

Kishan Swaroop

Vs

Govt. of NCT of Delhi

Criminal Appeal No. 882 of 1997

(M. K. Mukherjee, K. T. Thomas JJ)

22.09.1997

ORDER

1. Leave granted. Heard the learned counsel for the parties.
2. On a report lodged by the appellant with the Sadar Bazar Police Station, Delhi a case was registered against three persons. After police submitted charge-sheet (challan) against them they stood their trial for offences punishable under Sections 381 and 411 of the Indian Penal Code. The trial ultimately ended in their acquittal and aggrieved thereby the appellant filed a revision petition in the Delhi High Court. At the time of hearing of the petition the High Court posed the question whether the appellant was required to obtain permission from the Public Prosecutor to file such a petition and relying upon the judgment of this Court in K. Chinnaswamy Reddy v. State of A.P. and some judgments of the High Courts, it answered the same in the affirmative and dismissed the revision petition without prejudice to the appellant's right to approach it afresh after obtaining the requisite permission. The above order is under challenge in this appeal.
3. From the impugned judgment we find that the High Court has referred to the provisions of Sections 378 and 210 of the Code of Criminal Procedure to conclude that it was the primary responsibility of the State to file appeal/revision and therefore no criminal revision in respect of an order which is appealable at the instance of the State could/should be entertained without the requisite permission of the Public Prosecutor. In drawing the above inference the High Court failed to notice that if the Code of Criminal Procedure did not empower a private party to file a revision petition against an order of acquittal passed in a case instituted on a police report a formal permission of the Public Prosecutor would not entitle him to do so. To put it differently, a Public Prosecutor cannot vest a private party with a right which it has not got under the Code.
4. In dealing with the revision powers of the High Court vis-a-vis the right of a private party to move in revision against an order of acquittal passed in a case instituted upon a police report, this Court observed in Chinnaswamy Reddy (on which judgment the High Court relied) as under :

"It is true that it is open to a High Court in revision to set aside an order of acquittal even at the instance of private parties, though the State may not have thought fit to appeal; but this jurisdiction should in our opinion be exercised by the High Court only in exceptional cases, when there is some glaring defect in the procedure or there is a manifest error on a point of law and consequently there has been a flagrant miscarriage of justice."
5. In view of the earlier discussion of ours and the abovequoted observations of this Court we

unhesitatingly quash the impugned order and allow this appeal.