

SUPREME COURT OF INDIA

Netraj Singh

Vs.

State of M.P.

M.P.(Crl)No.10384/2006

(Dr.Arijit Pasayat and R.V. Raveendran,JJ.,)

22.03.2007

JUDGMENT

Dr.Arijit Pasayat, J.,

1. Challenge in this appeal is to the judgment rendered by a Division Bench of the Madhya Pradesh High Court reversing the order of acquittal passed by the trial Judge i.e. learned Additional Sessions Judge, Narsinghpur. Appellant was tried for alleged commission of offences punishable under Section 302 read with Section 149 of the Indian Penal Code, 1860 (in short the 'IPC'). The trial Court found the evidence to be inadequate and held the accused-appellant not guilty and accordingly directed the acquittal.

2. The State preferred an appeal questioning the said order of acquittal. It appears that the matter was listed for hearing on 1.5.2006. There was no appearance on behalf of the present appellant who was the respondent in the appeal before the High Court when the matter was taken up for final hearing. The High Court proceeded to hear the appeal in the absence of learned counsel and reversed the order of acquittal and held the appellant guilty of charged offences.

3. It is the stand of learned counsel for the appellant that during the pendency of the appeal the appellant filed an application for permission to change the counsel and sought permission to engage one Mr. Ashutosh Singh, Advocate to appear on his behalf in place of Mr. Anil Nima who was earlier appearing at the time of hearing. By order dated 31.1.2005 the application was allowed and the Court granted permission to Mr. Ashutosh Singh to appear on behalf of the appellant in place of earlier counsel. But in the cause list for the concerned day in respect of the appeal, the name of earlier counsel appeared. According to learned counsel for the appellant in view of the aforesaid position, the appellant was unrepresented. Learned counsel for the respondent did not dispute the factual position as stated by the appellant.

4. Since the name of learned counsel who had been permitted to appear on behalf of the present appellant was not reflected in the cause list, obviously the appellant has been

prejudiced. This is a case where the order of acquittal passed in favour of the appellant has been reversed by the impugned judgment of the High Court.

5. In the aforesaid circumstances, we set aside the order of the High Court and remit the matter for fresh consideration.

6. To avoid unnecessary delay, let the parties appear before the High Court on 13th April, 2007 so that appropriate orders can be passed by the concerned bench. The name of Mr. Ashutosh Singh who was permitted to appear on behalf of the present appellant by order dated 31.1.2005 shall be indicated in the cause list and not the name of learned counsel who was earlier appearing. We make it clear that by remitting the matter to the High Court for fresh consideration we have not expressed any opinion on the merits of the case.

7. The appeal is allowed to the aforesaid extent.