

## Kamra vs Pt. Murari Lal on 20 July, 1955

**Equivalent citations: AIR1955ALL694, 1955CRILJ1551, AIR 1955 ALLAHABAD 694**

ORDER

Oak, J.

1. This reference by the learned Sessions Judge of Meerut arises out of a proceeding under Section 476, Cr P. C. The matter has arisen thus. (2) Kamra filed a complaint under Ss. 447, 352 and 506, I. P. C. against Smt. Rajdulari and others. That criminal case ended in the acquittal of the accused persons. Subsequently Murari Lal, on behalf of Smt. Rajdulari, moved the learned Magistrate for taking proceedings under Section 476, Cr. P. C. against Kamra and Shabbir Ahmad on the ground that, they had given false evidence on oath during the trial. The learned Magistrate (Sri Harihar Prasad) rejected the application under Section 476, Cr. P. C. Against that order passed by Sri Harihar Prasad two separate appeals were filed. They were numbered as 69 and 70 of 1952.

The two appeals were directed against Kamra and Shabbir Ahmad. Those two appeals were disposed of on 31-7-1952 by Sri Kazmi, who was then the Additional Sessions Judge of Meerut. He set aside Sri Harihar Prasad's order, and remanded the case for further enquiry. The matter was subsequently dealt with by another Magistrate, Sri Chaturvedi. After holding further enquiry under Section 476, Cr. P. C. Sri Chaturvedi passed an order on 26-12-1952 ordering the prosecution of Kamra, but refusing to file a complaint against Shabbir Ahmad Khan.

Against this order dated. 26-12-1952, two separate appeals were filed by the parties. Kamra filed Criminal Appeal No. 73 of 1953 against the order in so far as the order directed his prosecution. Criminal Appeal No. 115 of 1953 was filed by Murari Lal against the same order in so far as Sri Chaturvedi declined to file a complaint against Shabbir Ahmad Khan. These two connected appeals (Nos. 73 and 115 of 1953) came up for disposal before the learned Sessions Judge of Meerut. A point was raised before the learned Sessions Judge that, Sri Kazmi's order dated 31-7-1952 remanding the case for fresh enquiry under Section 476, Cr. P. C. was bad in law.

The learned Sessions Judge accepted this contention, and has, therefore, made this reference to the High Court recommending that, Sri Kazmi's order dated 31-7-1952 and subsequent proceedings before the first class Magistrate should be quashed.

3. Mr. Mital appearing for the complainant raised a preliminary objection that, the learned Sessions Judge was not competent to make a reference against an order of an Additional Sessions Judge. The present reference has been made by the learned Sessions Judge under Section 438, Cr. P. C. Section 438(1), Cr. P. C. states:

"The Sessions Judge may..... on examining under Section 435 or otherwise the record of any proceeding, report for the orders of the High Court....."

Section 435, Cr. P. C. confers upon certain Courts the power to call for record of inferior Courts. An Additional Sessions Judge is not inferior to the Sessions Judge. I, therefore, agree with Mr. Mital that under Section 435, Cr. P. C. the learned Sessions Judge was not competent to call for records of the Additional Sessions Judge.

4. However, the operation of Section 438, Cr P. C. is not confined to cases falling under Section 435, Cr. P. C. The word 'otherwise' appearing in Section 438, Cr. P. C. shows that, it is permissible to make a report to High Court even in cases which do not fall under Section 435, Cr. P. C. In the case of -- 'Emperor v. Bhatu Sadu Mali', AIR 1938 Bom 225 (A) it was observed by a Full Bench of Bombay High Court that, a Sessions Judge may refer a matter to the High Court if he came to the conclusion that he had himself made a mistake which ought to be corrected by the High Court in revision.

The same reasoning will apply to an order passed by a court of co-ordinate jurisdiction. I, therefore, overrule the preliminary objection, and hold that under Section 438, Cr. P. C. a Sessions Judge may make to the High Court a report touching an order passed by an Additional Sessions Judge.

5. Although a Sessions Judge may be justified in special cases in making a reference with respect to an order passed by an Additional Sessions Judge, a Sessions Judge should ordinarily be reluctant to report against an order passed by an Additional Sessions Judge. Special circumstances may, however, make it imperative to adopt such an unusual course. In the present case the learned Sessions Judge of Merrut was called upon to hear Criminal Appeals Nos. 73 and 115 of 1953.

In dealing with those appeals the learned Sessions Judge had to discuss the propriety of Sri Chaturvedi's order dated 26-12-1952. It was in that connection that the learned Sessions Judge was obliged to observe that, Sri Kazmi's order dated 31-7-1952 was bad in law.

6. In the case of -- 'Munni Lal v. Emperor', AIR 1937 All 305 (B), it was held by a Full Bench of this Court that an appellate Court hearing an appeal under Section 476B, Cr. P. C. is not competent to remand the case to the lower court for further evidence being taken. It was held by Sulaiman, C. J., that, the appellate court has no jurisdiction to return the case to the lower court with the direction to take evidence. On the authority of this Full Bench decision I hold that Sri Kazmi's order dated 31-7-1953 remanding the case for further inquiry was without jurisdiction.

7. Mr. Mital pointed out that the point under consideration was not raised in the grounds of appeal filed before the learned 'Sessions Judge. Nevertheless the learned Sessions Judge thought it necessary to consider the point. Mr. Mital further urged that it is now too late to set aside that order dated 31-7-1952. . There is no limitation for taking action under Sections 438 and 439, Cr. P. C. The question is whether it is expedient to adopt the course suggested, by the learned Sessions Judge.

The learned Sessions Judge has recommended that Appeals Nos. 69 and 70 of 1952 should not be re-heard. If the reference is accepted, Appeals Nos. 69 and 70 of 1952 will have to be re-heard. If the reference is to be rejected, the Sessions Judge will have to hear Appeals Nos. 73 and 115 of 1953. It cannot be said that the second course is simpler than the first course. It is true that no revision was filed against the order dated 31-7-1952. But an order passed by the learned Magistrate in pursuance of that illegal order is still open to appeal. It is, therefore, still possible to correct Sri Kazmi's order dated 31-7-1952.

8. The reference is accepted. Sri Kazmi's order dated 31-7-1952 and the subsequent proceedings held before the learned Magistrate are quashed.

The learned Sessions Judge of Meerut is directed to readmit Criminal Appeals Nos. 69 and 70 of 1952, and dispose of those two appeals in accordance with law. It will be open to the learned Sessions Judge to transfer those two appeals to some other competent court.