before the Sessions Judge or the High Court and either of them have exercised the power, so

that no further revision would lie to the High Court. In the instant case, sub-section (3) has no application.

4. The present case therefore is clearly covered by Section 397(1) where the High Court alone could exercise power of revision and give relief, if any, to the appellants.

5. It is, therefore, manifest that the High Court took a legally erroneous view on the interpretation of Section 397(1) of the Code in holding that no revision lay to the High Court. In fact, one Bench of the High Court took the view that no appeal lay and another Bench took the view that no revision lay, thus holding that the appellants had no remedy at all. This is, however, not a correct legal position, as envisaged by the provisions of the Code.

6. For these reasons, therefore, we allow the appeal and remand the case to the High Court. The High Court will convert the appeal into revision and dispose of the revision in accordance with law. The appellants will continue on bail.

7. Parties to appear before the High Court on July 27, 1981.

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