

KUMAR ETC. ETC.

v.

KARNATAKA INDUSTRIAL COOP. BANK LTD. & ANR.
(Criminal Appeal Nos. 2049-2066 of 2012)

DECEMBER 14, 2012

[P. SATHASIVAM AND RANJAN GOGOI, JJ.]

Code of Criminal Procedure, 1973 - s.397 r/w s.401 - Revisional Jurisdiction - Reversal of acquittal into conviction - Permissibility - Allegation that appellants pledged fake ornaments and obtained loans thereagainst from respondent-bank - Acquittal of appellants by trial court - Revision petition - High Court allowed the same and convicted the appellants u/ss.406 and 420 r/w s.34 IPC - On appeal, held: While revisional power under the CrPC vest in the High Court the jurisdiction to set aside an order of acquittal, the same would not extend to permit conviction of the accused - Thus, order of High Court converting the acquittal of appellants to one of conviction cannot be sustained in law - Further, the revision petition was inordinately delayed and no sufficient cause was made out within the meaning of s.5 of the Limitation Act - Evidence tendered by the prosecution witnesses also made it clear that the prosecution had failed to prove that the gold ornaments exhibited were the very same articles pledged by the appellants - Appellants accordingly entitled to acquittal - Penal Code, 1860 - ss.406 and 420 r/w s.34 - Limitation Act, 1963 - s.5.

Respondent no.1-Bank filed complaints alleging that the accused-appellants had obtained loans from it by pledging fake gold ornaments. The trial court acquitted the appellants. Respondent no.1-Bank filed revision applications under Section 397 read with Section 401 CrPC . The High Court allowed the applications and

- A convicted the appellants under Sections 406 and 420 r/w s.34 IPC, and therefore the present appeals.

Allowing the appeals, the Court

- B HELD: 1. The revisional jurisdiction of a High Court is conferred by the provisions of Section 397 read with Section 401 CrPC. While Section 397 empowers the High court to call for the record of any proceeding before any inferior criminal court within its jurisdiction to satisfy itself as to the correctness, legality or propriety of any finding, sentence or order and such power extends to suspension of execution of any sentence or order and also to release the accused on bail, under Section 401(3) CrPC there is an express bar in the High Courts to convert a finding of acquittal into one of conviction. While D the revisional power under the CrPC would undoubtedly vest in the High Court the jurisdiction to set aside an order of acquittal the same would not extend to permit the conviction of the accused. The High Court may, however, order a retrial or a rehearing of the case, as may E be, if so justified. The order of the High Court converting the acquittal of the accused-appellants to one of conviction and the sentences imposed on each of them cannot be sustained in law. [Para 5] [1121-H; 1122-A-D]

- F *Sheetala Prasad & Ors. v. Sri Kant & Anr.* 2010 (2) SCC 190; 2009 (16) SCR 686 and *Johar & Ors. v. Mangal Prasad & Anr.* 2008 (3) SCC 423; 2008 (2) SCR 185 - relied on.

- G 2. Further, the Revision Applications filed by the complainant Bank before the High Court were inordinately delayed, i.e., some by 290 days and the others by 785 days. An application was filed by the complainant Bank under Section 5 of the Limitation Act, 1963 seeking condonation of the delay in instituting the Revision Applications. The entire application is in a single H paragraph containing a bald statement that the result of

the case (perhaps the order of the trial court) was not
intimated to the bank and it is only after getting the
requisite information and certified copies of the judgment
that the Revision application could be filed. The High
Court had condoned the delay on the ground that mere
technicalities should not come in the way of rendering
justice. While there can be no dispute with the above
proposition, one does not see how the same could have
had any application to the present case. It was the duty
of the High Court to consider the reasons assigned for
the delay and thereafter come to the conclusion whether,
on the grounds shown, sufficient cause within the
meaning of Section 5 of the Limitation Act has been made
out. On the basis of the statements made in the
condonation application filed on behalf of the bank, no
satisfaction could have been reasonably reached that the
complainant Bank was prevented by sufficient cause
from filing the Revision Applications in time. [Para 6]
[1122-E-G; 1123-A-C]

3. Also, from the evidence tendered by the
prosecution witnesses, viz. PWs 1,2,3 and 4, it is difficult
to see as to how the conclusion of the trial court that the
prosecution had failed to prove that the gold ornaments
exhibited in the case are the very same articles pledged
by the accused is in any way erroneous or untenable in
law so as to disentitle the accused to be acquitted. [Para
7] [1123-D-E; 1124-C-D]

Case Law Reference:

2009 (16) SCR 686	relied on	Para 5	
2008 (2) SCR 185	relied on	Para 5	G

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
Nos. 2049-2066 of 2012.

From the Judgment & Order dated 16.11.2010, H

A 22.03.2011 of the High Court of Karnataka Circuit Bench at Dharwad in Criminal Revision Petition Nos. 2250 of 2010 CW, 2256, 2251, 2252, 2253, 2254, 2255, 2257, 2258 of 2010, 2158, 2159, 2160, 2162, 2163, 2164, 2165, 2171 and 2161 of 2009.

B Shankar Divate for the Appellants.

N.D.B. Raju, Bharathi Raju, N. Ganpathy, V.N. Raghupathy for the Respondent.

C The Judgment of the Court was delivered by

RANJAN GOGOI, J. 1. Leave granted in each of the Special Leave Petitions.

2. The appellants who have been acquitted of the charges under Sections 406 and 420 read with Section 34 of the Indian Penal code have filed the instant appeals challenging the conviction ordered by the High Court of Karnataka in the exercise of its Revisional Jurisdiction under Section 397 read with Section 401 of the Code of Criminal Procedure. The appellant in each of the appeals has been sentenced to undergo R.I. for three months for the offence punishable under Section 406 IPC and R.I for six months for the offence under Section 420 IPC. While both the sentences of imprisonment are to run concurrently, each of the appellants has also been sentenced to pay fine or undergo the default sentence that has been imposed.

3. The facts lie within a short compass and may be briefly enumerated herein under.

G The respondent No. 1 in each of these appeals i.e. Karnataka Industrial Corporation Bank Ltd., Hubli (hereinafter shall be referred to 'the complainant Bank') had filed 18 different complaints in the Court of Judicial Magistrate, First Class, Hubli alleging that between 12.07.2003 and 31.03.2004 loans were taken by each of the appellants by mortgaging gold ornaments.

According to the complainant Bank, on 10.06.2004, a news A
item had appeared in the local newspapers that the appraiser
of Maratha Cooperative Bank had given false appraisal reports
on the basis of which the said bank had granted loans against
fake gold ornaments. As the said person was also the
appraiser of the complainant Bank the gold ornaments pledged B
with the complainant bank by the accused were verified through
another appraiser (PW.4) who certified the gold ornaments
pledged by the accused to be fake. Accordingly, the complaints
in question were filed alleging commission of offences under C
Section 406, 420 read with Section 34 of the IPC by each of
the accused persons who had taken loans from the complainant
Bank by pledging fake gold ornaments. The complaints were
referred, by the learned Magistrate, to the police for
investigation and on completion of such investigation charge
sheets were filed in the Court against each of the accused. D
Thereafter charges were framed to which the accused pleaded
not guilty and claimed to be tried. All the complaint cases were
taken up for trial together and the evidence of the prosecution
was recorded in the complaint case registered and numbered
as CC. No. 1235 of 2005. In the course of the trial six witnesses E
were examined by the prosecution and several documents were
also exhibited. Thereafter, the learned trial court by order dated
29.2.2008 acquitted each of the accused of the charges
levelled against them. It may also be noticed that during the
pendency of the trial, the appraiser, who was impleaded as the
second accused had died. Aggrieved by the said acquittal, F
the complainant Bank instituted separate Revision applications
before the High Court of Karnataka. The High Court by its
common order dated 16/11/2010 and 22/3/2011 allowed each
of the Revision Applications filed by the complainant Bank and
convicted and sentenced the accused as aforesaid. G
Aggrieved the present appeals have been filed.

4. We have heard Mr. Shankar Divate, learned counsel for
the appellant and Mr. N.D.B. Raju and Mr. V.N. Raghupathy,
learned counsels for the respondents. H

A 5. The revisional jurisdiction of a High Court is conferred by the provisions of Section 397 read with Section 401 of the Code of Criminal Procedure. While Section 397 empowers the High court to call for the record of any proceeding before any inferior criminal court within its jurisdiction to satisfy itself as to the correctness, legality or propriety of any finding, sentence or order and such power extends to suspension of execution of any sentence or order and also to release the accused on bail, under Section 401 (3) Cr.P.C. there is an express bar in the High Courts to convert a finding of acquittal into one of conviction. While the revisional power under the Code would undoubtedly vest in the High Court the jurisdiction to set aside an order of acquittal the same would not extend to permit the conviction of the accused. The High Court may, however, order a retrial or a rehearing of the case, as may be, if so justified.

C [vide *Sheetala Prasad & Ors. v. Sri Kant & Anr.*¹ and *Johar & Ors. v. Mangal Prasad & Anr.*²]. In view of the above we do not see how the orders of the High Court dated 16/11/2010 and 22/3/2011 converting the acquittal of the accused appellants to one of conviction and the sentences imposed on each of them can be sustained in law.

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6. There is another aspect of the case which cannot be left unaddressed. The Revision Applications filed by the complainant Bank before the High Court were inordinately delayed, i.e., some by 290 days and the others by 785 days.

F We have read and considered the application filed by the complainant Bank under Section 5 of the Limitation Act, 1963 seeking condonation of the delay that had occurred in instituting the Revision Applications. The entire application is in a single paragraph containing a bald statement that the result of the case (perhaps the order of the trial court) was not intimated to the bank and it is only after getting the requisite information and certified copies of the judgment that the Revision application could be filed. The High Court had condoned the delay on the

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1. 2010 (2) SCC 190.

H 2. 2008 (3) SCC 423.

ground that mere technicalities should not come in the way of rendering justice. While there can be no dispute with the above proposition, we do not see how the same could have had any application to the present case. It was the duty of the High Court to consider the reasons assigned for the delay and thereafter come to the conclusion whether, on the grounds shown, sufficient cause within the meaning of Section 5 of the Limitation Act has been made out. We have already taken note of the contents of the condonation application filed on behalf of the bank and it is our considered view that on the basis of the statements made therein no satisfaction could have been reasonably reached that the complainant Bank was prevented by sufficient cause from filing the Revision Applications in time.

7. We have also been addressed by the learned counsels for the parties at some length on the merits of the matter. To make the discussion complete we may briefly note the reasons that had weighed with the learned trial court to acquit the accused in the present cases. We have considered the evidence tendered by the prosecution witnesses, particularly, Madan Athani (PW-1), A.N. Ramakrishna (PW-2), Irappa Abbigeri (PW-3) and Pandurang (PW-4). Significantly, PW-1 had deposed that a register is maintained with respect to the gold articles pledged with the Bank showing the weight, the nature of the article, quality of the gold, name of the design etc. for purposes of identification of the articles pledged. However, no such register was brought on record by the prosecution. At the same time, PW-2 who was the Manager of the bank at the time of the filing of the complaint had stated that he had not called the borrowers/accused to identify the gold articles when the same were found to be fake nor had he informed the accused that the gold ornaments pledged by them were fake. That a register showing the particulars and description of the gold ornaments pledged to the bank was maintained had also been admitted by PW-3. PW-1 in his cross-examination had admitted that each gold article pledged with the bank will have a chit containing the loan account number, signature of the

- A borrower and the bank officials but in respect of the gold articles exhibited in the court no such chits were found to be affixed. It also transpires that PW-1 who was the Bank Manager at the time of the loan transaction had handed over the articles to the new incumbent (PW-2) and furthermore that the gold ornaments pledged were kept in a locker and were subjected to regular inspection by the bank officials. PW-4 who had submitted the second appraisal report to the effect that the gold ornaments sent to him were fake had deposed that the said fact i.e. gold ornaments were fake could be made out on an examination by the naked eye. If the prosecution evidence itself had revealed the aforesaid facts it is difficult to see as to how the conclusion of the learned trial court that the prosecution had failed to prove that the gold ornaments exhibited in the case are the very same articles pledged by the accused is in any way erroneous or untenable in law so as to disentitle the accused to be acquitted.

8. For all the aforesaid reasons we are of the view that the judgment and order dated 16/11/2010 and 22/3/2011 passed by the High Court in each of the Criminal Revisions before it cannot be sustained in law. We therefore, allow the appeals and set aside the common judgment and order dated 16/11/2010 and 22/3/2011 passed by the High Court in the Criminal Revision Petitions filed by the respondent Bank.

B.B.B.

Appeals allowed.