

State of Assam

Vs

Abdul Halim

Criminal Appeal Nos. 74 of 1991

(S. R. Pandian, Smt. M. S.Fathima Beevi JJ)

21.04.1992

JUDGEMENT

1. It is a criminal appeal arising out of an order passed by a Division Bench of the High Court of Gauhati dismissing the reference made by the Sessions Judge under Section 395 of the Code of Criminal Procedure. The brief facts of the case which led to this appeal are as follows:

2. The Sessions Judge of Nawagaon, during the trial of a murder case in Sessions Case No. 18(N)/74 exercising the powers conferred under Section 319 of the Code of Criminal Procedure directed the five respondents herein to be tried together with four other original accused already committed by the Magistrate to take their trial under Section 302 read with Sec. 34, IPC and also issued non-bailable warrants against these respondents.

3. The respondents approached the High Court by filing a Criminal Revision Case No. 155/78 challenging the order of the Sessions Judge passed under Section 319 of the Code of Criminal Procedure. The learned single Judge of the High Court allowed the revision holding:

"I am, therefore, of the opinion that Section 319(1), as it is worded, has no application to Sessions trials so as to override Sec. 193, Cr. P. C. "

4. The learned single Judge, thus quashed the order of the Sessions Judge impleading the respondents as accused and also the nonbailable warrants issued against them and directed the Sessions Judge to proceed against the original accused. After the matter went back, the Sessions Judge made a reference before the High Court under Section 395, Cr. P. C. bringing to the notice of the High Court that the order of the learned single Judge was contrary to the decision of the Supreme Court in *Joginder Singh v. State of Punjab*, AIR 1979 SC 339: (1979) 2 SCR 306. The Division Bench though expressed its opinion that in view of the judgment rendered by this Court in *Joginder Singh's* case, the decision given by the learned single Judge of that Court in the criminal revision is not good law, however, rejected the reference holding that once the judgment has been pronounced by the High Court either in exercise of its appellate or revisional jurisdiction, no review or revision can be entertained against that judgment as there is no provision in the Code which would enable the High Court to review the same or to exercise the revisional jurisdiction. However, the High Court has granted leave to appeal before this Court under Art. 134(')(c) of the Constitution of India.

5. The principles of law underlying Section 319 of the Code is well settled by this Court and,

therefore, that question does not arise for consideration before us. Though the Division Bench of the High Court has rejected the reference on the ground that it has no jurisdiction to quash the order of the learned single Judge, we by invoking our inherent jurisdiction, quash that order of the learned single Judge made in Criminal Revision Case No. 155/78 dated 12-12-78.

6. The next question is whether these five respondents should be asked to face the trial at this length of time. The occurrence should have taken place before 1974 since the order of the Sessions Judge is dated 23-9-74. In other words, it was 18 years ago this occurrence had happened..

7. None of the counsel appearing for the parties before us, is in a position to inform this Court as to the stage or result of the Sessions case after the reference has been rejected by the Division Bench of the High Court. Be that as it may, though we have quashed the order of the learned single Judge, we feel that the respondents at this length of time shall not be directed to face the trial of the Sessions case. The appeal is allowed subject to the direction not to proceed against the respondents as indicated above.

Order accordingly.

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