

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU
Cr. Rev. No.27/2007

Date of decision : September 08, 2008

Dilip Kumar Kathi Vs. Chaman Lal & Ors.

Coram:

Hon'ble Mr. Justice Virender Singh

For the petitioner(s) : Mr. K.K. Razdan, Advocate.

For the respondent(s) : Mr. K.L. Pandita, Advocate.

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| i) | Whether approved for reporting in Press/ Media | Yes/No |
| ii) | Whether to be reported in Digest/Journal: | Yes/No |
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Through the instant Revision Petition, the petitioner (complainant-first informant) has impugned the judgment of learned Judicial Magistrate Ist Class, Hiranagar, dated 30th of October, 2006, with regard to the acquittal earned by all the three respondents-1 to 3 (hereinafter referred to as accused).

Admitted position is that the State has not preferred any appeal against the impugned judgment.

All the three accused were booked in case FIR No.57/03 dated 08-04-2003 for the offences punishable under sections 336/337/34 RPC on the allegation that on 26th of March, 2003, about 8.00 p.m., complainant Dilip Kumar along with his brother Romesh Kumar had visited the house of Chaman Lal accused to enquire about the ration, he along with other two accused started pelting stones upon them, in which Dilip Kumar and his brother

Romesh Kumar had received injuries. These injuries are simple in nature.

The prosecution in support of his case has examined as many as four witnesses. The case of the accused was of false implication and one witness was examined by them in defence.

After examining the entire evidence, learned trial Judge has acquitted all the accused observing that the prosecution has not been able to prove the case beyond reasonable doubt.

I have heard learned counsel for both the sides and with their assistance perused the impugned judgment. Trial Court record has also been perused by me.

Learned counsel for the petitioner submits that learned Trial Court while rejecting the case of the prosecution has given undue importance to the minor discrepancies. He then submits that in this case complainant Dilip Kumar and his brother Romesh Kumar had received injuries at the hands of the accused and, therefore, there were no reasons for the trial Court to disbelieve injured witnesses. He then submits that non-examination of any independent witness would not make any difference in this case when the prosecution case is unfolded by these two injured witnesses on all material aspects.

Primarily, on the basis of the aforesaid submissions, learned counsel submits that the impugned judgment deserves to be disturbed.

Per contra Mr. Pandita submits that scope of revision by a complainant party in a case of acquittal earned by the accused in a State case is very limited. He submits that admittedly State has not preferred any appeal against the acquittal and there is no manifest illegality or gross irregularity apparent on record calling for the indulgence of this Court, while exercising its revisional jurisdiction.

Scope of revision by a complainant (first informant) in a State case against an order of acquittal is very widely discussed by Hon'ble Supreme Court in a judgment rendered in **Bindeshwari Prasad Singh alias B.P. Singh and others Versus State of Bihar (Now Jharkhand) and another, 2002 (4) RCR (Criminal) 61**, wherein their Lordships have observed that:

“In the absence of any legal infirmity either in the procedure or in the conduct of the trial, there was no justification for the High Court to interfere in exercise of its revisional jurisdiction. It is further observed that the High Court should not re-appreciate the evidence to reach a finding different than the one arrived at by the trial Court. In the absence of manifest illegality resulting in grave miscarriage of justice, exercise of revisional jurisdiction in such cases is not warranted. It is further observed by their Lordships that in exercise of revisional jurisdiction against an order of acquittal at the instance of a private party, the Court exercises

only limited jurisdiction and should not constitute itself into an appellate court which has a much wider jurisdiction to go into questions of facts and law and to convert an order of acquittal into one of conviction. It cannot be lost sight of that when a re-trial is ordered the dice is heavily loaded against the accused, and that itself must caution the Court exercising revisional jurisdiction.”

I do not intend to comment on the charges framed in this case for the reason that the accused side has not projected any grievance against the framing of the charge and allowed the prosecution to produce its evidence. Otherwise the charge for the offence punishable under sections 336/337 was defective. I have otherwise appreciated the case of the prosecution within the limited zone of consideration and find no fault with the impugned judgment. No doubt, the prosecution is not getting support from any independent witness, but even the statements of two main witnesses, namely, Dilip Kumar and Romesh Kumar, are not consistent on many material aspects. The learned trial Court after appreciating the entire evidence led by the prosecution in its right perspective has come to a categorical finding that the case of the prosecution is not free from doubt and, therefore, acquitted all the accused. I do not find any good reason to arrive at a different conclusion especially when I do not find any manifest illegality or gross irregularity apparent on record.

Finding no merit in the instant petition, the same is hereby dismissed.

(Virender Singh)
Judge

Jammu
September 08, 2008
T. Arora, PS