

Khemraj vs State Of Madhya Pradesh on 19 November, 1975

Equivalent citations: 1976 AIR 173, 1976 SCR (2) 753, AIR 1976 SUPREME COURT 173, 1976 LAB. I. C. 290, 1976 SC CRI R 42, (1976) 1 SCC 385, 1976 SCC(CRI) 3, 1976 (1) SCWR 49, 1976 CRI APP R (SC) 80, 32 FACLR 39, 1976 UJ (SC) 45, 1976 (1) SCC 369, 1976 SERVLJ 92, 1976 UJ (SC) 74, 1976 (1) SERVLR 60

Author: P.K. Goswami

Bench: P.K. Goswami, M. Hameedullah Beg

PETITIONER:

KHEMRAJ

Vs.

RESPONDENT:

STATE OF MADHYA PRADESH

DATE OF JUDGMENT 19/11/1975

BENCH:

GOSWAMI, P.K.

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GOSWAMI, P.K.

BEG, M. HAMEEDULLAH

CITATION:

1976 AIR 173

1976 SCR (2) 753

1976 SCC (1) 385

ACT:

Indian Penal Code-Ss. 465 r/W 471-Whether the State appeal against the acquittal under Ss. 465 r/w 471. but conviction under section 420 I.P.C. competent under section 417(2) of the Criminal Procedure Code, 1898-Scope of 417(2)

HEADNOTE:

'K' was charged and tried- for the offences under Ss. 465 r/w 471, for using a forged B.Sc. Certificate and a Date of Birth Certificate Convicted under section 420 I.P.C. by the trial court and sentenced to Rigorous Imprisonment for one year and to pay a fine of Rs. 500/. On an appeal the conviction was maintained, but the sentence was altered to one of six months Rigorous Imprisonment.

On an appeal by the State and the Revision by 'K', the revision petition was dismissed and the appeal allowed convicting him under Sections 465 471 Indian Penal Code and sentenced to one year Rigorous Imprisonment. D

On an appeal by special leave, on the question of competency of the state appeal under section 417(2) of the Criminal Procedure Code 1898, in a case investigated by the Delhi Special Police Establishment, while dismissing the appeal, the Court

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HELD: (i) Under section 5 of the Delhi Special Police Establishment Act 1946 (Act XXV of 1946) the powers and the jurisdiction of the Government to other areas in a state, although not a Union Territory. Once there is an extension of the powers and jurisdiction of the members of the Establishment, the members thereof while discharging such functions are deemed to be members of the Police force of the area and are vested with such powers functions and privileges and are subject to the liabilities of a police officer belonging to that force. [756 BC]

(ii) Investigation under the Delhi Act is a central investigation and the Central Government is concerned with the investigation of the cases by the Establishment and its ultimate result. It is in that background that in 1955 section 417 Cr-P.C. was amended adding sub section (2) in the section to provide for appeal against acquittal. [756 CE]

(iii) This, however, does not bar the jurisdiction of the State Government also to direct presentation of appeals when it is moved by the Establishment The Establishment can move either the Central Government or the State Government. It will be purely a matter of procedure. [756 E]

(iv) The word "also" in sub section (2) of section 417 of the Criminal Procedure Code does not bar the jurisdiction of the State Government to direct the public prosecutor to present an appeal even in cases investigated by the Establishment. Sub section (1) of section 417 is in general terms and would take in its purview all types of cases, since the expression used in that section is "in any case". [756-G-H]

(v) There is no limitation on the power of the State Government to direct institution of appeal with regard to any particular type of cases. Sub section (1) of section 417 being in general terms is as such of wider amplitude Sub section (2) advisedly uses the word "also" when power is given to the Central Government in addition to direct the public prosecutor to appeal. [756H, 757A]

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JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 134 Of 1975.

Appeal by Special Leave from the Judgment and order dated the 11th December 1974 of the Madhya Pradesh High Court in Criminal Revision No. 729 of 1970.

S.S. Khanduja for the Appellant.

Ram Panjwani, Dy. Advocate Genl. (M.P.), H. S. Parihar and K. N. Shroff, for the Respondent.

The Judgment of the Court was delivered by GOSWAMI, J. In this appeal by special leave the only point that arises for consideration is whether the appeal filed by the State of Madhya Pradesh in the High Court against the order of acquittal of the appellant under section 465 read with section 471 or the Indian Penal Code was competent under the law.

The accused (appellant) secured an appointment of Senior operator Trainee in the Bhilai Steel Project by submitting two forged certificates. The first certificate was regarding his passing the Bachelor of Science examination with Mathematics, Physics and Chemistry in 2nd Division from the University of Sagar. The second document was an attested copy of his Matriculation certificate in proof of age where his date of birth was shown as 'August 21, 1941.' , The minimum educational qualification for the post was that the candidate must be a Science Graduate of a recognised University with any two of the three subjects Mathematics, Physics and Chemistry and the age limit was prescribed between 18 to 23 years as on 1-10-1963.

The accused who registered himself as a Science Graduate in the Employment Exchange, Bhilai, was sponsored for the above mentioned post on January 28, 1964. He was ultimately selected for the post placing reliance on the aforesaid two certificates and he joined the appointment.

That, as it transpired, prosecution was launched against the accused on the complaint of the Superintendent of Police, Delhi Special police establishment, Jabalpur, and a case was registered against him under sections 182, 471 and 420 IPC. In due course a charge sheet was submitted against the accused and he was tried under section 465/471 and section 420 IPC. According to the prosecution the accused was 'born on August 21, 1936 and he had not passed his B.Sc. ' examination at all and after tendering the forged certificates procured the employment.

The accused was tried by the Special Magistrate, First Class, Jabalpur, for offences under Section 465 read with section 471 and under section 420 IPC. The trial court acquitted the accused under section 465 read with section 471 IPC and convicted him under section 420 IPC and sentenced him to rigorous imprisonment for one year and to pay a fine of Rs. 500/-. The learned Additional Sessions Judge on appeal maintained the conviction but reduced the sentence to six months' rigorous imprisonment maintaining the fine.

The State of Madhya Pradesh preferred an appeal to the High Court against the acquittal of the accused under section 465 read with section 471' IPC. The accused also preferred a revision application against his conviction under section 420 IPC. Both the matters were heard together and

by a common judgment the High Court dismissed the revision application of the accused and allowed the State's appeal and convicted the accused under section 465 read with section 471 and sentenced him to rigorous imprisonment for one year. Hence this appeal by special leave.

It is submitted on behalf of the appellant that the appeal to the High Court was not competent in view of the provisions of section 417(2) of the Criminal Procedure Code. It is admitted that this case is governed by the old Criminal Procedure Code, 1898. We may, therefore, at once read section 417, Criminal Procedure Code, so far it is relevant for our purpose:

"417(1) Subject to the provisions of sub-section (5), the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court.

(2) If such an order of acquittal is passed in any case in which the offence has been investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 the Central Government may also direct the Public Prosecutor to present an appeal to the High Court from the order of acquittal".

* * * * Section 417, Criminal Procedure Code, prior to the Amendment Act XXVI of 1955 provided for presentation of appeals by the public prosecutor on the direction of the State Government. The 1955 Amendment introduced several changes and provided for appeals at the instance of the complainant as also on the direction of the Central Government in cases investigated by the Delhi Special Police Establishment. Further changes were introduced in the matter of appeals against acquittal under section 378 of the Code of Criminal Procedure, 1973, with which we are not concerned in this appeal in view of the repeal provisions under section 484(1), Cr. P.C. The Delhi Special Police Establishment (briefly the Establishment), a central police force, is constituted under the Delhi Special Police Establishment Act, 1946 (Act XXV of 1946) (briefly the Delhi Act). Under section 2 of the Act, the Central Government may constitute a special police force, called the Delhi Special Police Establishment, for investigation of certain offences or class of offences as notified under section 3 of the Delhi Act. Under section 4 of the Act the Superintendence of the Delhi Special Police Establishment vests in the Central Government and administration of the Special Police Establishment vests in an officer appointed by the Central Government who exercises powers exercisable by an Inspector General of Police as the Central Government may specify. Under section 5 the powers and the jurisdiction of the Establishment can be extended by the Central Government to, other areas in a State although not a Union Territory. Once there is an extension of the powers and jurisdiction of the members of the Establishment, the members thereof while discharging such functions are deemed to be members of the Police force of the area and are vested with the powers, functions and privileges and are subject to the liabilities of a police officer belonging to that force. The police officer also subject to the orders of the Central Government exercises the powers of the officer incharge of a police station in the extended area. Under section 6 consent of

the State Government is necessary to enable the officer of the Establishment to exercise powers and jurisdiction in any area in the State not being a Union Territory or railway area.

Investigation under the Delhi Act is, therefore, a central investigation and the officers concerned are under the superintendence of the officer appointed by the Central Government. The superintendence of the Establishment is also under the Central Government. The Central Government, therefore, is concerned with the investigation of the cases by the Establishment and its ultimate result. It is in that background that in 1955 section 417 was amended by adding subsection (2) to the section to provide for appeal against acquittal in cases investigated by the Establishment also on the direction of the Central Government. In view of the provisions of the Delhi Act it was necessary to introduce sub-section (2) in section 417 so that this Central Agency which is solely and intimately connected with the investigation of the specified offences may also approach the Central Government for direction to appeal in appropriate cases.

This, however, does not bar the jurisdiction of the State Government also to direct presentation of appeals when it is moved by the Establishment. The establishment can move either the Central Government or the State Government. It will be purely a matter of procedure whether it moves the State Government directly or through the Central Government or in a given case moves the Central Government alone. It will again be a matter of procedure when the Central Government decides to appeal it requests the State Government to do the needful through the public prosecutor appointed under the Code.

The word 'also' in sub-section (2) of section 417 is very significant. This word seems not to bar the jurisdiction of the State government to direct the public prosecutor to present an appeal even in cases investigated by the Establishment. Sub-section (1) of section 417 is in general terms and would take in its purview all types of cases since the expression used in that sub-section is "in any case". We do not see any limitation on the power of the State Government to direct institution of appeal with regard to any particular type of cases, Sub-section (1) of section 417 being in general terms is as much of wider amplitude. Sub-section (2) advisedly uses the word 'also' when power is given to the Central Government in addition to direct the public prosecutor to appeal.

In the present case we find from the documents produced before us that the move was made by the Superintendent, Delhi Special Police Establishment, by requesting the Secretary, Law Department of the Government of Madhya Pradesh and the decision was taken by the State Government as it appears from the letter- of the Under Secretary dated January 28, 1969, to the Advocate General, Madhya Pradesh. The appeal was thereafter` filed in the name of the State of Madhya Pradesh. No objection, therefore, can be taken about the competency of the appeal being filed by the State of Madhya Pradesh in this case.

As a matter of procedure it will be even permissible for the appeal against acquittal to be filed by the public prosecutor under the direction of the State Government or the Central Government without impleading either as a party.

The objection of the appellant is, therefore, devoid of substance. We may mention that no such objection was even taken in the High Court. In the result the appeal fails and is dismissed.

S.R.

Appeal dismissed.