

IN THE HIGH COURT OF JUDICATURE AT PATNA

SLA No.28 of 2015

Arising Out of Complaint Case- 17 Year- 2001 Thana -null District- MUZAFFARPUR

Ram Pravesh Thakur

.... .. petitioner

Versus

1. The State of Bihar through Complainant Pramod Kumar Bihari, S.D.M. Muzaffarpur, Bihar
2. Krishna Kumar Singh, Son of Mahendra Singh, resident of Village Chhap, P.S. Paroo, Distt. Muzaffarpur.

.... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Ashok Kumar Sinha No. 3, Adv.

For the Respondent/s : Mr. S.A. Ahmad (A.P.P.)

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 27-08-2015

Heard learned counsel for the petitioner.

2. By way of filing this application under sub-section (4) of Section 378 clause 4 of the Code of Criminal Procedure (for short the 'Code'), the petitioner seeks leave to appeal against the judgment and order dated 26.02.2015 passed by learned Additional District and Sessions Judge XIth, Muzaffarpur in Criminal Revision No. 148 of 2014, whereby he has set aside the judgment and order dated 31.07.2014 passed by learned Judicial Magistrate 1st Class, Muzaffarpur in Complaint Case No. 17 of 2001 corresponding to Trial No. 2031 of 2014, by which the learned Magistrate had convicted the Opposite Party No. 2, Krishna Kumar Singh under Section 188 of the Indian Penal Code and sentenced him to pay a fine of Rs. 100/- and in default of payment of fine, to undergo a simple

imprisonment for seven days.



3. In brief, the fact of the case is that on the report of Paroo police that a breach of peace is likely to occur for construction of the house by the Opposite Party No. 2 Krishna Kumar Singh at the place of occurrence a proceeding under Section 144 of the Code was launched on 30th of June, 2000 and consequently in the said proceeding, Opposite Party No. 2 Krishna Kumar Singh and the petitioner were restrained from going upon land for making any construction for which notice was served upon them on 05.07.2000 and they were also ordered to show cause as to why rule against one or both of them be not made absolute. In spite of the service of notice, Opposite Party no. 2 went on with the construction work over the prohibited site in defiance of the prohibitory order taking the law into his hands. Later on, a petition was filed by the petitioner before the Sub-Divisional Magistrate in the proceeding under Section 144 of the code to initiate the inquiry for the said defiance of the order on which a report from the concerned police station was called for and after the submission of the said report after recording his satisfaction that the opposite party no. 2 has deliberately and knowingly violated the prohibitory order and therefore has committed an offence under the law, the Sub-Divisional Magistrate lodged a complaint before the Magistrate.

4. On the basis of said prosecution report cognizance of the offence was taken by the learned Sub-Divisional Judicial Magistrate

(West) against the Opposite Party no. 2 on 21.04.2001 and he was summoned to face trial.

5. On appearance of opposite party no. 2, the learned Magistrate explained to the accused the substance of accusation to which he pleaded not guilty and claimed to be tried. Accordingly, the trial commenced.

6. After holding the trial, the learned Magistrate convicted the accused under Section 188 of the Indian Penal Code and sentenced him in the manner indicated herein above. Against the aforesaid judgment and order recorded/reported by learned Magistrate on 31st July, 2014, the Opposite Party no. 2 preferred a revision application under Section 397 of the Code before the Court of Session.

7. After hearing the parties, the revisional Court vide its order dated 26th February, 2015 passed in Criminal Revision No. 148 of 2014 set aside the impugned judgment and order passed by learned Magistrate and allowed the revision application. Against the aforesaid order dated 26.02.2015, the present application under sub-section (4) of Section 378 has been filed.

8. In my view, the application is thoroughly misconceived. Sub-section (4) of Section 378 of the Code allows a private complainant to prefer an appeal against an order of acquittal provided the case was instituted upon complaint as defined in Section 2(d) of the Code. It does not specifically make mention of order of acquittal in original or appellate

jurisdiction by the Court subordinate to the High Court. In cases where no appeal has been provided by law or in cases where the remedy of appeal has for any reason failed to secure fair justice the Code provides remedy of revision. Revision lies both in pending and decided cases and it can be filed before a High Court or a Court of Session.

9. Under Section 376 of the Code no appeal would lie in petty cases. It reads as under:-

“376. No appeal in petty cases.

Notwithstanding anything contained in section 374, there shall be no appeal by a convicted person in any of the following cases, namely:—

(a) where a High Court passes only a sentence of imprisonment for a term not exceeding six months or of fine not exceeding one thousand rupees, or of both such imprisonment and fine;

(b) where a Court of Session or a Metropolitan Magistrate passes only a sentence of imprisonment for a term not exceeding three months or of fine not exceeding two hundred rupees, or of both such imprisonment and fine;

(c) where a Magistrate of the first class passes only a sentence of fine not exceeding one hundred rupees; or

(d) where, in a case tried summarily, a Magistrate empowered to act under section 260 passes only a sentence of fine not exceeding two hundred rupees:

Provided that an appeal may be brought against any such sentence if any other punishment is combined with it, but such sentence shall not be appealable merely on the ground—

(i) that the person convicted is ordered to furnish security to keep the peace; or

(ii) that a direction for imprisonment in default of payment of fine is included in the sentence; or

(iii) that more than one sentence of fine is passed in the case, if the total amount of fine imposed does not exceed the amount hereinbefore specified in respect of the case.”

10. In the instant case, the accused was sentenced to pay a fine of Rs. 1,000/- and in default of payment of fine to undergo imprisonment for seven days. In view of the sentence awarded to the accused by the magistrate no appeal challenging the conviction could have been filed in view of the legal bar created by Section 376 of the Code. Hence the accused preferred revision before the Sessions Court challenging the conviction.

11. Under the Code, very wide discretionary revisional powers have been conferred on the Session Court and the High Court. The object of revision is to confer upon superior criminal courts a kind of supervisory jurisdiction in order to correct miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precautions of apparent harshness of treatment which has resulted on one hand in some injury to the due maintenance of law and order, or on the other hand in some undeserved hardship to individuals.

12. The purpose of revision is to enable the revisional Court to satisfy itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed and as to the regularity of any

proceeding of inferior criminal court.

13. The revisional jurisdiction is derived from Sections 397 to 401 of the Code. Under Section 397 (1) of the Code, the High Court or any Session Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

14. Under Section 398 of the Code, the revisional Court may make an order for further enquiry. Further enquiry entails supplemental enquiry upon fresh evidence. The power under Section 398 of the Code, is not co-extensive with Section 397 of the Code but extends far wider as the record can otherwise be examined by the revisional Court without recourse to Section 397 of the Code.

15. Section 399 of the Code deals with Sessions Judge's power of revision. Under sub-section (1), the Sessions Judge in the case of any proceeding, the record of which has been called for by himself under Section 397(1), may exercise all or any of the powers which are exercisable by the High Court under Section 401(1) of the Code which

reads as follows :-

“401. In the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledge, the high Court may, in its discretion, exercise any of the powers conferred on a court of Appeal by Sections 386, 389, 390 and 391 or on a Court of Session by Section 307 and, when the judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in the manner provided by Section 392.”

16. Thus from the discussions, made hereinabove, it would be clear that the Session Court while exercising jurisdiction of revision has the same power of revision as provided in law to the High Court, whereas Section 378 (4) of the Code gives power to the complainant to file an application before the High Court seeking leave to appeal against the judgment of acquittal passed in a case arising out of complaint passed by a court subordinate to the High Court. However, it does not confer any power to the High Court to grant leave to appeal against a revisional order passed by a Court of session.

17. Section 399 (3) of the Code provides that in a case where any application for revision is made by or on behalf of any person before the Sessions Judge, no further proceeding by way of revision at the instance of such person shall be entertained by the High Court. In the present case, the revision was preferred by the accused before the Session Judge against the judgment of conviction barred by a court of Magistrate, which was allowed. Under such circumstances, a criminal revision to the

High Court against the order of the Sessions Judge at the instance of the complainant would have been maintainable but an application under Section 378 (4) of the Code at his instance cannot be entertained by this Court.

18. Considering all the relevant provisions, I am of the considered view that the remedy available to the petitioner is revision before this Court in the instant case. Consequentially the present application under Section 378 (4) of the Code filed by the petitioner is dismissed as not maintainable.

19. The petitioner will, however, be at liberty to file an appropriate revision application before this Court and the period spent by him in contesting the present proceeding would be excluded in considering the delay caused in filing the revision application.

(Ashwani Kumar Singh, J)

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