

SAHAB SINGH AND OTHERS

v.

STATE OF HARYANA

FEBRUARY 20, 1990

[B.C. RAY AND A.M. AHMADI, JJ.]

Code of Criminal Procedure 1973: Sections 374, 377, 386, 397 and 401—Appeal by convicts against conviction and sentence passed by trial court—High Court dismissing appeal, but enhancing sentence of fine without giving notice and opportunity of being heard to convicts—Whether within jurisdiction of High Court.

The appellants were convicted by the Additional Sessions Judge on three counts and sentenced to various terms of imprisonment and a fine of Rs.200 under Sections 148, 323/149 and 302/149 I.P.C. The appellants preferred an appeal against the order of conviction and sentence. Dismissing the appeal, the High Court, clarified that their convictions were on six counts and altered the fine awarded under Section 302/149 I.P.C. from Rs.200 to Rs.5,000 in respect of each appellant per count, i.e. Rs.30,000 per appellant. Hence the appellants preferred appeal, by special leave, in this Court, limited to the question of enhancement of fine only.

Allowing the appeal, and setting aside the order of High Court enhancing the fine, this Court,

HELD: It is clear from a conjoint reading of Sections 377, 386, 397 and 401 of Code of Criminal Procedure, 1973, that if the State Government is aggrieved about the inadequacy of the sentence, it can prefer an appeal under Section 377(1) of the Code. The failure on the part of the State Government to prefer an appeal does not, however, preclude the High Court from exercising *suo motu* power of revision under Section 397 read with Section 401 of the Code, since the High Court itself is empowered to call for the record of the proceeding of any court subordinate to it. But before the High Court can exercise its revisional jurisdiction to enhance the sentence, it is imperative that the convict is put on notice and given an opportunity of being heard on the question of sentence either in person or through his advocate. The revisional jurisdiction cannot be exercised to the prejudice of the convict without putting him on guard that it is proposed to enhance the sentence imposed by the Trial Court. [515A-D]

In the present case, the appeal was filed under Section 374(2) of the Code by the convicts against the order passed by the Additional Sessions Judge. No appeal was filed by the State under Section 377(1) of the Code against the sentence awarded by the trial court for the offence under Section 302/149, I.P.C. on the ground of its inadequacy. Nor did the High Court exercise *suo motu* revisional powers under Section 397 read with Section 401 of the Code. If the High Court was minded to enhance the sentence the proper course was to exercise *suo motu* powers under Section 397 read with Section 401 of the Code by issuing notice of enhancement and hearing the convicts on the question of inadequacy of sentence. Without following such procedure it was not open to the High Court in the appeal filed by the convicts to enhance the sentence by enhancing the fine. The High Court clearly acted without jurisdiction. [515D-F]

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 104 of 1990.

From the Judgment and Order dated 1.9.1983 of the Punjab and Haryana High Court in CrI. A. No. 199-DB/83.

B.S. Malik for the Appellants.

Mahabir Singh for the Respondent.

The Judgment of the Court was delivered by

AHMADI, J. Special leave granted.

The seven appellants before us were convicted by the learned Additional Sessions Judge, Sonapat on three counts and sentenced as under:

(a) rigorous imprisonment for one year under Section 148, I.P.C.;

(b) rigorous imprisonment for six months under Section 323/149, I.P.C.; and

(c) imprisonment for life and a fine of Rs.200 under Section 302/149, I.P.C.

All the said substantive sentences were directed to run concurrently.

A The seven appellants preferred an appeal against the order of conviction and sentence passed by the learned Trial Judge. The High Court while dismissing their appeal clarified that their convictions were on six counts and altered the fine awarded under Section 302/149, I.P.C. from Rs.200 to Rs.5,000 in respect of each appellant per count, i.e. Rs.30,000 per appellant. Being aggrieved by this enhancement of fine the appellants have preferred this appeal limited to the question of this enhancement only.

C Section 374 of the Code of Criminal Procedure ('the Code' hereinafter) provides for appeals from conviction by a Sessions Judge or an Additional Sessions Judge to the High Court. Section 377 entitles the State Government to direct the Public Prosecutor to present an appeal to the High Court against the sentence on the ground of its inadequacy. Sub-section 3 of Section 377 says that when an appeal has been filed against the sentence on the ground of its inadequacy, the High Court shall not enhance the sentence except after giving to the accused a reasonable opportunity of showing cause against such enhancement and while showing cause the accused may plead for his acquittal or for the reduction of the sentence. Admittedly no appeal was preferred by the State Government against the sentence imposed by the High Court on the conviction of the appellants under Section 302/149, I.P.C. Section 378 provides for an appeal against an order of acquittal. Section 386 enumerates the powers of the appellate court.

E The first proviso to that section states that the sentence shall not be enhanced unless the accused has had an opportunity of showing cause against such enhancement. Section 397 confers revisional powers on the High Court as well as the Sessions Court. It, *inter alia*, provides that the High Court may call for and examine the record of any proceeding before any inferior criminal court situate within its jurisdiction

F for the purposes 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 any inferior court. Section 401 further provides that in the case of any proceedings, 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 of the Code. Sub-section 2 of Section 401 provides that no order under this Section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by Pleader in his own defence. Sub-section 4 next provides that where under this Code an appeal lies and no appeal is

G brought, no proceeding by way of revision shall be entertained at the

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instance of the party who could have appealed. It is clear from a conjoint reading of Section 377, 386, 397 and 401 that if the State Government is aggrieved about the inadequacy of the sentence it can prefer an appeal under Section 377(1) of the Code. The failure on the part of the State Government to prefer an appeal does not, however, preclude the High Court from exercising *suo motu* power of revision under Section 397 read with Section 401 of the Code since the High Court itself is empowered to call for the record of the proceeding of any court subordinate to it. Sub-section 4 of Section 401 operates as a bar to the party which has a right to prefer an appeal but has failed to do so but that sub-section cannot stand in the way of the High Court exercising revisional jurisdiction *suo motu*. But before the High Court exercises its *suo motu* revisional jurisdiction to enhance the sentence, it is imperative that the convict is put on notice and is given an opportunity of being heard on the question of sentence either in person or through his advocate. The revisional jurisdiction cannot be exercised to the prejudice of the convict without putting him on guard that it is proposed to enhance the sentence imposed by the Trial Court.

Now, in the present case the appeal was filed under Section 374(2) of the Code by the convicts against the order passed by the Additional Sessions Judge. No appeal was filed by the State under Section 377(1) of the Code against the sentence awarded by the trial court for the offence under Section 302/149 I.P.C. on the ground of its inadequacy. Nor did the High Court exercise *suo motu* revisional powers under Section 397 read with Section 401 of the Code. If the High Court was minded to enhance the sentence the proper course was to exercise *suo motu* powers under Section 397 read with Section 401 of the Code by issuing notice of enhancement and hearing the convicts on the question of inadequacy of sentence. Without following such procedure it was not open to the High Court in the appeal filed by the convicts to enhance the sentence by enhancing the fine. The High Court clearly acted without jurisdiction. For the above reasons we are clearly of the opinion that the appeal must succeed.

In the result we allow this appeal and set aside the order of the High court insofar as it enhances the sentence by enhancing the fine from Rs.200 to Rs.5,000 per count per appellants. In other words we restore the order of sentence passed by the Trial Court under Section 302/149, I.P.C. The additional fine, if paid, will be refunded.