Satya Pal Singh vs State Of M.P. And Ors on 6 October, 2015

Equivalent citations: AIR 2017 (NOC) 528 (MADR), 2015 (15) SCC 613, 2015 AIR SCW 6251, AIR 2015 SC(CRI) 1834, (2015) 4 MAD LJ(CRI) 219, (2016) 5 MAD LW 577, (2016) WRITLR 1081, (2017) 1 BANKCAS 612, (2016) 1 ALLCRIR 502, (2016) 1 MARRILJ 175, (2015) 4 BOMCR(CRI) 311, (2015) 91 ALLCRIC 955, 2015 CRILR(SC MAH GUJ) 1106, (2015) 156 ALLINDCAS 261 (SC), (2016) 2 MADLW(CRI) 57, (2015) 4 JLJR 343, (2015) 4 DLT(CRL) 918, (2017) 1 MAD LJ 1, (2015) 4 RECCRIR 705, (2015) 4 CURCRIR 96, (2015) 3 UC 1981, (2016) 1 ALLCRILR 7, 2015 CRILR(SC&MP) 1106, (2015) 62 OCR 884, (2016) 4 PAT LJR 468, 2016 CALCRILR 3 291, (2016) 1 ALD(CRL) 288, (2015) 4 CRILR(RAJ) 1106, (2015) 3 DMC 670, (2017) 3 RAJ LW 2584, (2015) 10 SCALE 444, 2016 (3) SCC (CRI) 307, 2015 (4) CRIMES 124 SN

Author: V. Gopala Gowda

Bench: V. Gopala Gowda, T.S. Thakur

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1315 OF 2015
(Arising out of S.L.P. (Crl) NO. 7954 of 2014)

SATYA PAL SINGH ..... APPELLANT

VERSUS

STATE OF M.P. AND ORS. ..... RESPONDENTS

J U D G M E N T

V. GOPALA GOWDA, J.

Leave granted.

This criminal appeal by special leave is directed against the impugned judgment and order dated 04.03.2014 passed in Criminal Appeal No.547 of 2013 by the High Court of M.P. at Gwalior whereby the High Court has upheld the decision of the Sessions Court, Bhind, M.P. (the trial court) in

Sessions Case No. 293/2010 by acquitting all the accused i.e. respondent nos. 2 to 6 herein.

The appellant herein made a written complaint dated 19.07.2010 regarding the death of his daughter, Ranjana (hereinafter referred to as "the deceased") to the Addl. Superintendent of Police, Bhind, M.P. The FIR was registered on 27.07.2010. The trial court after the examination of evidence on record passed the judgment and order dated 13.06.2013 acquitting all the accused of the charges levelled against them for the offences punishable under Sections 498A and 304B of Indian Penal Code, 1860 (for short "IPC") and Section 4 of the Dowry Prohibition Act, 1961 and alternatively for the offence punishable under Section 302 of IPC. Being aggrieved of the decision of the trial court, the appellant approached the High Court against the order of acquittal of respondent nos. 2 to 6. The High Court vide its judgment and order dated 04.03.2014 has upheld the trial court's decision of acquittal of all the accused persons. The impugned judgment and order of the High Court is challenged in this appeal before this Court questioning its correctness.

Being aggrieved of the impugned judgment and order the appellant being the legal heir of the deceased filed an appeal before the High Court under proviso to Section 372 of the Code of Criminal Procedure, 1973 (for short "the Cr.P.C."). The High Court, however, has mechanically disposed of the appeal by passing a cryptic order without examining as to whether the leave to file an appeal filed by the appellant as provided under sub-Section (3) to Section 378 of Cr.P.C. can be granted or not. The correctness of the same is questioned by the appellant in this appeal inter alia urging various grounds.

Mr. Prashant Shukla, the learned counsel on behalf of the appellant placed strong reliance upon the judgment rendered by Delhi High Court in Ram Phal v. State & Ors.[1] wherein the Full Bench, after interpreting the proviso to Section 372 read with Section 2(wa) of the Cr.P.C., has held that the father of the victim has locus standi to prefer an appeal, being a private party coming under the definition of victim under Section 2(wa) of the Cr.P.C. It was contended by him that in the instant case, the appellant, being father of the deceased, has locus standi to file an appeal before the High Court against the order of acquittal under proviso to Section 372 without seeking the leave of the High Court as required under sub-Section (3) of Section 378 of Cr.P.C. Thus, the appeal filed by the appellant was maintainable before the High Court of M.P. under the abovesaid provisions of Cr.P.C. He further urged that undoubtedly, the said legal aspect of the matter has not been dealt with by the High Court and the appeal was decided on merits but without examining as to whether the leave to file an appeal by the appellant is required to be granted or not under the above provisions of Cr.P.C.

The learned counsel for the appellant drew the attention of this Court towards the decision rendered by Delhi High Court in the case referred to supra, wherein it has elaborately adverted to the definition of victim as defined under Section 2(wa) of Cr.P.C. and proviso to Section 372 of Cr.P.C. and has examined them in the light of their legislative history. It has also adverted to 154th Law Commission Report of 1996 in connection with the said legal provision of Cr.P.C. and has succinctly held that where the victim is unable to prefer an appeal then the appeal can be preferred by persons - such as relatives, foster children, guardians, fiancé or live-in partners, etc. of the victim, who are in a position to do so in his/her behalf. He urged that in the instant case, there is no need for the appellant, being the father of the deceased, to seek leave of the High Court as provided under

sub-Section (3) to Section 378 of Cr.P.C. to maintain the appeal before it as it is his statutory right to prefer an appeal against the order of acquittal of all accused persons in view of proviso to Section 372 of Cr.P.C.

It was further urged by him that the High Court ought to have granted the leave to the appellant to file an appeal by the appellant as required under sub-Section (3) of Section 378 of Cr.P.C. and thereafter it ought to have examined and disposed of the appeal on merits.

He further vehemently contended that the appeal before the High Court was filed by the appellant challenging the acquittal order passed by the trial court but the High Court has concurred with the decision of the trial court mechanically without re-appreciating the evidence on record. He further submitted that the decision of the High Court suffers from error in law as the High Court, being the Appellate Court, was required to re-appreciate the evidence on record to exercise its appellate jurisdiction in the appeal filed by the appellant with reference to the legal contentions urged in the memorandum of appeal but it has failed to do so. The High Court in a very cursory and casual manner has held that after a perusal of evidence on record it found no reason to interfere with the decision of the trial court as the prosecution has failed to establish beyond reasonable doubt that the charges levelled against all the accused are proved and it has dismissed the appeal by passing a cryptic order, which amounts to non-exercise of appellate jurisdiction properly by the High Court. Thus, the impugned judgment and order of the High Court is vitiated in law and therefore, the same is required to be set aside by this Court. He further requested this Court to remand the matter to the High Court for re-appreciation of the evidence on record and pass appropriate order on merits of the case after hearing both the parties.

We have carefully examined the above mentioned provisions of Cr.P.C. and the Full Bench decision of Delhi High Court referred to supra upon which strong reliance is placed by the learned counsel for the appellant. There is no doubt that the appellant, being the father of the deceased, has locus standi to prefer an appeal before the High Court under proviso to Section 372 of Cr.P.C. as he falls within the definition of victim as defined under Section 2(wa) of Cr.P.C. to question the correctness of the judgment and order of acquittal passed by the trial court in favour of respondent nos. 2 to 6 in Sessions Case No. 293/2010.

The proviso to Section 372 of Cr.P.C. was amended by Act No.5 of 2009. The said proviso confers a statutory right upon the victim, as defined under Section 2(wa) of Cr.P.C. to prefer an appeal against an order passed by the trial court either acquitting the accused or convicting him/her for a lesser offence or imposing inadequate compensation. In this regard, the Full Bench of Delhi High Court in the case referred to supra has elaborately dealt with the legislative history of insertion of the proviso to Section 372 of Cr.P.C. by Act No. 5 of 2009 with effect from 31.12.2009. The relevant provision of Section 372 of Cr.P.C. reads thus:

> “372. No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force:

Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court." The said amendment to the provision of Section 372 of Cr.P.C. was prompted by 154th Law Commission Report. The said Law Commission Report has undertaken a comprehensive review of Cr.P.C. and its recommendations were found to be very appropriate in amending the Cr.P.C. particularly in relation to provisions concerning arrest, custody and remand, procedure to be followed in summons and warrant-cases, compounding of offences and special protection in respect of women and inquiry and trial of persons of unsound mind. Further, the Law Commission in its report has noted the relevant aspect of the matter namely that the victims are the worst sufferers in a crime and they do not have much role in the Court proceedings. They need to be given certain rights and compensation so that there is no distortion of the criminal justice system. The said report of the Law Commission has also taken note of the views of the criminologist, penologist and reformers of criminal justice system at length and has focused on victimology, control of victimization and protection of the victims of crimes and the issues of compensation to be awarded in favour of them. Therefore, the Parliament on the basis of the aforesaid Report of the Law Commission, which is victim oriented in approach, has amended certain provisions of the Cr.P.C. and in that amendment the proviso to Section 372 of Cr.P.C. was added to confer the statutory right upon the victim to prefer an appeal before the High Court against acquittal order, or an order convicting the accused for the lesser offence or against the order imposing inadequate compensation.

The Full Bench of the High Court of Delhi after examining the relevant provisions under Section 2(wa) and proviso to Section 372 of Cr.P.C., in the light of their legislative history has held that the right to prefer an appeal conferred upon the victim or relatives of the victim by virtue of proviso to Section 372 is an independent statutory right. Therefore, it has held that there is no need for the victim in terms of definition under Section 2(wa) of Cr.P.C. to seek the leave of the High Court as required under sub-Section (3) of Section 378 of Cr.P.C. to prefer an appeal under proviso to Section 372 of Cr.P.C. The said view of the High Court is not legally correct for the reason that the substantive provision of Section 372 of Cr.P.C. clearly provides that no appeal shall lie from any judgment and order of a Criminal Court except as provided for by Cr.P.C. Further, sub-Section (3) to Section 378 of Cr.P.C. provides that for preferring an appeal to the High Court against an order of acquittal it is necessary to obtain its leave. We have to refer to the rules of interpretation of statutes to find out what is the effect of the proviso to Section 372 of Cr.P.C., it is well established that the proviso of a statute must be given an interpretation limited to the subject-matter of the enacting provision.

Reliance is placed on the decision of this Court rendered by four Judge Bench in Dwarka Prasad v. Dwarka Das Saraf[2], the relevant para 18 of which reads thus:

"18. ... A proviso must be limited to the subject-matter of the enacting clause. It is a settled rule of construction that a proviso must prima facie be read and considered in relation to the principal matter to which it is a proviso. It is not a separate or independent enactment. "Words are dependent on the principal enacting words to which they are tacked as a proviso. They cannot be read as divorced from their context" (Thompson v. Dibdin, 1912 AC 533). If the rule of construction is that prima facie a proviso should be limited in its operation to the subject-matter of the enacting clause, the stand we have taken is sound. To expand the enacting clause, inflated by the proviso, sins against the fundamental rule of construction that a proviso must be considered in relation to the principal matter to which it stands as a proviso. A proviso ordinarily is but a proviso, although the golden rule is to read the whole section, inclusive of the proviso, in such manner that they mutually throw light on each other and result in a harmonious construction." (emphasis laid by this Court) Further, a three Judge Bench of this Court by majority of 2:1 in the case of S. Sundaram Pillai v. V.R. Pattabiraman[3] has elaborately examined the scope of proviso to the substantive provision of the Section and rules of its interpretation. The relevant paras are reproduced hereunder:

"30. Sarathi in Interpretation of Statutes at pages 294-295 has collected the following principles in regard to a proviso:

(a)When one finds a proviso to a section the natural presumption is that, but for the proviso, the enacting part of the section would have included the subject-matter of the proviso.

(b)A proviso must be construed with reference to the preceding parts of the clause to which it is appended.

(c)Where the proviso is directly repugnant to a section, the proviso shall stand and be held a repeal of the section as the proviso speaks the latter intention of the makers.

(d)Where the section is doubtful, a proviso may be used as a guide to its interpretation: but when it is clear, a proviso cannot imply the existence of words of which there is no trace in the section.

(e)The proviso is subordinate to the main section.

(f)A proviso does not enlarge an enactment except for compelling reasons.

(g)Sometimes an unnecessary proviso is inserted by way of abundant caution.

(h)A construction placed upon a proviso which brings it into general harmony with the terms of section should prevail.

(i)When a proviso is repugnant to the enacting part, the proviso will not prevail over the absolute terms of a later Act directed to be read as supplemental to the earlier one.

(j)A proviso may sometimes contain a substantive provision.

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32. In Ishverlal Thakorelal Almaula v. Motibhai Nagjibhai it was held that the main object of a proviso is merely to qualify the main enactment. In Madras and Southern Mahrata Railway Co. Ltd. v. Bezwada Municipality Lord Macmillan observed thus:

"The proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment, and its effect is confined to that case."

33. The above case was approved by this Court in CIT v. Indo Mercantile Bank Ltd. where Kapur, J. held that the proper function of a proviso was merely to qualify the generality of the main enactment by providing an exception and taking out, as it were, from the main enactment a portion which, but for the proviso, would fall within the main enactment. In Shah Bhojraj Kuverji Oil Mills and Ginning Factory v. Subbash Chandra Yograj Sinha Hidayatullah, J., as he then was, very aptly and succinctly indicated the parameters of a proviso thus:

"As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment, and ordinarily, a proviso is not interpreted as stating a general rule." XXX XXX XXX

36. While interpreting a proviso care must be taken that it is used to remove special cases from the general enactment and provide for them separately.

37. In short, generally speaking, a proviso is intended to limit the enacted provision so as to except something which would have otherwise been within it or in some measure to modify the enacting clause. Sometimes a proviso may be embedded in the main provision and becomes an integral part of it so as to amount to a substantive provision itself." (emphasis supplied) Thus, from a reading of the abovesaid legal position laid down by this Court in the cases referred to supra, it is abundantly clear that the proviso to Section 372 of Cr.P.C. must be read along with its main enactment i.e., Section 372 itself and together with sub-Section (3) to Section 378 of Cr.P.C. otherwise the substantive provision of Section 372 of Cr.P.C. will be rendered nugatory, as it clearly states that no appeal shall lie from any judgment or order of a Criminal Court except as provided by Cr.P.C.

Thus, to conclude on the legal issue:

"whether the appellant herein, being the father of the deceased, has statutory right to prefer an appeal to the High Court against the order of acquittal under proviso to Section 372 of Cr.P.C. without obtaining the leave of the High Court as required under sub-Section (3) to Section 378 of Cr.P.C.", this Court is of the view that the right of questioning the correctness of the judgment and order of acquittal by preferring an appeal to the High Court is conferred upon the victim including the legal heir and others, as defined under Section 2(wa) of Cr.P.C., under proviso to Section 372, but only after obtaining the leave of the High Court as required under sub-Section (3) to Section 378 of Cr.P.C. The High Court of M.P. has failed to deal with this important legal aspect of the matter while passing the impugned judgment and order.

Adverting to another contention of the learned counsel on behalf of the appellant regarding the failure on the part of the High Court to re- appreciate the evidence it is clear from a perusal of the impugned judgment and order passed by the High Court that it has dealt with the appeal in a very cursory and casual manner, without adverting to the legal contentions and evidence on record. The High Court in a very mechanical way has stated that after a perusal of the evidence on record it found no reason to interfere with the decision of the trial court as the prosecution has failed to establish the charges levelled against the accused beyond reasonable doubt and it has dismissed the appeal by passing a cryptic order. This Court is of the view that the High Court, being the Appellate Court, has to exercise its appellate jurisdiction keeping in view the serious nature of the charges levelled against the accused. The High Court has failed to exercise its appellate jurisdiction properly in the appeal filed by the appellant against the judgment and order of acquittal passed by the trial court.

Hence, the impugned judgment and order of the High Court is not sustainable in law and the same is liable to be set aside by this Court and the case is required to be remanded to the High Court to consider for grant of leave to file an appeal by the appellant as required under sub-Section (3) to Section 378 of Cr.P.C. and thereafter proceed in the matter For the reasons stated supra, this appeal is allowed by setting aside the impugned judgment and order of the High Court. The case is remanded to the High Court to hear the appellant with regard to grant of leave to file an appeal as the appellant is legal heir of the victim as defined under Section 2(wa) of Cr.P.C. and dispose of the appeal in accordance with law in the light of observations made in this order as expeditiously as possible.

... ... J. [T.S. THAKUR]
.....J. [V. GOPALA GOWDA] New Delhi, October 6, 2015

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[2] 221 (2015) DLT 1 [4] (1976) 1 SCC 128 [6] (1985) 1 SCC 591

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