

Salig Ram And Anr. vs Smt. Tarawati on 7 January, 1954

Equivalent citations: AIR1954ALL594, AIR 1954 ALLAHABAD 594

ORDER

Randhir Singh, J.

1. These are two applications in revision against the order of the Sessions Judge of Lucknow dated 10th January 1953, refusing to interfere with an order dated 25th October 1952, passed by a Magistrate, first class, on an application made by Smt. Bitia.

2. As the facts of this case are a trifle complicated it would be useful to make a brief reference to them before entering into a discussion of the points raised on behalf of the applicants.

3. A complaint under Section 406 of the Indian Penal Code was made by one Smt. Taravati on the allegations that certain ornaments and a box had been entrusted by her in the company of her adoptive mother Smt. Jamna Devi sometime in 1948, to Salig Ram and Smt. Bitia for safe custody and that they failed to return the property to her and therefore committed criminal breach of trust. The defence of Salig Ram and Smt. Bitia was that the entrustment of the articles had been made by Smt. Jamna Devi and not by Smt. Taravati. It was also contended on behalf of Salig Ram that Jamna Devi in fact pawned the ornaments and that they were not deposited in trust. The learned Magistrate who tried the case came to the conclusion that the ornaments had been entrusted to the care of Salig Ram by Smt. Jamna Devi, but the box, which was a separate item, had been entrusted by Smt. Taravati. Salig Ram was acquitted and Smt. Bitia was discharged.

This order of acquittal was followed by an order made under Section 517, Criminal P. C. directing the return of the ornaments which had been taken possession of by the police to Salig Ram and the box to Smt. Taravati. Taravati then went in revision against the order of acquittal while Salig Ram and Smt. Bitia went in appeal against the order passed by the Magistrate under Section 517, Criminal P. C. Both these cases were transferred to Sri Gopal Chand Sinha, Temporary Civil and Sessions Judge. He dismissed the appeal but made a reference to the High Court for the setting aside of the acquittal. The reference made by the Sessions Judge came up for hearing before a learned Judge of this Court on 16th May 1952, and it was rejected.

Certain observations had been made in the judgment of the High Court and on the basis of these observations an application was made by Smt. Bitia to the Magistrate, who had passed the order under Section 517, Criminal P. C. for a revision of the order on the ground that the High Court had held that the box had also been entrusted by Jamna Devi and not by Taravati. The learned Magistrate to whom the application was made dismissed it on 25th October 1952, and a copy of the order has been filed. In this order the learned Magistrate referred to his earlier order for the

disposal of the articles which were the subject-matter of the dispute under Section 406, Penal Code, and he refused to amend his order unless an order of the High Court was brought. The applicants Smt. Bitia and Salig Ram then went in revision to the Sessions Judge of Lucknow. The learned Sessions Judge dismissed the application for revision and she has now come up in revision to this Court.

4. It appears that no revision was filed against the order of the Sessions Judge dated 22nd December 1951, dismissing the appeal filed against the order under Section 517, Criminal P. C. The order passed by the Magistrate therefore became final. It was only after that, that the judgment of the High Court was delivered in the reference made by the Sessions Judge on 16th May 1952. Smt, Bitia then made an application to the Magistrate for revising the order. Once a Magistrate has passed an order under Section 517, Criminal P. C., and the parties have gone up in appeal, it is not open to him to revise his, order or to set it aside on the motion of any of the parties to the dispute.

The learned Magistrate before whom the application for revision of the order had been made by Smt. Bitia was therefore, perfectly justified in refusing to interfere with his earlier order passed under Section 517, Criminal P. C. which had become final.

The learned counsel for the applicant has not been able to point out any provision of law under which a Magistrate was empowered or entitled to vary his order passed earlier under Section 517, Criminal P. C. at the request of either party unless it be on the basis of a clerical mistake. The learned counsel for the applicant has also read out the judgment of the High Court and it has been argued that the observations made by the learned Judge who heard the reference amounted almost to a decision of certain points of fact. I am unable to agree with this contention. A perusal of this order clearly shows that the learned Judge was of opinion that the case in respect of which reference had been made was full of doubts and improbabilities and as such he refused to interfere with the order of acquittal passed by the Magistrate. Any observations of this kind would not amount to a finding on any question of fact such as to justify the Magistrate who had passed the order under Section 517, Criminal P. C., following the acquittal to reverse his order passed regarding the disposal of property.

5. A revision has also been filed on behalf of Smt. Taravati. She made an application before the Sessions Judge in the application for revision filed by Smt. Bitia and Salig Ram. This application of Taravati was also dismissed by the Sessions Judge. The learned counsel for the applicant Smt. Taravati in the other revision application has also not been able to point out that the order passed by the Sessions Judge on 10th January 1953, was wrong. Both the applications in revision must, therefore, fail and are dismissed.