Kaptan Singh & Ors vs State Of M.P. & Anr on 24 April, 1997

Equivalent citations: AIR 1997 SUPREME COURT 2485, 1997 (6) SCC 185, 1997 AIR SCW 2423, 1997 CRIAPPR(SC) 156, 1997 CRILR(SC MAH GUJ) 370, 1997 CALCRILR 226, 1997 SCC(CRI) 870, (1997) 5 JT 35 (SC), 1997 (1) UJ (SC) 791, 1997 CRILR(SC&MP) 370, (1997) 4 SUPREME 211, (1997) 1 CTC 672 (SC), 1997 (5) JT 35, (1997) ILR (KANT) 2916, (1997) 2 CURCRIR 109, (1997) 34 ALLCRIC 801, (1997) 2 SCJ 201, (1997) 2 CRICJ 104, (1997) 2 CHANDCRIC 92, (1997) 2 CRIMES 52, (1997) 1 JAB LJ 399, (1997) 2 ALLCRILR 592, (1997) 2 BLJ 983, (1997) 2 EASTCRIC 100, (1997) 2 RAJ LW 281, (1997) 3 RECCRIR 135, (1998) SC CR R 216, 1997 BOM LR 2 67, 1997 (100) BOM LR 67

Author: M.K. Mukherjee

Bench: M.K. Mukherjee, S.P. Kurdukar

PETITIONER:
KAPTAN SINGH & ORS.

Vs.

RESPONDENT:
STATE OF M.P. & ANR.

DATE OF JUDGMENT: 24/04/1997

BENCH:
M.K. MUKHERJEE, S.P. KURDUKAR

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T M.K. MUKHERJEE, J.

Leave granted.

The six appellants before us were arraigned before the Sessions Judge, Morena for rioting and the murder of Baijnath in the night between June 5 &6, 1983. The trial Judge acquitted them of both the charges; and aggrieved thereby the respondent No.2, who was the grandfather of the deceased, sent a registered letter to the High Court. That letter was registered as a criminal revision and notice was issued to the appellants. After hearing the parties the High Court allowed the revision petition, set aside the acquittal of the appellants and remanded the matter to the trial Court to pass a fresh judgment after hearing the parties or, if need be, to hold a retrial. The above judgment of the High Court is under challenge in this appeal.

In assailing the judgment of the High Court Mr. Lalit, the learned counsel appearing for the appellants submitted that the High Court exceeded its revisional jurisdiction under Section 401 Cr. P.C. in that it reappraised the entire evidence from its own point of view and reached inferences contrary to those of the trial Court on almost every point, which was legally impermissible. In support of hes contention he relied upon the judgments of this Court in Chinnaswamy vs. State of Andhra Pradesh (AIR 1962 S.C 1788), Mahendra Pratap vs, Sarjn Singh (AIR 1968 S.C. 707), Khetra Basi vs. state of Orissa (AIR 1970 S.C. 272) and P.N.J. Raju vs. B.P. Appadn (AIR 1975 S.C. 1854), Wherein the scope and extent of the revisional jurisdiction of the High Court in dealing with an order of acquittal have been dealt with. In Chinnaswamy (supra) this Court held that though it was open to the High Court to set aside an order of acquittal even at the instance of the private parties the revisional jurisdiction should be exercised only in exceptional cases when there was some glaring defect in the procedure or there was a manifest error on a point of law and consequently there had been a flagrant miscarriage of justice. This Court Pointed out that it was not possible to lay down the criteria for determining such exceptional cases which would cover all contingencies but indicated some cases which would justify the High Court to Interfere with an order of acquittal in revision. The cases so indicated are:

> where the trial Court has no jurisdiction to try the case but has still acquitted the accused or where the trial Court has wrongly shut out evidence which the prosecution wished to produce or where the appeal Court has wrongly held evidence which was admitted by the trial Court as not admissible or where material evidence has been overlooked either by the trial court or by the appeal Court or where the acquittal is based on a compounding of an offence. Which is invalid under law. In the other Cases referred to above this Court reiterated the principles laid down in Chinnaswamy (supra) and observed that the revisional jurisdiction when invoked by a private complainant against all order of acquittal ought not to be exercised lightly and that it could be exercised only in exceptional case where the interests of public justice required interference for the correction of a manifest illegality or the prevention of a gross miscarriage of justice.
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> Apart from the cases relied upon by Mr. Lalit, we find that in Ayodhya vs. Ram Sumer Singh (AIR 1981 SC 1415) a three judge Bench of this Court dealt with the power exercisable under Section 401 Cr. P.C. In that case the high Court, after referring to Chinnaswamy (supra), had said:

> " In the instant case, we find that this is a case of non-application of mind on the part of the Court below. The Probative value of the First Information Report (Ex.KA 19) has been entirely ignored. The individual testimony of the eye witnesses has not been discussed and their reliable testimony has been ignored, from which it follows that material evidence has not been considered and it has been overlooked. The entire Judgment is full of inconsistencies. The Court below has misquoted the evidence at some places, for example, while dealing with the copy of statement (Ex.KA 18). The Judgment consists of faulty reasoning and lack of judicial approach. Accepted canons for appreciating evidence have been thrown to the wind. The conclusions on the question of motive are against the weight of overwhelming evidence in the case. In our opinion, the view expressed by the court below has resulted in grave miscarriage of justice so far as the opposite parties Uma Shanker, Girja Shanker, Gauri Shanker, Achhaibar, Jhabbar, Bansu, Ram Katul, Ayodhya Dube and Vindhyachal are concerned. The above, in our opinion, are exceptional circumstances which compel us to order retrial of the aforesaid opposite parties."

In upholding the above order of the High Court this Court observed as under:

> "In our view the High Court has given adequate reasons for interfering with the acquittal and ordering a retrial of the appellants. We may add that the High Court also expressed the view that the instances mentioned by this Court in Chinnaswamy vs. State of Andhra Pradesh as justifying interference with orders of acquittal in the exercise of revisional powers were illustrative and not exhaustive. We agree with the view expressed by the High Court and we only wish to say that the Criminal Justice System does not admit of 'Pigeon holing' . If and the law do not fall neatly into slots, When a Court starts laying down rules enumerated (1),(2),(3),(4) or
>
> (a),(b),(c),(d), it is arranging for itself traps and pitfalls.

Categories, classifications and compartments, which statute does not mention, all tend to make law less flexible, less sensible and less just."

From a conspectus of the above decisions it follows that the revisional power of the High Court while sitting in judgment over and order of acquittal should not be exercised unless there exists a manifest illegality in the judgment or order of acquittal or there is grave miscarriage of justice. Read in the context of the above principle of law we have no hesitation in concluding that the judgment of the trial Court in the instant case is patently wrong and it has caused grave miscarriage of justice. The High Court was therefore fully justified in setting aside the order of acquittal. From the judgment of the trial Court we find that one of the grounds that largely weighed with it for acquitting the appellants was that an Inspector of CID who had taken up the investigation of the case and was examined by the defence (D.W.3) testified that during his investigation he hound that the story as made out by the prosecution was not true and on the Contrary the plea of the accused (appellants) that in the night of the incident a dacoity with murder took place in the house of Baijnath by unknown criminals and the appellants were implicated falsely was true . It is trite that result of

investigation can never be legal evidence; and this Court in Vijender etc. Vs. State of Delhi (JT 1977 (3) SC 131), made the following comments while comments while dealing with this issue:

> "The reliance of the trial Judge on the result of investigation to base is findings is again patently wrong. If the observation of the trial judge in this regard is taken to its logical conclusion it would mean that a finding of guilt can be recorded against an accused without a trial, relying solely upon the police report submitted under Section 173 Cr.P.C., which is the outcome of an investigation. The result of investigation under chapter XII of the Criminal procedure code is a conclusion that an investigating officer draws on the basis of materials collected during investigating officer draws on the basis of materials collected during investigation and such conclusion can only form the basis of a competent Court to take cognizance thereupon under Section 190(1) (b) cr. p. c. and to proceed with the case for trial, where the materials collected during investigation are to be translated into legal evidence, The trial conclusion solely on the evidence adduced during the trial; and it cannot rely on the investigation or the result thereof. Since this is law, elementary principle of criminal law, we need not dilate on this point ."

The High Court was, therefore, fully justified in commenting upon the trial court's impermissible and undue reliance on the evidence of DW 3 and , for that matter, the result of his investigation . Incidentally it may be mentioned that ignoring the report of investigation submitted by the Inspector the Magistrate took cognizance of the offences alleged against the appellants and committed the case to the court of Session. There are other patent infirmities in the judgment of the trial Court to which the High Court has adverted but in case any reason given by us for this comment of ours creates an unconscious impression upon the trial Court, we refrain from doing so.

We, therefore, find no merit in this appeal and dismiss it. Before parting with this judgment we would like to observe that in complying with the directions of the High Court, the trial Court should not be in any way influenced by any observation made by the High Court touching the merits of the case.