

ORISSA HIGH COURT

Namdeo Sindhi

Vs

State (Orissa)

Criminal Revn. No. 207 of 1956

(Narasimham, C.J.)

03.05.1957

ORDER

Narasimham, C.J.

1. This is a petition to revise the appellate judgment of the Sessions Judge of Sambalpur, maintaining the conviction of the petitioners under Section 323, I. P. C., and the substantive sentence of imprisonment passed on them by a First Class Magistrate of Sambalpur. The revision petition was put up before me for admission on the 28th September, 1956 and after hearing Mr. Chatterji for the petitioners I passed the following order :

"This revision is admitted so far as petitioner Lachman Sindhi is concerned on the question of sentence only. He will continue on the same bail.

The revision is dismissed in respect of petitioners Nam Deo Sindhi and Puranmal Sindhi. Immediate steps should be taken to commit these two petitioners to jail to serve out their sentences."

2. The charge against the three petitioners was that on account of previous grudge they, on the 30th September, 1955, severely assaulted one Sardar Balbir Singh, Travelling Ticket Examiner on the South Eastern Railway while he was proceeding along Jharsuguda bazar. The motive for this dastardly attack was said to be his action in charging petitioner No. 1 Namdeo Sindhi with penalty for having travelled in the train without a ticket on a previous occasion. A knife was also said to have been used by the said Namdeo Sindhi. The trial Court thought that a substantive sentence of imprisonment was necessary in a case of this type and that, as Namdeo Sindhi was the principal offender, he should be given a more severe sentence than the other two petitioners. The appellate Court fully agreed with the trial Court as regards the adequacy of the sentence on all the three petitioners.

3. The revision petition of Namdeo Sindhi and Puranmal Sindhi was summarily dismissed by me on the 28th September, 1956, and the revision petition of Lachman Sindhi alone was admitted on the question of sentence, but at the time of the hearing of the petition Mr. Chatterji on his behalf

submitted that the order of summary dismissal of the petition as against Namdeo Sindhi and Puranmal Sindhi may be reviewed by me because the parties had settled their dispute amicably and the injured person, Sardar Balbir Singh, had compounded the offence prior to the 28th September, 1956. An affidavit sworn by Balbir Singh dated the 3rd December, 1956, was also filed in this Court from which it appears that sometime in the third week of September, 1956, through the intervention of third parties, he had compounded the offence. He also appeared before this Court and admitted his signature in the petition, and said that he had settled the dispute. Mr. Chatterji submitted that when he filed this revision petition on the 28th September, 1956 he was not aware of the fact that a few days before that date the offence had been lawfully compounded and that this was a good ground for this Court to review its order dated the 28th September, 1956.

4. Counsel for the both sides were heard on the question as to whether this Court has the Power to review its previous order summarily dismissing the criminal revision petition in the light of new facts placed before it subsequently.

5. Mr. Chatterji urged that the summary dismissal of a criminal revision petition by the High Court is not a 'judgment' within the meaning of Section 369, Criminal Procedure Code, nor is it a 'judgment or order of an appellate Court' for the purpose of Section 430 of that Code and consequently the finality of the 'judgments' or orders referred to in those two Sections has no application. Hence, according to him, the inherent power of the Court under Section 561A, Criminal Procedure Code, may be invoked, especially in a case of this type where, on the admitted facts, it is clear that the offence has been lawfully compounded prior to the date of summary dismissal of the revision petition. According to Mr. Chatterji, the lawful compounding of the offence resulted in the acquittal of the three petitioners prior to the 28th September, 1956, and though this fact was not brought to the notice of the Court on that date, the conviction cannot legally stand after the date of composition and this was a good ground for this Court to exercise its inherent jurisdiction under Section 561A, Criminal Procedure Code. He relied on a decision of the Madhya Bharat High Court reported in *Bhagwan Das Babulal v. State*¹, where after a summary dismissal of the revision petition that High Court interfered and passed an order under Section 562, Criminal Procedure Code, in lieu of the sentence passed by the trial Court. Mr. Chatterji also relied on *Sriram v. Emperor*², where notwithstanding the dismissal of a criminal revision petition the High Court interfered under Section 561-A, Criminal Procedure Code, with the order of the lower Court where it appeared that a mandatory provision of law was overlooked.

6. I think the correctness of these decisions is open to considerable doubt in view of the recent decision of the Supreme Court in *U. J. S. Chopra v. State of Bombay*³. It is true that the facts on which that decision was based were slightly different. There the question for consideration was whether after the summary dismissal of an appeal the High Court could examine the case on merits once again when the State files a petition for enhancement of the sentence and the accused claims the right under sub-section (6) of Section 439, Criminal Procedure Code, to challenge the conviction. While answering this question in the affirmative their Lordships of the Supreme Court have discussed the effect of the summary dismissal of a criminal revision petition by the High Court and the circumstances under which such an order of summary dismissal can be reviewed. They have made it absolutely clear that though the order of dismissal of a criminal revision petition will not be a judgment within the meaning of Section 369, Criminal Procedure

Code, nor will such an order be controlled by Section 430, Criminal Procedure Code, which applies only to appeals, yet finality attaches to that order, and it is not open to the same High Court to review or alter the same. Thus Das J., (as he then was) observed at page 644 of the aforesaid decision :

"The summary dismissal of an appeal or revision by the accused, with or without hearing him or his Pleader, but without issuing notice to the respondent, is, so far as the accused is concerned, a judgment of conviction and confirmation of his sentence, and he can no longer initiate a revision petition against his conviction and sentence."

Similarly, Bhagwati J. though differing from Das J. in other respects, fully agreed with this view (at page 650) in the following terms :

"An order dismissing the appeal or criminal revision summarily or in limine would no doubt be a final order of the High Court not subject to review or revision even by the High Court itself, but would not tantamount to a judgment replacing that of the lower Court. The convicted person would be bound by that order and would not be able to present another petition of appeal or an application for criminal revision challenging the conviction or sentence passed upon him by the lower Court."

Doubtless Their Lordships held that this would not preclude the State from applying for enhancement of the sentence and on such an application being made it is open to the convicted person to show cause against his conviction in exercise of a right, expressly conferred by sub-section (6) of Section 439, Criminal Procedure Code.

7. These weighty observations of their Lordships of the Supreme Court which are clearly binding on me are, I think, sufficient to conclude the matter. My order dated 28th September, 1956 had the effect of confirming the conviction and sentence passed on petitioners Namdeo Sindhi and Puranmal Sindhi, and it is not open to this Court to review or alter that order merely because it has subsequently come to light that prior to that date the parties had lawfully compounded the offence. To allow such a review would be clearly against the principle of finality of orders of dismissal passed by the High Court. The petitioners are themselves to blame for not having apprised their Advocate of all the material facts.

8. Mr. Chatterji also relied on a recent decision of the Patna High Court reported in *Ramautar v. State of Bihar*^A, where, after discussing the aforesaid Supreme Court decision, that Court held that when a criminal revision petition is dismissed for default, the High Court has the inherent power, under Section 561-A, Criminal Procedure Code, to pass an order for restoration and re-hearing of the revision petition for the ends of justice in appropriate cases. But this decision is clearly distinguishable. The dismissal of a criminal revision for default is not the same as the summary dismissal of a criminal revision after hearing the Advocate for the petitioner. Where a revision is dismissed for default it may be said, with some justification, that neither sub-section (1) nor sub-section (2) of Section 439, Criminal Procedure Code, has been complied with and the order of dismissal is not a valid order under that Section. But when a revision is dismissed summarily after hearing the Advocate for the petitioner (as happened in the present case), it is a valid order under that Section and by virtue of the aforesaid Supreme Court decision AIR 1955

SC 633. it is final and not subject to review or alteration by the same High Court. I do not think therefore that the Patna decision is sufficient authority for me to justify a review of my order dated the 28th September 1956.

9. The case of petitioner Lachman Sindhi may now be considered. It is true that his revision petition was admitted on the question of sentence only. He is said to be a boy aged 17 years. But as there was no final order summarily dismissing his revision petition, it is open to Mr. Chatterji to show that on account of the lawful composition of the offence there can be no legally subsisting conviction and sentence at present. The offence of which he was charged namely, Section 323, I. P. C., is lawfully compoundable without the permission of the Court, and from the affidavit of the victim of the assault, namely Sardar Birbal Singh, it is clear that the offence was compounded sometime in the third week of September, 1956 and such composition has the effect of acquittal and consequently the conviction and sentence passed on this petitioner cannot subsist. Section 345 (5) (A), Criminal Procedure Code, expressly allows such a composition even at the stage of filing a criminal revision in the High Court. I would, therefore, allow the revision petition of Lachman Sindhi, set aside his conviction and sentence, and acquit him under Section 345, Criminal Procedure Code

10. The prayer of Namdeo Sindhi and Purnamal Sindhi for review of my order dated the 2Eth September, 1956 is rejected. They should surrender to their bail bonds to serve out the unexpired portion of their sentences. It is doubtless open to the State Government to remit a portion of their sentences if so advised.

The revision is thus allowed in part.

Revision allowed.

Cases Referred.

¹ AIR 1954 Mad Bha 10

² AIR 1948 All 106

³ AIR 1955 SC 633

⁴ AIR 1957 Pat 33