SUPREME COURT OF INDIA

Thankappan Nadar

Vs.

Gopala Krishnan

(M Shah, B Singh and H Sema JJ.)

30.04.2002

ORDER

1. Leave granted.

2. This appeal is filed against the judgment and order dated 18th July, 2001 passed by the High Court of Kerala in Crl. R.P. No. 62 of 1994 allowing the revision application filed by PW1 de facto complainant.

3. In the present case, the principal assistant sessions judge, Thiruvananthapuram by his judgment and order dated 18th January, 1992, convicted accused nos. 1 to 11 and sentenced them for the offences under sections 143, 147, 148 and 307 read with Section 149 IPC. The sessions judge, Thiruvananthapuram, after appreciating the evidence allowed the criminal appeal No. 24 of 1992 and acquitted the accused for the offences for which they were charged. In revision application filed by PW1- defacto complainant, the High Court set aside the order of sessions judge. Hence, this appeal.

4. Mr. U.R. Lalit, learned senior counsel appearing on behalf of the appellants submitted that the order passed by the High Court is, on the face of it, illegal and erroneous as the High Court has exceeded its revisional jurisdiction conferred under Section 401 of the Code of Criminal Procedure. It is his submission that it is well settled law that High Court can exercise/invoke its revisional jurisdiction only in exceptional cases, where there is manifest illegality or gross miscarriage of justice. For this purpose, he relied upon various judgments. It is his contention that in the present case the High Court has only re-appreciated the evidence and arrived at the conclusion that it is not a fit case for acquitting the accused. For this purpose, the High Court mainly relied upon the evidence of the injured witness. No doubt, finally the High Court remitted the matter to the trial court for deciding the case afresh. But it is his submission that the appreciation of evidence was without jurisdiction as there was no manifest illegality nor there was any glaring defect in the procedure followed by the trial court.

5. As against this, learned counsel for respondent No. 1 - victim submitted that for one or the other reason, if the state government does not prefer appeal in such serious cases, the High

Court has ample jurisdiction to interfere with the judgment and order passed by the appellant court. It is his submission that for exercise of revisional jurisdiction there is no limitation.

6. In a revision application filed by the de facto complainant against the acquittal order, the court's jurisdiction under Section 397 read with Section 401 of the Cr.P.C. is limited. The law on the subject is well settled. Instead of referring to various judgments, we would only refer to few decisions rendered by this Court. In Akalu Ahir and Others v. Ramdeo Ram , this Court has (in para 8) observed thus:

> "This Court however, by way of illustration, indicated the following categories of cases which would justify the High Court in interfering with a finding of acquittal in revision:
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> (i) Where the trial court has no jurisdiction to try the case, but has still acquitted the accused;
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> (ii) Where the trial court has wrongly, shut out evidence which the prosecution wished to produce;
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> (iii) Where the appellate court has wrongly held the evidence which was admitted by the trial court to be inadmissible;
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> (iv) Where the material evidence has been overlooked only (either) by the trial court or by the appellate court;
> And
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> (v) Where the acquittal is based on the compounding of the offence which is invalid under the law. These categories were, however, merely illustrative and it was clarified that other cases of similar nature can also be properly held to be of exceptional nature where the High Court can justifiably interfere with the order of the acquittal."
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> The Court further observed:
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> "No doubt, the appraisal of evidence by the trial judge in the case in hand is not perfect or free from flaw and a court of appeal may well have felt justified in disagreeing with its conclusion, but from this it does not follow that on revision by a private complainant, the High Court is entitled to reappraise the evidence for itself as if it is acting as a court of appeal and then order a retrial. It is unfortunate that a serious offence inspired by rivalry and jealousy in the matter of election to the office of village Mukhia, should go unpunished. But that can scarcely be a valid ground for ignoring or for not strictly following the law as enunciated by this Court. (Emphasis added)

7. In our view, the emphasised portion of the aforesaid judgment is applicable in the present case. It is unfortunate that such a serious offence inspired by rivalry in the matter of election

should go unpunished. However, that would not be a valid ground for ignoring or for not strictly following the law as enunciated by this Court, which does not empower the court exercising the revisional jurisdiction to re-appreciate the evidence.

8. In Vimal Singh v. Khuman Singh and Another , this Court after considering various decisions, observed as under:

> "Coming to the ambit of power of the High Court under Section 401 of the Code, the High Court in its revisional power does not ordinarily interfere with judgments of acquittal passed by the trial court unless there has been manifest error of law or procedure. The interference with the order of acquittal passed by the trial court is limited only to exceptional cases when it Is found that the order under revision suffers from glaring illegality or has caused miscarriage of justice or when it is found that the trial court has no jurisdiction to try the case or where the trial court has illegally shut out the evidence which otherwise ought to have been considered or where the material evidence which clinches the issue has been overlooked. These are the instances where the High Court would be justified in interfering with the order of acquittal. Sub-section (3) of Section 401 mandates that the High Court shall not convert a finding of acquittal into one of conviction. Thus, the High Court would not be justified in substituting an order of acquittal into one of conviction even if it is convinced that the accused deserves conviction. No doubt, the High Court in exercise of its revisional power can set aside an order of acquittal if it comes within the ambit of exceptional cases enumerated above, but it cannot convert an order of acquittal into an order of conviction. The only course left to the High Court in suchexceptional cases is to order retrial."

9. Same is the view taken by this Courtb in *Logendra Nath Jha and Others v. Polaital Biswas*[1], K. Chinnaswamy Reddy v. State of A.P. , Mahendra Pratap Singh v. Sarju Singh , Pakalapathi Narayana Gajapathi Raju and Others v. Bonapalli Peda Appadu and Others and Ayodhya Dube and Others v. Ram Sumer Singh .

10. In the present case also, the High Court has not found any procedural illegality or manifest error of law in the order passed by the sessions judge. The High Court has merely re-appreciated the evidence and arrived at the conclusion that there was no reason not to rely upon the injured witnesses PW1, PW2 and PW4 and that when there is an attack by a large group of people armed with lethal weapons and when they belong to an organised group like RSS, the people of the locality may be terrorised and might be unwilling to testify even if they had actually seen the occurrence. The High Court observed that the victims in the case no doubt belong to the rival party, but that does not render their evidence, interested or partisan and thereafter set aside the acquittal order passed in appeal by the sessions judge and emitted it for fresh hearing and disposal by observing that court would decide the matter unhampered by any of the observations contained in the order. From the findings recorded by the High Court, it is difficult to hold that there was any manifest error of law or procedure. It is nobody's case that the appellate court has shut out or has overlooked the evidence which clinches the issue. The High Court has only re-appreciated the entire evidence and has taken

contrary view for setting aside the acquittal order. This, in our view, is not permissible while exercising the revisional jurisdiction at the instance of de facio complainant against the order of acquittal.

11. In the result, the appeal is allowed, the impugned judgment and order passed by the High Court is set aside and order passed by the sessions judge in criminal appeal No. 24 of 1992 is restored.

[1]*1951 SCR 676*