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GANESHA

v.

SHARANAPPA & ANR.

(Criminal Appeal No. 1948 of 2013)

NOVEMBER 19, 2013

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**[CHANDRAMAULI KR. PRASAD AND KURIAN  
JOSEPH, JJ.]**

*Code of Criminal Procedure, 1973:*

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*s.401(3) r/w s.386(a) – Revisional power of High Court – Explained – High Court converting the acquittal into conviction – Held: High Court while exercising the powers of revision can exercise all those powers which have been conferred on the court of appeal u/s 386 but, in view of sub-s. (3) of s. 401, while exercising such power, High Court cannot convert a finding of acquittal into one of conviction – In the instant case, High Court rightly came to the conclusion that it is one of the exceptional cases as the finding of acquittal is on a total misreading and perverse appreciation of evidence and rightly set aside the order of acquittal, but it gravely erred in converting the order of acquittal into that of conviction, instead of directing re-hearing by trial court – Order of High Court set aside, but, in the circumstances of the case, re-hearing by trial court declined – Penal Code, 1860 – s.324.*

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*s.154 and s.2(d) r/w s.200 – ‘Informant’ and ‘complainant’ – Distinction between – Explained.*

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**On the basis of a report given by the informant (PW-2) alleging that when he made a protest as the accused persons were grazing their cattle in his land and thereby damaging the crop the appellant assaulted him with a stick, an FIR was registered against the appellant and other accused persons. The trial court acquitted all the**

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accused. However, in revision, the High Court set aside the order of acquittal of the appellant and convicted him u/s 324 IPC and sentenced him to six months simple imprisonment with a fine of Rs.5000/-.

In the instant appeal, it was contended for the appellant that the High Court in revision could not convert a finding of acquittal into one of conviction.

Allowing the appeal, the Court

HELD: 1.1 Sub-s. (1) of s. 401 of the Criminal Procedure, 1973 makes it evident that the High Court, while exercising the powers of revision, can exercise any of the powers conferred on a court of appeal including the power u/s 386 of the Code. Section 386(a) authorizes the appellate court to reverse an order of acquittal, find the accused guilty and pass sentence on the person found guilty. However, sub-s. (3) of s. 401 of the Code contemplates that the power of revision does not authorize a High Court to convert a finding of acquittal into one of conviction. On the face of it, the High Court while exercising the powers of revision can exercise all those powers which have been conferred on the court of appeal u/s 386 of the Code but, in view of sub-s. (3) of s. 401 of the Code, while exercising such power, cannot convert a finding of acquittal into one of conviction. [para 9] [407-A-B, E-G]

1.2 In a case where the finding of acquittal is recorded on account of misreading of evidence or non-consideration of evidence or perverse appreciation of evidence, nothing prevents the High Court from setting aside the order of acquittal at the instance of the informant in revision and directing disposal on merits afresh by the trial court. In the event of such direction, the trial court shall be obliged to re-appraise the evidence

A in light of the observation of the revisional court and take an independent view uninfluenced by any of the observations of the revisional court on merits of the case. [para 10] [407-G-H; 408-A-B]

B 1.3 Interference with the order of acquittal in revision is called for only in cases where there is manifest error of law or procedure and in those exceptional cases in which it is found that the order of acquittal suffers from glaring illegality, resulting into miscarriage of justice. The High Court may also interfere in those cases of acquittal caused by shutting out the evidence which otherwise ought to have been considered or where the material evidence which clinches the issue has been overlooked. In such an exceptional case, the High Court in revision can set aside an order of acquittal but it cannot convert an order of acquittal into that of an order of conviction. The only course left to the High Court in such exceptional cases is to order re-trial. [para 10] [408-B-E]

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E *Bindeshwari Prasad Singh vs. State of Bihar* 2002 (1) Suppl. SCR 495 = (2002) 6 SCC 650 – relied on.

F 1.4 In the instant case, the High Court rightly came to the conclusion that it is one of the exceptional cases as the finding of acquittal is on a total misreading and perverse appreciation of evidence. On the face of it, the High Court rightly set aside the order of acquittal but it gravely erred in converting the order of acquittal into that of conviction, instead of directing re-hearing by the trial court. [para 11] [409-D-E]

G 1.5 Ordinarily, this Court would have set aside the order of the revisional court and directed for re-hearing by the trial court, but taking into account the nature of offence, at such a distance of time, the order of the High Court is set aside, and re-hearing by the trial court is declined. [para 11 and 13] [409-E; 410-D]

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2. It is noticed that in many of the judgments including the instant one, no distinction is made while using the words 'informant' and 'complainant'. In many of the judgments, the person giving the report u/s 154 of the Code is described as the 'complainant' or the 'de facto complainant' instead of 'informant', assuming that the State is the complainant. In a case registered u/s 154 of the Code, the State is the prosecutor and the person whose information is the cause for lodging the report is the informant. This is obvious from sub-s. (2) of s.154 of the Code which, inter alia, provides for giving a copy of the information to the 'informant' and not to the 'complainant'. However the complainant is the person who lodges the complaint. The word 'complaint' is defined u/s 2(d) of the Code to mean any allegation made orally or in writing to a Magistrate and the person who makes the allegation is the complainant, as would be evident from s.200 of the Code, which provides for examination of the complainant in a complaint-case. Therefore, these words carry different meanings and are not interchangeable. [para 12] [409-F-H; 410-A-C]

#### Case Law Reference:

2002 (1) Suppl. SCR 495      relied on      para 10

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal  
No. 1948 of 2013.

From the Judgment and Order dated 03.08.2008 of the High Court of Karnataka, Circuit Bench, Gulbarga in Criminal Revision No. 147 of 2007.

Akshat Shrivastav, Inderjeet Yadav, Sidharth Shrivastava,  
Manjeet Kirpal for the Appellant.

Sanjay R. Hegde, V.N. Raghupathy for the Respondents.

The Judgment of the Court was delivered by

A **CHANDRAMAULI KR. PRASAD, J.** 1. Petitioner, besides three other accused, was put on trial for offence under Section 341, 323, 324 and 504 read with Section 34 of the Indian Penal Code. Judicial Magistrate, First Class, Yadgiri Taluk, Gulbarga District, Karnataka, by its judgment and order  
 B dated 14th of September, 2006 passed in CC No. 355 of 2006, acquitted them of all the charges.

2. Aggrieved by the aforesaid, the informant preferred Criminal Revision Petition No. 147 of 2007 and the High Court, by the impugned judgment and order dated 5th of August, 2008  
 C maintained the order of acquittal of all accused persons, excepting accused no. 3, Ganesha who has been held guilty for the offence punishable under Section 324 of the Indian Penal Code and sentenced to undergo simple imprisonment for a period of six months and also to pay a fine of Rs.5,000/-  
 D , and in default of payment of fine, to undergo further simple imprisonment for a period of three months.

3. It is against this order that Ganesha has preferred this special leave petition.

E 4. Leave granted.

5. The prosecution was set in motion on the basis of a report given by the informant, Sharanappa, inter alia, alleging that he made a protest when he saw the accused persons  
 F grazing their cattle in his land and thereby damaging the mulberry crop. It was alleged that Ganesha, the appellant herein assaulted the informant with a Badige (stick) which caused injury near his left eye. The rest of the prosecution story is not being narrated as the accused who have allegedly participated in that  
 G have been acquitted and we are not concerned with that in the present appeal. The trial court, on appraisal of the evidence, came to the conclusion that the prosecution has not been able to prove its case beyond all reasonable doubt and, accordingly, acquitted all the accused. However, in revision, the High Court  
 H re-appraised the evidence and found the reasoning assigned

by the trial court to be totally perverse and contrary to the evidence on record. The High Court relied on the evidence of Sharanappa, the informant (PW-2), Maremma (PW-4), Sujatha (PW-5) and Hussainappa (PW-6), who claimed to be the eye-witnesses of the occurrence. The High Court found Maremma (PW-4) and Hussainappa (PW-6) to be the independent eye-witnesses and reliable. The High Court further observed that the evidence of Dr. Surekha (PW-1), who examined the injured and gave the wound certificate (Exhibit 2) corroborated the case of the prosecution. Accordingly, the High Court set aside the order of acquittal of the present appellant and convicted him as above. While doing so, the High Court observed as follows:

"17. In my view, the aforesaid reasoning of the trial court is totally perverse and contrary to the evidence on record. We have seen from the evidence of P.Ws. 2, 4, 5 and 6 that all of them have come out successfully in their cross-examination and all of them have spoken to the fact of A-3 assaulting P.W. 2 with a stick near his left eye and the other accused persons catching hold of P.W.2. Furthermore, it is also clear from the evidence of P.Ws. 2 and 5 that the incident happened in the land of the complainant when the cattle belonging to the accused went to the land of the complainant for grazing the crop. Therefore, no doubt arises as to the place of incident."

6. Mr. Akshat Shrivastav, learned counsel appearing on behalf of the appellant raises a very short point. He submits that the High Court in revision could not convert a finding of acquittal into one of conviction and at most, while exercising the revisional jurisdiction, could direct for re-trial. Mr. V.N. Raghupathy, learned counsel appearing on behalf of the respondents, however, submits that the High Court having found the reasoning assigned by the trial court to be totally perverse and contrary to the evidence on record is not precluded from setting aside the order of acquittal and convicting the accused for the offence charged.

A 7. Having appreciated the rival submissions we find substance in the submission of learned counsel for the appellant. Section 401 of the Code of Criminal Procedure, for short 'the Code', confers power of revision to the High Court, same reads as follows:

B "401. High Court's powers of revision.- (1) 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 C 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.

D (2) 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.

E (3) Nothing in this section shall be deemed to authorise a High court to convert a finding of acquittal into one of conviction.

F (4) Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

G (5) Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly."  
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8. From a plain reading of sub-section (1) of Section 401 of the Code it is evident that the High Court, while exercising the powers of revision, can exercise any of the powers conferred on a court of appeal including the power under Section 386 of the Code, relevant portion whereof reads as follows:

**"386. Powers of the Appellate Court.** - After perusing such record and hearing the appellant or his pleader, if he appears, and the Public Prosecutor, if he appears, and in case of an appeal under section 377 or section 378, the accused, if he appears, the Appellate Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may -

- (a) in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused be re-tried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law;

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9. Section 386(a) thus authorizes the appellate court to reverse an order of acquittal, find the accused guilty and pass sentence on the person found guilty. However, sub-section (3) of Section 401 of the Code contemplates that the power of revision does not authorize a High Court to convert a finding of acquittal into one of conviction. On the face of it, the High Court while exercising the powers of revision can exercise all those powers which have been conferred on the court of appeal under Section 386 of the Code but, in view of sub section (3) of Section 401 of the Code, while exercising such power, cannot convert a finding of acquittal into one of conviction.

10. However, in a case where the finding of acquittal is recorded on account of misreading of evidence or non-consideration of evidence or perverse appreciation of evidence,

A nothing prevents the High Court from setting aside the order of acquittal at the instance of the informant in revision and directing fresh disposal on merit by the trial court. In the event of such direction, the trial court shall be obliged to re-appraise the evidence in light of the observation of the revisional court

B and take an independent view uninfluenced by any of the observations of the revisional court on the merit of the case. By way of abundant caution, we may herein observe that interference with the order of acquittal in revision is called for only in cases where there is manifest error of law or procedure

C and in those exceptional cases in which it is found that the order of acquittal suffers from glaring illegality resulting into miscarriage of justice. The High Court may also interfere in those cases of acquittal caused by shutting out the evidence which otherwise ought to have been considered or where the material evidence which clinches the issue has been

D overlooked. In such an exceptional case, the High Court in revision can set aside an order of acquittal but it cannot convert an order of acquittal into that of an order of conviction. The only course left to the High Court in such exceptional cases is to order re-trial. The view, which we have taken finds support from

E a decision of this Court in *Bindeshwari Prasad Singh vs. State of Bihar* (2002) 6 SCC 650, in which it has been held as follows:

"12. ....Sub-section (3) of Section 401 in terms provides that nothing in Section 401 shall be deemed to

F authorize a High Court to convert a finding of acquittal into one of conviction. The aforesaid sub-section, which places a limitation on the powers of the revisional court, prohibiting it from converting a finding of acquittal into one of conviction, is itself indicative of the nature and extent of

G the revisional power conferred by Section 401 of the Code of Criminal Procedure. If the High Court could not convert a finding of acquittal into one of conviction directly, it could not do so indirectly by the method of ordering a retrial. It is well settled by a catena of decisions of this Court that

H the High Court will ordinarily not interfere in revision with

an order of acquittal except in exceptional cases where the interest of public justice requires interference for the correction of a manifest illegality or the prevention of gross miscarriage of justice. The High Court will not be justified in interfering with an order of acquittal merely because the trial court has taken a wrong view of the law or has erred in appreciation of evidence. It is neither possible nor advisable to make an exhaustive list of circumstances in which exercise of revisional jurisdiction may be justified, but decisions of this Court have laid down the parameters of exercise of revisional jurisdiction by the High Court under Section 401 of the Code of Criminal Procedure in an appeal against acquittal by a private party."

11. In the present case, the High Court in our opinion, rightly came to the conclusion that it is one of the exceptional cases as the finding of acquittal is on a total misreading and perverse appreciation of evidence. On the face of it, the High Court rightly set aside the order of acquittal but it gravely erred in converting the order of acquittal into that of conviction, instead of directing re-hearing by the trial court. Ordinarily we would have set aside the order of the revisional court to the extent aforesaid and directed for re-hearing by the trial court, but taking into account the nature of offence, at such a distance of time we would not like to charter that course.

12. Before we part with the case, we may observe a common error creeping in many of the judgments including the present one. No distinction is made while using the words 'informant' and 'complainant'. In many of the judgments, the person giving the report under Section 154 of the Code is described as the 'complainant' or the 'de facto complainant' instead of 'informant', assuming that the State is the complainant. These are not words of literature. In a case registered under Section 154 of the Code, the State is the prosecutor and the person whose information is the cause for lodging the report is the informant. This is obvious from sub-

- A section (2) of Section 154 of the Code which, inter alia, provides for giving a copy of the information to the 'informant' and not to the 'complainant'. However the complainant is the person who lodges the complaint. The word 'complaint' is defined under Section 2(d) of the Code to mean any allegation
- B made orally or in writing to a Magistrate and the person who makes the allegation is the complainant, which would be evident from Section 200 of the Code, which provides for examination of the complainant in a complaint-case. Therefore, these words carry different meanings and are not
- C interchangeable. In short, the person giving information, which leads to lodging of the report under Section 154 of the Code is the informant and the person who files the complaint is the complainant.

- D 13. In the result, we allow this appeal, set aside the order of the High Court and decline to direct re-hearing by the trial court.

R.P.

Appeal allowed.