

Gurbax Singh, etc., v. The State of Punjab, etc. (Sharma, J.)

under Article 166 of the Constitution has not been satisfied, the notification is *quæstio* in the eyes of law.

(10) For the reasons mentioned above, this petition deserves to succeed and I order accordingly. There shall be no order as to costs.

N.K.S.

REVISIONAL CRIMINAL.

Before M. R. Sharma, J.

GURBAX SINGH ETC.,—*Petitioners.*

*versus*

THE STATE OF PUNJAB, ETC.,—*Respondents.*

Cr. Re. No. 891 of 1971.

January 22, 1973.

*Code of Criminal Procedure (Act V of 1898)—Section 545(b)—Magistrate convicting an accused person for causing injuries in a cognizable case and granting compensation to the injured—Accused acquitted in appeal—Injured complainant—Whether has a right to be heard in such appeal—Order of acquittal—Whether can be set aside in revision simply on the ground of the non-hearing of such complainant by the appellate Court.*

*Held*, that in cognizable cases, it is the State, which is the aggrieved party and the Criminal Procedure Code does not provide that a private complainant should be heard in appeal arising out of the trial of such cases. A criminal court while recording conviction of an accused has the discretion to grant compensation for any loss or injury caused by the offence, under section 545(b) of the Code. but a private complainant, who is injured has no right to insist, that compensation must under all circumstances be awarded to him. When compensation is awarded to a complainant, it is always subject to the right of appeal which vests in the convict. This grant of compensation cannot be regarded as a vested right. When an accused files an appeal against his conviction, the entire case is re-opened in appeal. The effect of the judgment of acquittal passed by an appellate Court is that the conviction recorded by the trial Magistrate becomes non-existent in the eyes of law. In other words, when a conviction is set aside, the effect which flows out of such a conviction, namely the award of compensation to a complainant, also disappears. In a suitable case it may be proper for an appellate Court to hear

a complainant or an injured witness who has been awarded compensation, but the orders of acquittal passed by it cannot be set aside in exercise of revisional powers, only on the ground that it failed to hear an injured witness who had been awarded compensation under section 545(b) of the Code of Criminal Procedure.

(Paras 3 and 5).

*Petition under section 439 of Cr. P. C. for revision of the order of Shri M. L. Mirchia, Additional Sessions Judge, Amritsar, dated 1st July, 1971, reversing that of Shri Gurdev Singh, Judicial Magistrate 1st Class, Amritsar, dated 18th June, 1971 and acquitting the respondents Nos. 1 to 6.*

M. L. Sethi, Senior, Advocate, with S. B. Lal, Advocate, for the petitioners.

S. S. Chopra, Advocate, for Advocate-General, (Punjab), for the respondents.

#### JUDGMENT

SHARMA, J.—The respondents were tried by the learned Judicial Magistrate, 1st Class, Amritsar, for offences under sections 326, 325, 324, 148 and 149, Indian Penal Code, and convicted of these offences on June, 18, 1971. In appeal, the learned Additional Sessions Judge, Amritsar, observed that the first information report was lodged with undue delay and that the prosecution witnesses failed to give a proper explanation of the injuries sustained by Mangal Singh, respondent. On these grounds, the learned Additional Sessions Judge, gave the benefit of doubt to the respondents and allowed their appeal. Gurbax Singh and Surta Singh who were the injured witnesses have filed a revision petition against the acquittal of the respondents.

(2) The learned counsel for the petitioners has urged that Gurbax Singh suffered 9 injuries and Surta Singh suffered four injuries in the course of this incident. Mangal Singh, respondent who was arrayed as an accused person before the learned trial Magistrate suffered two contused wounds only which were somehow or other were not explained by the prosecution witnesses. He has also urged that because the injured witnesses were unable to make a statement earlier, the delay in lodging the first information report should not have been considered as a material circumstance. It was submitted that these grounds were not sufficient to warrant a finding of acquittal. I am afraid, I cannot agree with this submission. The learned Additional Sessions Judge was the final Court

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of fact and the reasons given by him for disbelieving the prosecution story are not irrelevant. Because of the acquittal of the respondents, the presumption of innocence in their favour stands augmented. Such a finding cannot be interfered with in revision.

(3) It was then argued by the learned counsel that the learned trial Magistrate had ordered that out of the fine, if realized, Rs. 300 were to be given to Gurbax Singh and Rs. 200 were to be given to Surta Singh petitioners. At the hearing of the appeal, no notice was given to the injured witnesses and that, since the respondents have been acquitted, the benefit accruing to the petitioners in the shape of compensation awarded to them has been denied to them without affording them a proper hearing. In support of this contention, he has relied upon *Hiralal Bhagwanji Contractor v. Kantilal Rangildas Maherban and another* (1), *Emperor v. Chunilal Bhagwanji* (2), *Balwant Ganesh Marathe v. Motilal Nathuram Jain* (3), *Bharasa Now v. Sukdeo and others* (4), and *Sunil Kr. Ghosh v. Ajit Kr. Das and others* (5). It has been held in these cases that it would be proper to allow a complainant a hearing at the time of appeal. On this basis, it was urged that the acquittal of the respondents be set aside and the case be remitted to the learned trial Court for a fresh decision in accordance with law. In my considered opinion, this contention raised by the learned counsel is also without any force. In cognizable cases, it is the State which is the aggrieved party and the Criminal Procedure Code does not provide that a private complainant should be heard in appeal arising out of the trial of such cases. A criminal Court while recording conviction of an accused has the discretion to grant compensation for any loss or injury caused by the offence, under section 545(b) of the Code of Criminal Procedure, but a private complainant has no right to insist that compensation must under all circumstances be awarded to him. When an accused files an appeal against his conviction, the entire case is re-opened in appeal. The effect of the judgment of acquittal passed by an appellate Court is that the conviction recorded by the trial Magistrate becomes non-existent in the eyes

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(1) 1971 Gujrat Law 446.

(2) 201 I. C. 710.

(3) A. I. R. 1936 Nag. 144.

(4) A. I. R. 1926 Cal. 1054.

(5) 73 C. W. N. 212.

of law. In other words, when a conviction is set aside, the effect which flows out of such a conviction, namely, the award of compensation to a complainant, also disappears. When compensation is awarded to a complainant, it is always subject to the right of appeal which vests in the convict. This grant of compensation cannot be regarded as a vested right. Consequently, a complainant cannot complain that the principles of natural justice are violated when a convict is acquitted in appeal in cognizable cases. In *Union of India v. Col. J. N. Sinha and another* (6), it was observed by the Supreme Court as under:—

“As observed by this Court in *Kraipak and others v. Union of India* (7), “the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law but supplement it.’ It is true that if a statutory provision can be read consistently with the principles of natural justice, the Courts should do so because it must be presumed that the legislatures and the statutory authorities intend to act in accordance with the principles of natural justice. But if on the other hand a statutory provision either specifically or by necessary implication excludes the application of any or all the principles of natural justice then the Court cannot ignore the mandate of the legislature or the statutory authority and read into the concerned provision the principles of natural justice. Whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision conferring the power, the nature of the power conferred, the purposes for which it is conferred and the effect of the exercise of that powers.”

(4) Section 545 of the Code of Criminal Procedure was brought on the statute book in 1898. The Code was amended on many occasions subsequently. By section 84 of the Criminal Procedure Code Amendment Act, 1955, section 417 of the Code was re-cast

(6) 1970 S. L. R. 748.

(7) 1969 S. L. R. 445.

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and a private complainant was for the first time given the right to file an application for leave to appeal against the orders of acquittal passed in a private complaint. This shows that the Legislature was alive to the question regarding the conferment of some rights on the private complainants and yet section 545 of the Code was allowed to remain as it was originally enacted. A careful reading of these provisions shows that the Legislature has by implication indicated that a private complainant has no right of being heard in an appeal filed by an accused in a cognizable case. In view of these circumstance, the order of acquittal passed by the learned Additional Sessions Judge cannot be regarded as illegal.

(5) I may, however, add that in a suitable case it may be proper for an appellate Court to hear a complainant or an injured witness who has been awarded compensation by the learned trial Magistrate, but the orders of acquittal passed by it cannot be set aside in exercise of revisional powers, only on the ground that it failed to hear an injured witness who had been awarded compensation under section 545 (b) of the Code of Criminal Procedure. There is no merit in this petition and the same is dismissed.

N.K.S.

APPELLATE CIVIL

Before P. C. Pandit and B. S. Dhillon, JJ.

SUNDER SINGH, ETC.,—Appellants.

versus

THE CENTRAL CO-OPERATIVE BANK LTD.,  
KARNAL, ETC.,—Respondents.

E. F. A. No. 154 of 1966.

January 25, 1973.

*Punjab Co-operative Societies Act (XXV of 1961)—Sections 55, 56, 68 and 82—Co-operative Bank advancing loan to a Co-operative Society on hypothecation of properties and on the guarantees of the sureties, who are also members of the Society—Entire dispute regarding payment of the loan both by the Society and the sureties referred to arbitration—Such reference—Whether valid qua the Bank and the sureties—Sureties not heard and award given—Whether makes the award without jurisdiction.*