

Before Mr. Justice Mirza and Mr. Justice Patkar.

EMPEROR v. RAMESHWAR HARNATH AND OTHERS.\*

1929  
February 1

*Criminal Procedure Code (Act V of 1898), section 439, sub-section 4—Order of acquittal—Jurisdiction of High Court to interfere at the instance of private complainant—Power of High Court to convert finding of acquittal into one of conviction.*

The High Court has jurisdiction to entertain applications in revision against orders of acquittal under section 439 of the Criminal Procedure Code, although as a matter of practice and policy it will not interfere with such orders at the instance of a party other than the Local Government except on some very broad ground of the requirements of public justice.

*Mukund v. Ladu,*<sup>(1)</sup> *Ahmedabad Municipality v. Maqanlal,*<sup>(2)</sup> *In re Fareedoon Cawasji,*<sup>(3)</sup> *Joita v. Parshottam,*<sup>(4)</sup> *Paujdar Thakur v. Kasi Chowdhury,*<sup>(5)</sup> *Asutosh Das Gupta v. Purna Chandra Ghosh,*<sup>(6)</sup> *Queen-Empress v. Ala Bakhsh,*<sup>(7)</sup> *Qayyum Ali v. Faiyaz Ali,*<sup>(8)</sup> *Re Simru Goundam,*<sup>(9)</sup> *Sankaralinga Mudaliar v. Narayana Mudaliar*<sup>(10)</sup> and *Gulli Bhagat v. Narain Singh,*<sup>(11)</sup> referred to.

The High Court has, however, no power in revision to convert a finding of acquittal into one of conviction, as laid down in section 439, sub-section 4, of the Criminal Procedure Code.

*Kishan Singh v. The King-Emperor,*<sup>(12)</sup> followed.

APPLICATION for the revision of an order of acquittal passed by the Sessions Judge of East Khandesh who reversed the order of conviction and sentence passed by the First Class Magistrate, Jalgaon.

Application to revise an order of acquittal.

One Panalal Lacchamandas of Jalgaon filed a complaint against Rameshwar Harnath and 12 others in the Court of the First Class Magistrate, Jalgaon, on a charge of defamation under section 500 of the Indian Penal Code. The trying Magistrate found all the accused guilty of the offence with which they were charged and sentenced them each to pay a fine. In appeal the Sessions Judge of East Khandesh acquitted the accused.

\*Criminal Application for Revision No. 280 of 1928.

(1) (1901) 3 Bom. L. R. 584.

(2) (1906) 9 Bom. L. R. 156.

(3) (1917) 41 Bom. 560.

(4) (1928) 25 Bom. L. R. 488.

(5) (1914) 42 Cal. 612.

(6) (1922) 50 Cal. 159.

(7) (1884) 6 All. 454.

(8) (1904) 27 All. 359.

(9) (1914) 38 Mad. 1028.

(10) (1922) 45 Mad. 913 F. B.

(11) (1928) 2 Pat. 708.

(12) (1928) L. R. 55 I. A. 390.

The complainant Panalal applied to the High Court in revision to set aside the order of acquittal.

Diwan Bahadur *G. S. Rao*, for the applicant.

*K. A. Somji*, with *A. A. Adarkar*, for the opponents.

*P. B. Shingne*, Government Pleader, for the Crown.

MIRZA, J. :—This is an application for the revision of an order of the Sessions Judge, East Khandesh, who reversed the conviction and sentence passed on the accused Nos. 1 to 12 by the First Class Magistrate, Jalgaon, and acquitted them. A preliminary objection has been taken on behalf of the accused that this Court has no jurisdiction to interfere with an order of acquittal on an application in revision.

The complainant in this case is not the Local Government, but a private individual. The complaint was for defamation under section 500, Indian Penal Code. Diwan Bahadur Rao on behalf of the applicant-complainant has urged that as the complaint relates to a private and personal matter concerning the applicant, the Local Government would not interfere with the order of acquittal by instituting an appeal under the provisions of section 407 of the Criminal Procedure Code. He has also urged that the past practice of this Court not to interfere in such matters has not been of such a uniform nature as to induce us to follow it on this occasion. He relies upon the cases of *Mukund v. Ladu*<sup>(1)</sup> and *Ahmedabad Municipality v. Maganlal*,<sup>(2)</sup> in both of which this Court interfered with an order of acquittal at the instance of a party other than the Local Government. In the first of these cases this Court reversed the order of acquittal and ordered the Magistrate to rehear the complaint, and in the second case it set aside the order of acquittal passed by the Magistrate, and

1929

EMPEROR

v.

RAMESHWAR  
HARNATH

<sup>(1)</sup> (1901) 3 Bom. L. R. 534.

<sup>(2)</sup> (1906) 9 Bom. L. R. 156.

1929  
 EMPEROR  
 v.  
 RAMBESHWAR  
 HARNATH  
 Mirza J.

directed him, after such further inquiry as may be necessary, to dispose of the case in accordance with law. In both these cases the application was made on behalf of a Municipality and not a private individual and related to a matter of public interest and importance. Both these rulings are clear authority on the subject of this Court having jurisdiction to interfere in revision with an order of acquittal irrespective of the applicant being the Local Government.

In *In re Faredoon Cawasji*<sup>(1)</sup> a Divisional Bench of this Court held that this Court has power under section 439 of the Criminal Procedure Code to interfere in revision with an order of acquittal, but by a uniform established practice of the Court, revisional applications against orders of acquittal are not entertained from private petitioners except it be on some very broad ground of the exceptional requirements of public justice. In *Joita v. Parshottam*<sup>(2)</sup> a Divisional Bench of this Court declined, on an application by a private complainant, to interfere with an order of acquittal. Sir Norman Macleod, the Chief Justice, remarked (p. 489) :—

“ Speaking for myself, if in such a case Government do not exercise their right of asking us to admit an appeal from the order of acquittal, I find it difficult to imagine any circumstances which would justify this Court in interfering in revision at the instance of the complainant.”

Diwan Bahadur Rao has relied upon the ruling of the Calcutta High Court in *Faujdar Thakur v. Kasi Chowdhury*,<sup>(3)</sup> which is to the effect that under section 439 of the Criminal Procedure Code, the High Court has jurisdiction to set aside an order of acquittal, but it has now become a settled practice that it will not ordinarily interfere in revision in such cases at the instance of a private prosecutor. This ruling was followed by the same Court in *Asutosh Das Gupta v. Purna Chandra Ghosh*.<sup>(4)</sup> The facts of that case were somewhat different

<sup>(1)</sup> (1917) 41 Bom. 560.

<sup>(2)</sup> (1923) 25 Bom. L. R. 488.

<sup>(3)</sup> (1914) 42 Cal. 612.

<sup>(4)</sup> (1922) 50 Cal. 159.

from the case before us. The accused in that case were convicted by the Magistrate. In an appeal which was preferred, the Sessions Court had allowed their plea that the trial was vitiated by a misjoinder of charges and had ordered a new trial on certain charges only omitting others. The complainant regarded the omission of charges on the new trial ordered as an order of acquittal on those charges and came in revision to the High Court against such order of acquittal. The High Court entertained the application following its previous rulings, but agreed with the view taken by the Sessions Judge and discharged the rule.

Our attention has also been called to the rulings of the Allahabad High Court in *Queen-Empress v. Ala Bakhsh*<sup>(1)</sup> and *Qayyum Ali v. Faiyaz Ali*,<sup>(2)</sup> which are to the effect that although the High Court has the power to interfere in revision with an original or appellate judgment of acquittal it will ordinarily not do so. We have been referred also to the rulings of the Madras High Court in *Re Sinnu Goundan*<sup>(3)</sup> and in *Sankaralinga Mudaliar v. Narayana Mudaliar*.<sup>(4)</sup> The first of these cases laid down that the High Court as a Court of Revision would not, on the District Magistrate's report, set aside an order of acquittal where an appeal lay by Government against such an order. The Full Bench ruling in the second case laid down that the High Court will not ordinarily interfere in revision at the instance of private parties with a judgment of acquittal except when it is urgently demanded in the interests of public justice. Similarly, in *Gulli Bhagat v. Narain Singh*<sup>(5)</sup> the High Court of Patna has held that the High Court will not interfere in revision at the instance of a private party with an order of acquittal passed under section 494, Criminal Procedure Code.

<sup>(1)</sup> (1884) 6 All. 484.

<sup>(2)</sup> (1904) 27 All. 359.

<sup>(5)</sup> (1923) 2 Pat. 708.

<sup>(3)</sup> (1914) 38 Mad. 1028.

<sup>(4)</sup> (1922) 45 Mad. 913.

1929

EMPEROR

v.  
RAMESHWAR  
HARNATH

Mirza J.

1929  
 EMPEROR  
 v.  
 RAMESHWAR  
 HARNATH  
 Mirza J.

The uniform rulings of our Court and the Calcutta, Madras, Allahabad and Patna High Courts are all in favour of the High Court's jurisdiction to entertain applications in revision against orders of acquittal although as a matter of practice and policy it would not interfere with an order of acquittal at the instance of a party other than the Local Government except on some very broad ground of the requirements of public justice.

A doubt has been cast upon the subject of the High Court's jurisdiction in such matters by the recent decision of their Lordships of the Privy Council in *Kishan Singh v. The King-Emperor*.<sup>(1)</sup> In that case the Government of Allahabad had filed an application in revision against a conviction of an accused person under section 304, Indian Penal Code, when he was tried in the Sessions Court on a charge of murder under section 302, Indian Penal Code. The Allahabad High Court had allowed the application, converted the conviction into one of murder under section 302 and passed the sentence of death on the accused. Their Lordships of the Privy Council considered the case as one of acquittal under section 302, Indian Penal Code, and regarded the application in revision made by the Local Government to the High Court as falling under section 439, sub-section (4), of the Criminal Procedure Code, which debars the High Court from exercising the powers conferred upon it under section 439 so as to convert a finding of acquittal into one of conviction. The pertinent remarks of their Lordships on this point are at page 396 of the report. They say :

" Their Lordships are of opinion that in view of the provision contained in section 439, sub-section 4—that nothing in that section shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction—the learned judges of the High Court, who were dealing only with the application for revision, had no jurisdiction to convert the learned trial judge's finding of acquittal on the charge of murder into one of conviction of murder."

<sup>(1)</sup> (1928) L. R. 55 I. A. 390.

The present application prays for the reversal of the order of acquittal. It asks us to reverse the order of acquittal of the Sessions Court and restore the order of conviction of the trial Court. In other words we are asked to convert a finding of acquittal into one of conviction which under the provisions of section 439, sub-section 4, we are not authorised to do. The ruling of their Lordships of the Privy Council to which I have referred would, in my judgment, apply to such an application in revision as this. We have no jurisdiction to convert an order of acquittal into one of conviction on an application in revision and the application must fail.

1929  
EMPEROR  
v.  
RAMESHWAR  
HARNATH  
Mirza J.

It is not necessary for us on this application to express an opinion whether the judgment of their Lordships of the Privy Council in the case to which I have alluded overrules the previous rulings of this Court and the Calcutta, Madras, Allahabad and Patna High Courts regarding our jurisdiction to interfere in revision in cases of acquittal. Speaking for myself, with great respect I feel that it would not be an easy matter to interfere with an order of acquittal on revision without directly or indirectly contravening the spirit if not the letter of section 439, sub-section (4), of the Criminal Procedure Code. For my part I would be averse to exercising the revisional jurisdiction of this Court in cases of acquittal—in case such jurisdiction exists—except perhaps when an interference is urgently demanded in the interest of justice. No such cause is shown to exist in the present case.

The application is rejected.

PATKAR, J. :—This is an application by the complainant to set aside an appellate order of acquittal passed by the learned Sessions Judge of East Khandesh. It is urged on behalf of the applicant that the High Court has the power to interfere in revision with an order of

1929  
 EMPEROR  
 v.  
 RAMESHWAR  
 HARNATH  
 v. *Rathkar J.*

acquittal by the lower Court and reliance is placed on the decisions of this Court in *Mukund v. Ladu*<sup>(1)</sup> and *Ahmedabad Municipality v. Maganlal*.<sup>(2)</sup> These cases relate to applications by the Municipalities and not by a private complainant. On the other hand in *In re Faredoon Cawasji*<sup>(3)</sup> it was held that the High Court has power under section 439 of the Criminal Procedure Code to interfere in revision with an order of acquittal, but by a uniform established practice of the Court, revisional applications against orders of acquittal are not entertained from private petitioners except it be on some very broad ground of the exceptional requirements of public justice. The case follows the decision of Sir Lawrence Jenkins C.J., in *Faujdar Thakur v. Kasi Chowdhury*.<sup>(4)</sup> To the same effect are the rulings of this Court in *Heerabai v. Framji Bhikaji*<sup>(5)</sup> and in *Joita v. Parshottam*.<sup>(6)</sup> There is consensus of opinion of the different High Courts on this point as reflected in the decisions of the Madras High Court in *Re Sinnu Goundan*<sup>(7)</sup> and *Sankaralinga Mudaliar v. Narayana Mudaliar*<sup>(8)</sup>; of the Allahabad High Court in *Queen-Empress v. Ala Bakhsh*<sup>(9)</sup> and *Qayyum Ali v. Faiyaz Ali*<sup>(10)</sup>; of the Calcutta High Court in *Faujdar Thakur v. Kasi Chowdhury*<sup>(11)</sup> and *Pramatha Nath Barat v. P. C. Lahiri*<sup>(12)</sup>; and of the Patna High Court in *Gulli Bhagat v. Narain Singh*.<sup>(13)</sup>

It is urged, however, on behalf of the opponent that the High Court has no power to interfere in revision with an order of acquittal and reliance is placed on the Privy Council decision in *Kishan Singh v. The King-Emperor*<sup>(14)</sup> and on sub-section (4) of section 439 of the

<sup>(1)</sup> (1901) 3 Bom. L. R. 584.

<sup>(2)</sup> (1906) 9 Bom. L. R. 156.

<sup>(3)</sup> (1917) 41 Bom. 560.

<sup>(4)</sup> (1914) 42 Cal. 612 at p. 615.

<sup>(5)</sup> (1890) 15 Bom. 349.

<sup>(6)</sup> (1923) 25 Bom. L. R. 488.

<sup>(7)</sup> (1914) 38 Mad. 1028.

<sup>(8)</sup> (1922) 45 Mad. 913.

<sup>(9)</sup> (1884) 6 All. 484.

<sup>(10)</sup> (1904) 27 All. 359.

<sup>(11)</sup> (1914) 42 Cal. 612.

<sup>(12)</sup> (1920) 47 Cal. 818.

<sup>(13)</sup> (1923) 2 Pat. 708.

<sup>(14)</sup> (1928) L. R. 55 I. A. 390.

Criminal Procedure Code. In *Kishan Singh v. The King-Emperor*<sup>(1)</sup> the Allahabad High Court interfered in revision at the instance of the Local Government on an application for enhancement of sentence passed on the accused who was tried on a charge under section 302, Indian Penal Code, but was convicted under section 304, Indian Penal Code. The High Court convicted the accused under section 302, Indian Penal Code, and sentenced him to death. Their Lordships of the Privy Council held that the High Court had no jurisdiction under sub-section (4) of section 439, Criminal Procedure Code, to convert the finding of acquittal under section 302 into one of conviction under that charge and enhance the sentence. Their Lordships dissented from the view of the Madras High Court in *Re Bali Reddi*<sup>(2)</sup> and followed the view of the Bombay High Court and of the Allahabad High Court in *Emperor v. Shivputraya*<sup>(3)</sup> and *Emperor v. Sheo Darshan Singh*.<sup>(4)</sup> The general question as to whether the High Court has power to interfere in revision with an order of acquittal according to the decisions of the several High Courts has not been considered by their Lordships of the Privy Council, though the reasons given in the judgment might suggest a contrary inference. In the present case the application is for setting aside the order of acquittal so as to convert the finding of acquittal into a finding of conviction. This power is excluded by sub-section (4) of section 439 of the Criminal Procedure Code, and is opposed to the ruling of the Privy Council in *Kishan Singh v. The King-Emperor*.<sup>(1)</sup> Under section 439 the High Court in exercise of its powers of revision, can exercise any of the powers conferred on a Court of appeal by section 423. Under section 423, clause (1) (a), in a case of an acquittal the High Court can reverse such order and direct that

1929

EMPEROR

v.

RAMESHWAR

HARNATH

Palkar J.

<sup>(1)</sup> (1923) L. R. 55 I. A. 390.<sup>(2)</sup> (1913) 37 Mad. 119.<sup>(3)</sup> (1924) 49 Bom. 510.<sup>(4)</sup> (1922) 44 A. L. 332.



1929  
 EMPEROR  
 v.  
 RAMESHWAR  
 HARNATH  
 Patkar J.

further inquiry be made, or that the accused be re-tried or committed for trial as the case may be, or find him guilty and pass sentence on him according to law. Sub-section (4) of section 439 excludes the power of the High Court to convert a finding of acquittal into one of conviction. It does not interfere with the other powers conferred by clause (1) (a) of section 423 of directing further inquiry to be made or directing the accused to be re-tried as the case may be. I may refer in this connection to the decision of the Full Bench of the Allahabad High Court in *Queen-Empress v. Balwant*.<sup>(1)</sup> It is not necessary for the purpose of this case to go into the general question whether the High Court has the power to interfere with an order of acquittal in revision. In the present case the application is to set aside the order of acquittal and convict the accused. That cannot possibly be done under sub-section (4) of section 439 and the ruling of the Privy Council in *Kishan Singh v. The King-Emperor*.<sup>(2)</sup> Besides the complainant in this case has other remedies. He could have applied to the Local Government to file an appeal against the order of acquittal; he has also another remedy by suit for damages in a civil Court. According to the established and uniform practice this Court would not interfere with an order of acquittal in revision unless it is urgently demanded in the interests of public justice. No such ground for interference exists in the present case.

On these grounds I agree that this application must be dismissed.

*Rule discharged.*

B. G. R.

<sup>(1)</sup> (1886) 9 All. 134.

<sup>(2)</sup> (1928) L. R. 55 I. A. 330.