

Dulan Dayal Singh Vs. Prasadi and ors.

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Court : Allahabad

Decided On : Feb-07-1956

Reported in : AIR1956All478; 1956CriLJ968

Judge : Raghubar Dayal and ;James, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 417(3); Code of Criminal Procedure (CrPC) (Amendment) Act, 1955 - Sections 116; [Code of Civil Procedure \(CPC\) , 1908](#)

Appeal No. : Misc. Leave Appln. No. 2 of 1956

Appellant : Dulan Dayal Singh

Respondent : Prasadi and ors.

Advocate for Pet/Ap. : P.C. Chaturvedi and ;J. Rathore, Advs.

Judgement :

Raghubar Dayal, J.

1. This is an application under Section 417, Sub-section (3) Criminal P. C., as in force from 1-1-1956, in view of the Central Government Notification No. 1/11/ 55- Judl (R), dated 1-12-1955, published in India Gazette, dated 10-12-1955.

2. Dulan Dayal Singh's complaint was dismissed and the accused were acquitted of the various offences by a Magistrate I Class Faizabad, on 31-10-1955. He filed this application for leave to appeal on 25-1-1956. The application would be in time in case the applicant was given the benefit of Section 12, Limitation Act.

3. The learned single Judge referred a point for decision to this Bench, and the point formulated by him is:

'Whether the right given by Section 417(3), Cr. P. C., would apply to cases filed in which the proceedings in the Magistrate's Court are started before the Act came into force or would apply only to those cases which are initiated after the coming in of this Act.'

Another application under Section 417(3), Criminal P. C., instituted by Kedar Nath Bhargava has also been referred to this Bench by the learned single Judge. Kedar Nath Bhargava seeks leave to appeal against an order of acquittal, dated 17-1-1956, in the case instituted on his complaint prior to 1-1-1956.

4. Section 417, Criminal P. C., as amended, is:

'417. (1) Subject to the provisions of Sub-section (5), the State Government may, in any case, direct the-Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court.

2. If such an order of acquittal is passed in any case in which the offence has been investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 (35 of 1946), the Central Government may also direct the Public Prosecutor to present an appeal to the High Court from the order of acquittal.

3. If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.

4. No application under Sub-section (3) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of sixty days from the date of that order of acquittal.

4a. If, in any case, the application under Sub- section (3) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under Sub-section (1).'

5. The relevant portions of Section 116, Code of Criminal Procedure (Amendment) Act, 1955 (No. XXVI of 1955) are:

'Notwithstanding that all or any of the provisions of this Act have come into force in any State, --

(a)

(b)

(c)

(d)

but, save as aforesaid, the provisions of this Act and the amendments made thereby shall apply to all proceedings instituted after the commencement of this Act and also to all proceedings pending in any Criminal Court on the date of such commencement.'

The contention for Dulan Dayal Singh is that he has instituted the application for leave to appeal subsequent to the enforcement of the Amending Act and that therefore the Amended Act would apply to it as it applies to all proceedings instituted after the commencement of that Act. The contention does not appeal to us as sound. Proceedings instituted by a person who is entitled to institute them will be governed by the provisions of the Amending Act in case they are instituted subsequent to its enforcement.

It is a condition precedent for the institution of a proceeding that the person

concerned should have a right to institute it. Section 116 of Act 26 of 1955 does not give any right to file an application for leave to appeal against an order of acquittal in cases instituted on private complaint. Dulan Dayal Singh cannot, therefore, rely on the provisions of Section 116 of Act 26 of 1955 for establishing a right to apply for leave to appeal against the order of acquittal.

The right to institute such an application is given by Section 417, Sub-section (3). Ordinarily that right will be available to such complainants whose cases were instituted after the enforcement of Act 26 of 1955. Such a right can also be available to such complainants whose complaints were instituted prior to the enforcement of Act 26 of 1955 but were disposed of by the trial Court subsequent to the enforcement of that Act in view of the provisions of Section 116 of that Act providing for the application of the amendments to proceedings pending in any criminal court on the date of the commencement of that Act.

The accused proceeded against on Dulan Dayal Singh's complaint were acquitted in October 1955. They had a right to the non-disturbance of that acquittal order subject to orders passed on a State appeal against that acquittal or to orders passed in the exercise of revisional jurisdiction by this Court. The complainant had no vested right to appeal against the order of acquittal on 31-10-1955, when the acquittal order was passed.

The Amending Act does not provide this right to apply for leave to appeal for such complainants also whose complaints had ended in acquittal of the accused prior to the coming into force of the Amending Act 26 of 1955. The case is fully covered by the Privy Council decision in 'Delhi Cloth and General Mills Co. Ltd. v. Income-tax Commr., Delhi'. In that case appeals were sought to be filed by virtue of the provisions of an Act which came into force on 1-4-1926, though the orders appealed against had been passed in January 1926. Their Lordships observed at page 244:

'The principle which their Lordships must apply in dealing with this matter has been authoritatively enunciated by the Board in the 'Colonial Sugar Refining Co. v. Irving', 1905 AC 369 (B)., where it is in effect laid down that, while provisions of a statute dealing merely with matters of procedure may properly, unless that construction be textually inadmissible, have retrospective effect attributed to them, provisions which touch a right in existence at the passing of the statute are not to be applied retrospectively in the absence of express enactment or necessary intendment.

Their Lordships can have no doubt that provisions which, if applied retrospectively, would deprive of their existing finality orders, which when the statute came into force, were final, are provisions which touch existing rights. Accordingly, if the section now in question is to apply to orders final at the date when it came into force, it must be clearly so provided. Their Lordships cannot find in the section even an indication to that effect'.

There is no indication in Section 417, Sub-section (3) that such a right is given to a complainant who had no such right when the order of acquittal had been passed. We have already indicated that the order of acquittal was final subject to orders passed in two contingencies which did not include the contingency of an appeal by the complainant. We are, therefore, of opinion that Dulan Dayal Singh cannot apply for leave to appeal.

6. It was urged for Dulan Dayal Singh that he is not exercising any new right which could be said to have been given to him under Section 417 (3), Criminal P. C., but he was filing this appeal just as an agent on behalf of the State which certainly had a right to appeal against the order of acquittal.

Sub-section (1) of Section 417, Criminal P. C. retains the right of the State to file an appeal against any acquittal subject to the provisions of Sub-section (5) of that section, and Sub-section (5) provides that in a case an application for permission to appeal instituted by a private complainant is refused no appeal from that order of acquittal would lie under Sub-section (1) on behalf of the State. We do not think that the right given to the complainant under Sub-section (3) is a mere procedural right in so far that the complainant is just acting on behalf of the State.

7. Coming to the question actually referred and pertinent to the other application by Kedar Nath Bhargava we are of opinion that a complainant whose complaint is instituted prior to the enforcement of the Amending Act, No. 26 of 1955, but ends in acquittal after the enforcement of that Act, has a right to apply for leave to appeal under Section 417(3), Criminal P. C. as amended.

Section 116 of Act No. 26 of 1955 provides that the amendments made by that Act would apply to all proceedings pending in any criminal Court on the date of commencement of that Act. This means that the amended section 417 applies to the cases which were pending on the enforcement of that Act and that, therefore, any right which is conferred under the amendments would be available to the parties concerned even though such a right was not available to them prior to the amendments that is, on the date of the institution of the complaints.

The Amending Act, in our opinion, expressly provides for the applicability of the provisions of the amended Act to pending proceedings and, therefore the application of Kedar Nath Bhargava comes within the exceptions contemplated in the Privy Council case already referred to and the principles laid down by their Lordships of the Supreme Court in 'Hoosein Kasam Dada (India) Ltd. v. State of Madhya Pradesh : 1983(13)ELT1277(SC) .

8. Our answer to the question referred is the right given by Section 417(3), Criminal P. C. as amended can be availed of by a complainant whose complaint, though filed prior to the commencement of Act No. 26 of 1955, ended in acquittal subsequent to the enforcement of that Act, but is not available to a complainant whose complaint had ended in acquittal prior to the enforcement of that Act.

9. We direct that the two applications be laid before the learned Single Judge for further orders.