

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08-04-2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Crl.R.C. No. 1275 of 2014

Janardhanan

...Petitioner

Versus

The State

Represented by the Inspector of Police
Olakkur Police Station
Dindivanam Taluk
Villupuram District
(Crime No.153/2013)

...Respondent

Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C. against the judgment passed in S.C.No.592 of 2013 by the learned Additional Assistant Sessions Judge, Dindivanam, dated 07.08.2014, acquitting the accused on giving the benefit of doubt to the accused instead of giving honourable acquittal.

For Petitioner : Mr. K.Selvakumaraswami

For Respondent : Mr. R.Prathap Kumar
Government Advocate (Crl.side)

ORDER

The petitioner has come forward with this Criminal Revision Case seeking to expunge the remark "giving benefit of doubt" and modify the same as one of "honourable acquittal" in the judgment passed in S.C.No.592 of 2013 by the learned Additional Assistant Sessions Judge, Dindivanam District, dated 07.08.2014.

2. The case of the petitioner is that he faced trial in S.C.No. 592 of 2013 before the Additional Assistant Sessions Court, Dindivanam, for the alleged offences under Sections 294-B, 323, 324 and 307 IPC. The Trial Court found the petitioner not guilty and acquitted the petitioner by giving the benefit of doubt. Now, the grievance of the petitioner is that since all the witnesses turned hostile, the Trial Court ought to have given the petitioner honourable acquittal, instead of acquitting him giving the benefit of doubt, hence, he filed this Criminal Revision Case seeking to expunge

the remark of Trial Court "giving benefit of doubt" and modify the same as one of "honourable acquittal".

3. Today, when the matter is taken up, learned counsel appearing for the petitioner fairly submitted that as per the judgment of the Division Bench of Madurai Bench of Madras High Court reported in 2014-2-L.W.(Crl.) 683, M.Krishnan and others Vs. The State, no revision is maintainable for converting an order of acquittal passed by a Trial Court into an order of honourable acquittal. Relying on the said judgment, the learned counsel for the petitioner prayed this Court to dismiss this Criminal Revision Case as not maintainable.

4. I have heard Mr.R.Prathap Kumar, learned Government Advocate (Criminal Side) appearing for the respondent in this regard.

5. In the decision reported in 2014-2-L.W.(Crl.) 683, M.Krishnan and Others Vs. The State, the Division Bench of Madurai Bench of Madras High Court has elaborately dealt with regard to the revisional power of the High Court to convert an acquittal from "benefit of doubt" into one of "honourable acquittal" and in paragraph Nos.41 to 59, it was held as follows:-

"41. We would now take up the second question with regard to the revisional power of the High Court to convert an acquittal from 'benefit of doubt' into one of 'honourable acquittal'. All these petitions have been filed by persons who have been acquitted by the trial Court. They seek to convert their acquittal on 'benefit of doubt' as one of 'honourable acquittal'. Normally, if a person is acquitted, his acquittal can be challenged under Section 378 Cr.P.C. by the opposite party and definitely not by the acquitted accused. Section 397 of the Code empowers the High Court and the Sessions Court to call for and examine the record of a subordinate Court in order to satisfy as to the correctness, legality or propriety of any finding, sentence or order, and as to the regularity of any proceedings. As we have stated earlier, Proof beyond reasonable doubt and Benefit of doubt are not findings or sentence or order. They are just tools with which the subjective mind of the Judge undertakes a judicial tour to arrive at a finding whether the accused is guilty or not.

42. But, it is contended by Mr.K.N.Govardhanan, learned counsel for the petitioners that Section 386 of the Code is telescoped into Section 401, which speaks about the High Courts power of revision. Therefore, the learned counsel contends that in view of Section 386 (d), the revisional Court has the power to alter or reverse any order.

43. The wide range of powers conferred upon the Appellate Court under Section 386 of the Code are worth noting. The range of such powers vary, depending upon whether it is an appeal from an acquittal or an appeal from conviction or an appeal from any other order.

44. In an appeal from an order of acquittal, Section 386(a) confers the following powers upon the Appellate Court -

- (i) to reverse the order of acquittal and direct further enquiry to be made;
- (ii) to reverse the order of acquittal and direct that the accused be re-tried or committed for trial; and
- (iii) to reverse the order of acquittal and find him guilty and impose the sentence on him according to law.

45. In an appeal from a conviction, the Appellate Court has the following powers :

- (i) reverse the finding and sentence and acquit or discharge the accused;
- (ii) reverse the finding and sentence and order the accused to be re-tried by a court of competent jurisdiction;
- (iii) reverse the finding and sentence and order the accused to be committed for trial;
- (iv) alter the finding, maintaining the sentence; and
- (v) alter the nature or extent or alter both (nature and extent) of the sentence with or without altering the finding.

46. In an appeal for enhancement of the sentence, the Appellate Court has the following powers :

- (i) reverse the finding and sentence and acquit or discharge the accused;
- (ii) reverse the finding and sentence and order him to be re-tried by a Court competent to try the sentence;
- (iii) alter the finding, while maintaining the sentence; and
- (iv) alter the nature or extent or alter both so as to enhance or reduce the sentence, with or without altering the finding.

47. In an appeal from any other order, the Appellate Court has the power to alter or reverse such

order, under Clause (b). Similarly, under Clause (e), the Appellate Court has residual powers namely to make any amendment or any consequential or incidental order that may be just or proper.

48. A careful look at Clauses (a) to (e) of Section 386 shows that all of them deal only with the powers of the Appellate Court, while dealing with (a) appeals against acquittal; (b) appeals against conviction; (c) appeals for enhancement of sentence; and (d) appeals against any order. Therefore, Section 386 cannot be read in isolation. Under Section 372, no appeal shall lie from any judgment or order of a criminal court except as provided for by the Code or any other law for the time being in force. The proviso to Section 372 enables the victim alone to file an appeal against the order of acquittal. This proviso was inserted by Act V of 2009. Section 373 also provides for appeals from orders requiring security or refusal to accept or rejecting surety for keeping peace and good behaviour. Section 374 deals with appeals from conviction. Sections 375 and 376 bar appeals in cases where the accused pleads guilty and in cases, which are petty in nature. Section 377 provides for appeal by the State Government against the sentence on the ground of inadequacy. Section 378 provides for the appeal in case of acquittal.

49. Therefore, the power of revision conferred upon the High Court under Section 401(1) cannot be read in isolation from the various provisions for appeals available under Sections 372 to 380 of the Code of Criminal Procedure. Neither Section 386 nor the proviso under Section 372 enables an accused to file an appeal against his own acquittal. Unless an appeal is maintainable, the question of invocation of Clause (b) or Clause (e) of Section 386 would not arise. To put it differently, an appeal should be one, which falls under any of the categories of appeals stipulated in Sections 373 to 380, to enable the High Court to exercise the power under Section 386(d) by invoking Section 401(1). If a revision filed by an accused, who is acquitted by the Trial Court, is not maintainable either as an appeal under any of the provisions of Sections 373 to 380 or as revision under Section 397, the power under Section 401(1) read with Section 386(d) cannot be invoked. Under Sub-Section (4) of Section 401, no proceeding by way of revision can be entertained at the instance of a party, who had a right of appeal under the Code, but who did not file such appeal. Sub-Section

(5) of Section 401 empowers the High Court to treat an application for revision as a petition of appeal. But, fundamentally, a revision can be maintained only if the parameters are satisfied. As a matter of fact, the revisional jurisdiction of the High Court, while dealing with an order of acquittal passed by the Trial Court is narrower in its scope. Right from *Bansilal v. Lakshman Singh* [AIR 1986 SC 1721], up to *Johar and Others v. Mangal Prasad* [2008 CrL.J. 1627 (SC)], the Supreme Court repeatedly pointed out that the revisional power of the High Court is much more restricted in its scope and that it cannot interfere with orders of acquittal so easily. To say on the one hand that the revisional powers cannot be used to upset an order of acquittal so easily, but to entertain revisions on the other hand, for converting the so called benefit of doubt acquittals into honourable acquittals, will be to pervert the provision relating to revisional jurisdiction.

50. If we understand the revisional power of the High Court to be narrower in scope than the powers of an Appellate Court, we would realise that a Revisional Court cannot do what an Appellate Court itself cannot do. If an appeal by an acquitted person is not maintainable in law in terms of any of the provisions of Sections 373 to 380 of the Code, we do not know how a revision, which is narrower in scope than an appeal, could be maintained at the instance of such a person.

51. As pointed out by the Supreme Court in *Pranab Kumar Mithra v. State of West Bengal* [AIR 1959 SC 144], the revisional powers vested in the High Court under the Code do not create any right in the litigant, but only conserve the powers of the High Court to see that justice is done in accordance with the recognised rule of criminal jurisprudence and that the Subordinate Criminal Courts do not exceed in their jurisdiction or abuse their powers vested in them by the Code. These boundaries within which a revisional Court can function, will stand completely breached, if a revision can be entertained at the instance of an acquitted person, on the ground that the quality of his acquittal should be much more than what it is.

52. Moreover, in any case, an order of acquittal will not come within the definition of the expression 'any other order' appearing in Clause (d) of Section 386. Judgments are given under Chapter XXVII of the Code and a judgment of acquittal will not come within

the definition of the expression any other order in Section 386(d). Therefore, the revisions filed by acquitted persons, are not maintainable.

53. On the concern expressed by Mr. K. K. Ramakrishnan, learned counsel for the petitioners that there is a tendency to foist false cases on innocent persons, we need to do nothing more, than to quote the opinion of the Privy Council in *Bhuboni Sah v. The King* [AIR 1949 PC 261] wherein the Judicial Committee of the Privy Council commented:

"The tendency to include the innocent with the guilty is peculiarly prevalent in India, as Judges have noted on innumerable occasions and it is very difficult for the Court to guard against this danger. An Indian villager is seldom in a position to place cogent evidence of alibi."

54. But, repeatedly the Courts have also lamented about the failure of the Investigating Agencies to conduct a thorough and scientific investigation and also about various other factors such as the lack of adequate protective measures for witnesses, resulting in acquittal in a majority of the cases relating to heinous crimes. In *Masalati and others v. State of Uttar Pradesh* [AIR 1965 SC 202], the Supreme Court stated as follows :

"It is not unknown that where serious offences like the present are committed and a large number of accused are tried, attempts are made either to terrorise or win over prosecution witnesses."

55. It is to be noted that the concept of witnesses turning hostile is unknown to English jurisprudence, but Sir Stephens was aware of the conditions that obtain in India and hence, he drafted Section 154 of the Evidence Act. Pursuant to the Law Commissions recommendations, Section 154 has been further amended by Central Act 2 of 2006 whereby a party, whose witness has turned hostile, can rely upon any part of the evidence of such a witness.

56. It is on account of the fact that many times, persons, who are really guilty, escape from the clutches of law due to a variety of reasons other than the merits of their own case, that employers tend to scan the judgments of acquittal of criminal courts before they venture to select a person for appointment.

The law does not provide a relief within the system of administration of criminal justice, to an acquitted person to seek before any forum, an enhancement of the quality of the order of acquittal passed by a criminal Court. Therefore, the recourse that clever lawyers have invented in the past six years, is not founded upon any of the provisions of the Criminal Procedure Code.

57. If we have a careful look at the history of this development, namely that of acquitted persons approaching this Court for an order of honourable acquittal, we would find that this invention by lawyers, has as its mother, an amendment introduced to Rule 14(b) of the Tamil Nadu Police Subordinate Rules. The validity of this Rule came to be challenged before this Court. By a decision rendered by the Full Bench, to which one of us was a party (VRSJ), in *Manikandan v. Chairman, Tamil Nadu Uniformed Services Recruitment Board* [2008 (2) CTC 97], the Rule was upheld.

58. It was only after the Rule was upheld that some lawyers and jurists, who could not reconcile themselves to the ratio of the Full Bench, invented this new remedy under Sections 397 and 401 of the Code. An attempt was also made to test the soundness of the ratio laid down by the Full Bench. But, a Larger Bench reiterated the decision in *Manikandan*, in *J.Alex Ponseelan v. The Director General of Police, Tamil Nadu* [2014 (2) CTC 337]. Therefore, the flash of creative genius that came as a spark in 2008, inventing a remedy unavailable under the Criminal Procedure Code, cannot survive for long.

59. In view of the above, we hold on the second question that no revision or appeal or any other petition under any of the provisions of the Criminal Procedure Code can be entertained by this Court for converting an order of acquittal passed by a Trial Court into an order of honourable acquittal. Therefore, all these petitions deserve to be dismissed."

6. In the judgment cited supra, the Division Bench of Madurai Bench of Madras High Court has ultimately held that no revision or appeal or any other petition under any of the provisions of the Criminal Procedure Code can be entertained by this Court for converting an order of acquittal passed by a Trial Court into an order of honourable acquittal.

7. Following the decision cited supra, this Criminal Revision Case is dismissed as not maintainable. No costs.

Sd/-
Assistant Registrar(LA)

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Sub Assistant Registrar

paa

To

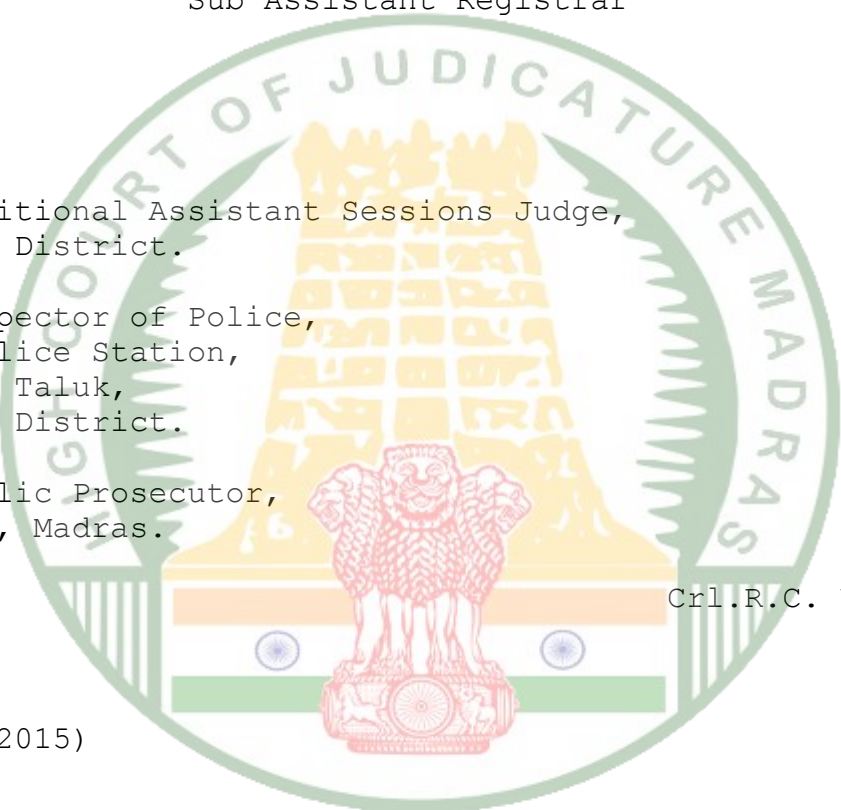
1. The Additional Assistant Sessions Judge,
Dindivanam District.

2. The Inspector of Police,
Olakkur Police Station,
Dindivanam Taluk,
Villupuram District.

3. The Public Prosecutor,
High Court, Madras.

Crl.R.C. No. 1275 of 2014

KM (CO)
PSI (13.05.2015)

The seal of the High Court of Judicature Madras is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion capital on top. Below the gopuram is the Indian national flag (saffron, white, and green horizontal stripes) with the Ashoka Chakra in the center. The words 'HIGH COURT OF JUDICATURE MADRAS' are written in a green circle around the central image. At the bottom, the Sanskrit motto 'सत्यमेव जयते' (Satyameva Jayate) is written in Devanagari script.

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