

Court No. - 44

Case :- CRIMINAL REVISION No. - 1266 of 1995

Revisionist :- Dinesh Singh

Opposite Party :- Ramadhin Singh & Others

Counsel for Revisionist :- I.P.Singh

Hon'ble Sanjay Kumar Singh,J.

None is present on behalf of the revisionists to press this revision. Counsel for the opposite party Nos. 1 to 7 is also not present. Learned Additional Government Advocate on behalf of the State is present.

Record shows that earlier this case was passed over on 23.02.2016 & 8.3.2016. Thereafter by order dated 12.04.2016 learned counsel for the revisionist was allowed four weeks time to correct the array of the opposite parties but as per office report in compliance of order dated 12.04.2016 no correction application has yet been moved. Thereafter case was listed on 15.09.2018, 29.11.2018 & 11.12.2018 but none was present on behalf of the revisionist to press this revision.

This revision has been preferred against the judgment and order dated 12.06.1995 passed by XI Additional Sessions Judge, Kanpur Nagar in S.T. No.405 of 1988 (State vs. Ramdhin Singh and others) under sections 302, 324, 323,149, 147 whereby opposite party Nos.1 to 7, namely, Ramdhin Singh, Ramesh Singh, Surendra Bahadur Singh, Satish Singh, Ram Jiwan Singh, Ram Sajiwan Singh & Ram Pal Singh have been acquitted from the charges framed against them.

This revision is pending since 1995 and has not yet been admitted.

Heard learned A.G.A. on behalf of the State and perused the entire record thoroughly as well as impugned judgment.

Learned A.G.A. precisely submitted that prosecution has proved its case beyond reasonable doubt, therefore, judgment and order dated 12.06.1995 of the court below acquitting the opposite party Nos. 1 to 7 is bad in law and as such deserves to be set aside.

On testing the above submissions in the light of law settled by the Apex Court on the scope of true contours of the jurisdiction vested in the High Court under Section 397 read with Section 401 of the Criminal Procedure Code, 1973, while examining an order of acquittal passed by the trial court, I find that the judgment and order of acquittal in revision can be interfered only on the following circumstances:-

- (i) Where the trial court has no jurisdiction to try the case, but has still acquitted the accused;
- (ii) where the trial court has wrongly shut out evidence which the prosecution wished to produce;
- (iii) where the appellate court has wrongly held the evidence which was admitted by the trial court to be inadmissible;

(iv) where the material evidence has been overlooked only (either) by the trial court or by the appellate court; and

(v) where the acquittal is based on the compounding of the offence which is invalid under the law.

Further the scope of power of revision against an order of acquittal has been well considered and settled by the Apex Court in case of **Vimal Singh Vs. Khuman Singh (1998) 7 SCC 223**. The observation made in para 9 of the said case are being extracted below:

"9. Coming to the ambit of power of the High Court under Section 401 of the Code, the High Court in its revisional power does not ordinarily interfere with judgments of acquittal passed by the trial court unless there has been manifest error of law or procedure. The interference with the order of acquittal passed by the trial court is limited only to exceptional cases when it is found that the order under revision suffers from glaring illegality or has caused miscarriage of justice or when it is found that the trial court has no jurisdiction to try the case or where the trial court has illegally shut out the evidence which otherwise ought to have been considered or where the material evidence which clinches the issue has been overlooked. These are the instances where the High Court would be justified in interfering with the order of acquittal. Sub-section (3) of Section 401 mandates that the High Court shall not convert a finding of acquittal into one of conviction. Thus, the High Court would not be justified in substituting an order of acquittal into one of conviction even if it is convinced that the accused deserves conviction. No doubt, the High Court in exercise of its revisional power can set aside and order of acquittal if it cannot convert an order of acquittal into an order of conviction. The only course left to the High Court in such exceptional cases is to order retrial."

Aforesaid view has been reiterated by the Apex Court in its subsequent judgement in case of **Venkatesan Vs. Rani and another (2013) 14 SCC 207** and held as follows:

"Revisional jurisdiction of the High Court while examining an order of acquittal is extremely narrow and ought to be exercised only in cases where trial court had committed a manifest error of law or procedure or had overlooked and ignored relevant and material evidence thereby causing miscarriage of justice. Reappreciation of evidence is an exercise that the High Court must refrain from while examining an order of acquittal in the exercise of its revisional jurisdiction."

If within the limited parameters, interference of the High Court is justified the only course of action that can be adopted is to order a retrial after setting aside the acquittal. As the language of Section 401 of the Code makes it amply clear there is no power vested in the High Court to convert a finding of acquittal into one of conviction."

Keeping in view of the above proposition of law, I find that the present revision against the judgement and order of acquittal dated 12.06.1995 is bereft of any merit. There is no manifest error of law or illegality or perversity in the judgment and order dated 12.06.1995. Presumption, observations and findings recorded by the XI Additional Sessions Judge, Kanpur Nagar, while acquitting the opposite party Nos. 1 to 7 are well

founded.

Hence no interference is called for in the impugned judgement and order. Revision lacks merit and is accordingly **dismissed**.

Order Date :- 22.12.2018

SKD