

APPELLATE CRIMINAL

Before R. S. Sarkaria and S. C. Mital, JJ.

SADHU SINGH.—Appellant

versus

DEVI DAYAL KOHLI,—Respondent.

Criminal Appeal No. 772 of 1968.

November 11, 1971.

Code of Criminal Procedure (Act V of 1898)—Sections 417(3), 494 and 495—Successor-in-interest of a deceased complainant allowed under section 495 to conduct the prosecution—Complaint dismissed and accused acquitted—Appeal against such acquittal—Whether maintainable by such successor-in-interest—Criminal Appeal—Whether can be withdrawn.

Held, that the right to appeal against an order of acquittal has primarily been given to the State Government and sub-section (3) of section 417 of the Code of Criminal Procedure is in the nature of an exception. The word 'complainant' occurring in that sub-section has to be interpreted in the restricted sense of a person on whose complaint the case had been instituted in the trial court. A successor-in-interest of a complainant, even if he is allowed under section 495 of the Code of conduct the prosecution after the death of the complainant on whose complaint the Magistrate takes cognizance of the case, does not by operation of law become the complainant. There is no provision in the Code which gives the status of original complainant to the successor of the deceased complainant for the purpose of filing an appeal under section 417(3) of the Code.

(Paras 5 and 6)

Held, that section 494 of the Code expressly lays down that a case may be withdrawn by the Public Prosecutor with the consent of the Court "before the judgment is pronounced" by trial Court. These words provide for the extreme limit up to which a case pending before the trial Court can be withdrawn. They cannot be extended to cover an appeal which is a post-trial matter. Hence under section 494 of the Code, a criminal appeal cannot be withdrawn.

(Para 3)

Appeal from the order of Shri K. K. Taneja, Judicial Magistrate 1st Class, Ambala, dated the 12th March, 1968, acquitting the respondent.

Cr. M. 1710/71.

Application under section 561-A, Criminal Procedure Code, on behalf of Devi Dayal Kohli, respondent praying that the parties have come to a compromise and the Criminal Appeal No. 772/68 be dismissed.

Sadhu Singh v. Devi Dayal Kohli (Sarkaria, J.)

Nemo, for the appellant.

R. L. Kohli, Advocate of Delhi, R. N. Narula, and J. S. Chawla, Advocates with him, *for the respondent.*

JUDGMENT

Judgment of this Court was delivered by:—

SARKARIA, J.—(1) The material facts leading to this order are as follows:—

Amar Singh, son of Bakhshi Singh of Ambala City made a complaint against Devi Dayal Kohli, alleging commission of offences under sections 406/379/509, Indian Penal Code. After trial the Judicial Magistrate 1st Class, Ambala, acquitted the accused by a judgment, dated 12th March, 1968, Amar Singh died during the pendency of the case in the trial Court and thereafter it seems that the proceedings were continued by his son, Sadhu Singh, though it is not clear whether he was granted the necessary permission under section 495, Criminal Procedure Code, for continuing the conduct of the prosecution in place of the deceased.

(2) The complainant's son, Sadhu Singh, after obtaining special leave under section 417(3), Criminal Procedure Code, has filed this appeal against the aforesaid order of acquittal.

(3) An application has been made under section 561-A, Criminal Procedure Code, in which it is, *inter alia*, stated that the parties have compromised the matter, and, in consequence, the appellant be allowed to withdraw the appeal. It is well settled that section 494 of the Code of Criminal Procedure does not extend to the withdrawal of appeals. That section expressly lays down that the case may be withdrawn by the Public Prosecutor with the consent of the Court "*before the judgment is pronounced*" by the trial Court. The words "*in other cases before judgment is pronounced*", occurring in section 494 provide for the extreme limit up to which a case pending before the trial Court can be withdrawn. They cannot be extended to cover an appeal which is a post-trial matter. Thus, even if it is assumed for the sake of argument that Sadhu Singh was duly authorised under section 495, Criminal Procedure Code, to continue the prosecution after the death of his father in the trial Court, he will not be

competent to withdraw this appeal under section 494 or under any other provision of the Code. This request is, therefore, declined.

(4) The next contention of the learned counsel for the respondent, however, is that Sadhu Singh was not competent to file this appeal under section 417(3), Criminal Procedure Code, because he was not the *complainant*. It is maintained that this objection is not merely one of form, but is one which goes to the root of the matter. A successor-in-interest of a complainant—proceeds the argument—even if he had been allowed under section 495 of the Code, in the trial Court to conduct the prosecution, does not become the “complainant” for the purposes of section 417(3), Criminal Procedure Code. Reliance for this argument has been placed on *Monmathanath v. Niranjan Modal and others* (1) and *Ninilal Samanta v. Rabin Ghosh* (2). There appears to be a good deal of force in this contention.

(5) The case turns on an interpretation of the term ‘complainant’ as used in section 417(3), Criminal Procedure Code. This term as such, has not been defined in the Code. Section 4(1)(h) of the Code, however, defines ‘complaint’ as under:—

“ ‘Complaint’ means the allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person whether known or unknown, has committed an offence, but it does not include the report of a police-officer.”

It follows from the above definition, that the “complainant” would be a person who *institutes* the complaint. Section 417(3) provides that if an order of acquittal is passed by any case *instituted* upon a complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the *complainant* may present such an appeal to the High Court. There is no doubt that the instant case was instituted upon a complaint made by Amar Singh. The only question is: whether after his death, his son, Sadhu Singh—even if he was allowed under section 495 of the Code to continue the prosecution—can also be deemed as a ‘complainant’ within the contemplation of sub-section (3) of section 417. In our judgment, the answer to this question must be in the negative. From the definition of the word ‘complaint’, it follows

(1) A.I.R. 1967 Cal. 442.

(2) A.I.R. 1964 Cal. 64.

that complainant is one who sets the machinery of a Magisterial Court in motion by making certain allegation with regard to the commission of an offence before it, for taking action against the person who has infringed the law. Sadhu Singh admittedly was not the person, who had moved the Magisterial Court by presenting the complaint before it. Sadhu Singh, came into the picture at a much later stage. He cannot, therefore, be treated as a 'complainant' for the purposes of section 417(3).

(6) The history of this legislation further shows that a strict construction is to be put on the word 'complainant' for the purposes of sub-section (3) of section 417. Section 407, Criminal Procedure Code of 1861, expressly prohibited appeals from judgments of acquittal of any Criminal Court and an order of acquittal was final and conclusive. The *extraordinary* remedy of an appeal against an order of acquittal received statutory recognition for the first time in 1872, in the interest of public safety, peace and order. Even so, the right against an acquittal has been hedged around by many safeguards, the idea being that a person once acquitted after a regular trial should not be lightly vexed again with regard to the same charge. One of such safeguards is that before a person acquitted can undergo further trial for the offence of which he has been acquitted, the highest executive authority must apply its mind and hold that it is desirable, and the highest legal authority (Public Prosecutor) must advise that it is legal and proper and the highest judicial authority (High Court) must find that it is just that the order should be set aside. Before the Code of Criminal Procedure Amendment Act, 1955, only the State Government was entitled to prefer an appeal against an order of acquittal under section 417. Applications or appeals by the complainant in the case to set aside an order of acquittal could not be entertained. The object of restricting the right of appeal against a judgment of acquittal to the State Government was to prevent abuse of the process of appeal by busy bodies or private complainants acting with a view to gratify private spite or personal vindictiveness and to ensure that interference with an acquittal takes place only where it results in miscarriage of justice. For the first time section 3 of the Amendment Act of 1955 gave a right to a complainant *on whose complaint the case had been instituted* in the trial Court, to obtain special leave from the High Court for preferring an appeal against an acquittal. It will be thus seen that even after this amendment the complainant has no right to file an appeal against an order of acquittal as a matter of course. He has to obtain special leave of the High Court for doing so. In

short, the right to appeal against an order of acquittal has primarily been given to the State Government. Sub-section (3) of section 417 is in the nature of an exception to that general rule. The word 'complainant', therefore, in that sub-section has to be interpreted in a restricted sense viz., the person on whose complaint the case had been instituted in the trial Court. In the instant case it was Amar Singh, father of Sadhu Singh, who had set the machinery of Criminal law in motion by making certain allegations in writing before it with regard to the commission of offences under sections 406/379/509, Indian Penal Code, and had further prayed that action be taken against the accused for committing those offences. Even if it is assumed that he was allowed under section 495, Criminal Procedure Code, to conduct the prosecution after the death of Amar Singh, Sadhu Singh did not become the complainant for the simple reason that the complaint on the basis of which the Magistrate had taken cognizance of the case, had not been made by him. In our opinion, the successor-in-interest of the complainant does not by operation of law become the complainant. There is no provision in the Code of Criminal Procedure which would give the status of the original complainant to the successor of the deceased complainant for the purpose of filing an appeal after special leave under section 417(3) of the Code. In the view we take we are fortified by a Single Bench judgment of the Calcutta High Court in *Monmathanath v. Niranjana Modal and others* (1) (supra).

(7) For the foregoing reasons, we would hold that Sadhu Singh not being the complainant was incompetent to maintain this appeal and we dismiss the same.

B. S. G.

CIVIL MISCELLANEOUS

Before A. D. Koshal, J.

M/S BHARAT SINGH & CO.,—Petitioner

versus

THE STATE OF HARYANA, ETC.,—Respondents.

Civil Writ No. 2857 of 1971.

November 12, 1971.

Punjab Village Common Lands (Regulation) Act (XVIII of 1961)—Section 10-A—Punjab Gram Panchayat Act (IV of 1953)—Section 97—Resolution of a panchayat embodying lease, contract or agreement relating to the land vested in the Panchayat—Such resolution cancelled without