State of Madhya Pradesh Vs. Hukumsingh Ramprasad and ors.

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Court : Madhya Pradesh

Decided On : Jul-29-1969

Reported in : AIR1970MP26; 1970CriLJ235; 1969MPLJ728

Judge : P.K. Tare, ;K.L. Pandey and ;Surajbhan, JJ.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 345(6), 369, 403 and 430; Indian Penal Code (IPC) - Sections 148, 149, 301, 307, 323, 324 and 325

Appeal No. : Criminal Appeal No. 84 of 1965

Appellant : State of Madhya Pradesh

Respondent : Hukumsingh Ramprasad and ors.

Advocate for Def. : Rajendra Singh, ;S.C. Dutt and ;Surendra Singh, Advs.

Advocate for Pet/Ap. : M.L. Chansoria, Dy. Govt. Adv.

Judgement :

Tare, J.

1. The following questions have been referred to this Full Bench by a Division Bench of this Court by order, dated 3-3-1966:--

(1) Does an order of acquittal under Section 345(6), Criminal Procedure Code, passed on an application for leave to compound an offence under Section 323, Penal Code of which the accused was convicted by the trial Court, bar a State appeal against his acquittal of the offence under Section 307 of the Penal Code, even when such order under Section 345(6), Criminal Procedure Code, was passed without notice to the State?

(2) Does such an order of acquittal bar a State appeal from his acquittal under Sections 148 and 149, Penal Code?

(3) Does such an order of acquittal bar a State appeal from an order of acquittal of a co-accused under Sections 307, 325,324, 148 and 149, Penal Code? If so, to what extent?

2. The said questions arose under the following circumstances: In Sessions Trial No. 90 of 1964 of the Court of Additional Sessions Judge, Vidisha, 10 persons in all by name Hukumsingh, Mehtab, Lalsingh, Moharsingh, Halku, Raghuwarprasad, Laxman, Ramnarayan, Balaprasad and Shivcharan were prosecuted for alleged offences under

Sections 307,325, 324, 148 and 149, Indian Penal Code in connection with an incident that took place on 13-10-1963 when the accusedwere said to have committed the said offences. The trial Judge acquitted the other 6 accused and found Hukumsingh, Moharsingh, Halku and Mehtab guilty of the offence under Section 323, Indian Penal Code and sentenced them to rigorous imprisonment for 3 months.

3. Hukumsingh and 3 others who had been convicted by the trial Judge filed Criminal Appeal No. 17 of 1965 in the High Court. According to the High Court Rules, that appeal went before a Single Bench. In that appeal, an application was made for composition of the offence under Section 323, I.P.C. and by order, dated 16-2-1965, permission was granted to compound the offence and consequently, those 4 accused were acquitted under Section 345(6), Criminal Procedure Code. In that case although notice had been ordered to be issued to the State, the order in question came to be passed before the interim, date fixed by the office for appearance of the other side i.e. 23-2-1965. Thus, the State had no opportunity to put in appearance in that case as the offence had already been allowed to be compounded on 16-2-1965. It is pertinent to note that the application did not bear the signatures of the victims who might have been considered to be complainants, nor it was made on their behalf, nor had anybody signed on their behalf. However, it appears as per the order of the learned Single Judge that complainants had appeared before him.

4. Thereafter on 19-4-1965, the State filed the present appeal i.e. Criminal Appeal No. 84 of 1965 against all the 10 accused claiming that they be convicted under Sections 307, 325, 324 read with Sections 149 and 148, Indian Penal Code. Therefore, on behalf of the accused an objection was raised that the present appeal filed by the State was not tenable as the order, dated 16-2-1965, in Criminal Appeal No. 17 of 1965 filed by 4 accused had become final and the right of the State to file an appeal was lost.

5. Finality to a judgment of a criminal Court has been conferred by Section 369, Criminal Procedure Code which allows merely accidental slips or clerical errors to be corrected and subject to that power, a judgment in a criminal case cannot be altered by that Court. Similarly, Section 430, Criminal Procedure Code makes the appellate judgment in a criminal case final except in cases covered by Section 417, Criminal Procedure Code or Chapter XXXII, Criminal Procedure Code. In some types of cases. Section 403, Criminal Procedure Code, debarring a second trial, may also be relevant. This has been a debatable question in the past on which there was a difference of opinion in some High Courts. In Sailani v. Emperor, AIR 1914 All 191(2), two persons were tried for causing simple hurt to another personand both the accused were acquitted because of compounding of the offence. Subsequently, when the injured person died, the Magistrate committed one of the accused to stand his trial for an offence under Section 304, Indian Penal Code and discharged the other accused. The Sessions Judge on perusal of the record directed the commitment of the discharged accused as well to stand his trial for the offence under Section 304, Indian Penal Code. The Magistrate accordingly committed the other accused to Sessions Court. It appears that the bar of Section 403, Criminal Procedure Code was pleaded by the discharged accused who had subsequently been committed to the Sessions Court. The learned Judges constituting the Division Bench held that an order of commitment could only be interfered on a question of law and as no question of law arose in that case, the commitment could not be set aside. However, it appears that the provision of Section 430, Criminal Procedure Code was not specifically advanced nor considered.

6. Thereafter, in a Full Bench case, namely, Mohammadi Gul v. Emperor, 28 Nag LR 233=(AIR 1932 Nag 121) (FB), a Full Bench of the Judicial Commissioner's Court was required to consider the instant question when Macnair, J. C. and Subhedar, A. J. C., by a majority judgment, held that a High Court would not be precluded from hearing an appeal filed by the Local Government from an acquittal, by the mere fact of its having previously decided an appeal by the accused against his conviction in the same trial for a minor offence. In that case, Niyogi, A. J. C., as he then was, expressed a contrary opinion which was approved by a Full Bench of the Madhya Bharat High Court in State v. Kalu, AIR 1952 Madh Bha 81, as also by a Full Bench of the Punjab High Court in The State v. Mansha Singh, AIR 1958 Punj 233. However, a Division Bench of the Gujarat High Court in State v. Diwanji Gardharji, AIR 1963 Guj 21, dissented from the Full Bench view of the Madhya Bharat and Punjab High Courts and accepted the majority view of the Nagpur Judicial Commissioner's Court mainly by relying on the Supreme Court case of U. J. S. Chopra v. State of Bombay, AIR 1955 SC 633. The Division Bench of the Gujarat High Court thought that the reasoning of the Supreme Court in the said case supported its own conclusions and was contrary to the reasoning and the conclusion arrived at by the Full Bench of the Punjab High Court.

7. It might have been necessary for us to examine the reasoning and the ratio decidendi of these cases but for the fact that we find that the instant question has been directly decided by their Lordshipsof the Supreme Court in an appeal arising from this State, namely, Nirbhay Singh v. State of Madhya Pradesh, Cri. Appeal No. 219 of 1966, D/- 30-10-1968 (SC). In that case, Nirbhay Singh was tried before the Court of Sessions, Ujjain in connection with the death of his mother, Bhagwanti. The Sessions Judge convicted him of the offence of culpable homicide not amounting to murder and sentenced him to rigorous imprisonment for 7 years. An appeal preferred by Nirbhay Singh from jail was summarily dismissed by the High Court on 16-3-1965. Thereafter, the State on 21-3-1965 filed an appeal against the acquittal of Nirbhay Singh of the charge of murder. The High Court in the said appeal set aside the acquittal and found Nirbhay Singh guilty of the offence of murder and, therefore, altered his sentence to one of imprisonment for life. In view of those facts, the question arose for consideration before their Lordships. Their Lordships while considering some of the cases mentioned above by us, made the following observations:--

'There is however no warrant for the argument that when an appeal preferred by a person convicted of an offence is dismissed summarily by the High Court under Section 421 of the Code of Criminal Procedure, the judgment of the trial Court gets merged in the judgment of the High Court and it cannot thereafter be modified even at the instance of any other party affected thereby, and in respect of matters which were not and could not be dealt with by the High Court when summarily dismissing the appeal. When the High Court dismisses an appeal of the person accused summarily and without notice to the State, the High Court declines thereby to entertain the grounds set up for setting aside the conviction of the accused. That judgment undoubtedly binds the accused and he cannot prefer another appeal to the High Court against the same matter in respect of which he had earlier preferred an appeal. But it is a fundamental rule of our jurisprudence that no order to the prejudice of a party may be passed by a Court, unless the party had opportunity of showing cause against the making of that order. When an appeal of a convicted person is summarily dismissed by the High Court the State has no opportunity of being heard. The judgment summarily dismissing the appeal of the accused is a

judgment given against the accused and not against the State or the complainant. If after the appeal of the accused is summarily dismissed, the State or the complainant seeks to prefer an appeal against the order of acquittal, the High Court is not prohibited by any express provision or implication arising from the scheme of the Code from entertaining the appeal. Where, however, theHigh Court issues notice to the State in an appeal by the accused against the order of conviction, and the appeal is heard and decided on the merits, all questions determined by the High Courteither expressly or by necessary implication must be deemed to be finally determined, and there is no scope for reviewing those orders in any other proceeding. The reason of the rule is not so much the principle of merger of the judgment of the trial Court into the judgment of the High Court, but that a decision rendered by the High Court after hearing the parties on a matter in dispute is not liable to be reopened between thesame parties in any subsequent enquiry.' Therefore, as per the pronouncement of their Lordships of the Supreme Court in the said case, the view as expressed by Niyogi, A.J.C. in the Nagpur Full Benchcase, 28 Nag LR 233=(AIR 1932 Nag 121) (FB), and as expressed by the Full Benches of the Madhya Bharat, AIR 1952 Madh Bha 81 (FB), and the Punjab High Courts, AIR 1958 Punj 233 (FB), would require re-examination. For the purposes of the present case, it is not necessary for us to examine the majority view of the Nagpur Judicial Commissioner's Full Bench, 28 Nag LR 233=(AIR 1932 Nag 121) (FB), which goes further than the observations of their Lordships of the Supreme Court. We would reserve our opinion on the question. Therefore, we do not think it necessary to discuss the question any further except to answer the reference in the light of the observations of their Lordships of the Supreme Court.

8. Our answers to the three questions posed are as follows:--

Question No. (1):-- No.

Question No. (2):-- No.

Question No. (3):-- No, subject to the limitations indicated by their Lordships of the Supreme Court in Cri. Appeal No. 219 of 1966, D/- 30-10-1968 (SC) (supra) where the judgment in an appeal filed by an accused after notice to the State becomes final.

9. In view of the answers given by us, let the matter be put up for decision of the appeal on merits before an appropriate Bench.