

Dineshehandra Bharadwaj and Another Vs State of M.P.

Court: Madhya Pradesh High Court

Date of Decision: March 13, 1979

Acts Referred: Constitution of India, 1950 " Article 227

Criminal Procedure Code, 1973 (CrPC) " Section 423, 424, 426, 427, 428

Penal Code, 1860 (IPC) " Section 228

Citation: (1980) JLJ 612

Hon'ble Judges: J.P. Bajpai, J

Bench: Single Bench

Advocate: B.N. Kulshreshta, for the Appellant; K.S. Shrivastava, Panel Lawyer for State, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Bajpai, J.

This petition is at the instance of the two applications of legal practitioners at the tahsil place who have been sentenced to a fine

of Rs. 200 each by the Revenue Court of Tahsildar on finding them to be the offence for the punishment u/s 228 of the Indian Penal Code in

accordance with the procedure laid down in section 480 of the Old Code of Criminal Procedure. The applicants preferred an appeal before the

Sub-Divisional Officer in accordance with the provisions of section 426 of the Code. The finding about their liability and the sentence of fine having

been upheld by the appellate Court, the applicant approached the Sessions Court seeking interference in revision in accordance with the provisions

of section 436 read with section 439 of the Code. The Sessions Court however, dismissed the revision on the preliminary ground that the same

was not tenable in as much as the Court who heard the proceedings could not be regarded as inferior Criminal Courts. The applicants have now

come up in revision.

2. On behalf of the State, Shri K. S. Shrivastava Advocate raised a preliminary objection to the maintainability of this revision in accordance with

the provisions of section 439 of the Code by contending that the view taken by the Sessions Court was absolutely correct and was in consonance

with view already taken by this High Court in the case of AIR 1947 36 (Nagpur) . The argument put forth was that despite the fact that the

Tahsildar took cognizance of the offence punishable u/s 228 of the Indian Penal Code in accordance with the provisions of section 480 of the

Code and sentenced the applicants to a fine of Rs. 200. The said Revenue Court could not be treated as inferior Criminal Court so as to make

interference possible by this Court in a revision preferred u/s 439 of the Code. It was further contended that similar was the position about the

appellate order made by the Sub-Divisional Officer in appeal. The Court of the Sub-Divisional Officer was also a Revenue Court. The appeal was

heard and entertained by the said Court as the appellate Revenue Court.

3. Shri D. N. Kulshreshtha, learned counsel for the applicants, however contended that since the proceedings before the Revenue Court of

Tahsildar in the matter of taking cognizance for the offence u/s 228 of the Indian Penal Code were of criminal nature and the Sub-Divisional

Officer heard the appeal against the order imposing the sentence of fine by holding the applicants guilty for the said offence, such proceedings, even

if they were of the Revenue Courts, i.e. the Court of Tahsildar and the Sub-Divisional Officer, were at least covered by the language of section

439 of the Code of Criminal Procedure which does not specifically qualify the words any proceedings "by further adding the words of "any inferior

Criminal Court" as has been done in other sections for instance in section 435 of the Code. The learned counsel for the applicants placed reliance

on a decision of the Patna High Court reported in *Mt. Rampati Kuer and Others Vs. Jadunandan Thakur and Others*, and also on certain

observations made by the Bombay High Court in the case of *Vithabai Dattu Patar Vs. Malhar Shankar Kulkarni*,

4. I have gone through the aforesaid decision. It is true that the learned judge of the Patna High Court had taken the view that since the language

used in section 439 of the Code, did not specifically restrict the term "any proceeding" only to those an inferior criminal Court, as has been

specifically done in other section like section 435 etc., the orders made by such revenue or civil Courts u/s 486 or 480 of the Code of Criminal

Procedure could be revised by the High Court by invoking its revisional jurisdiction u/s 439 of the Code irrespective of the fact that the aforesaid

Courts might actually not be inferior criminal Courts. During the course of hearing, a reference was also made to the decision of the Supreme

Court in the case of *Thakur Das (Dead) by Lrs. Vs. State of Madhya Pradesh and Another*,

5. The short point involved for deciding the question regarding the tenability of this revision is whether simply for the reasons that the revenue

Courts of the Tahsildar or that of the Sub-Divisional Officer dealt with a matter governed by section 486 or 480 of the Code and took

congnizance of an offence punishable u/s 228 of the Indian Penal Code, which happened to be committed before the aforesaid Courts below be

treated as inferior criminal Courts so as to make the revision u/s 439 of the Code against the order made by the Revenue Courts tenable. The

other point which further arises on the second contention raised by the learned counsel for the applicant is that even if the aforesaid Courts could

not be treated as inferior criminal Courts, the proceedings of the nature as involved in the present case could be called by virtue of section 439 of

the Code for exercising the revisional jurisdiction because the language used in section 439 of the Code does not specifically qualify the term "any

proceedings" by confining the same to those of inferior criminal Courts.

6. In my opinion this revision cannot be entertained u/s 439 of the Code. If we go through the special provisions as contained in section 476

onwards including sections 480 and 486 of the Code, it becomes apparent that the Civil or revenue Courts have been given special powers for

dealing with the abnormal cases of contempt being committed during the course of proceedings of such Court.

7. As discussed above, the scheme, as contemplated by the above referred provisions of the Code, was for the purposes of giving special powers

for dealing with an abnormal situation. But can it be said that simply because certain special powers had been conferred on a revenue or a civil

Court for dealing with the matter of contempt, during the course of the proceedings of the Court, such Courts would lose their identity as a civil or

revenue Court ? In my opinion the answer will be "No". The special provisions made regarding appeal etc. against such orders also make it clear

that while conferring such additional powers, the Legislature did not intend to make the orders passed in exercise of such powers appealable or

revisable in accordance with the general procedure before normal forum as provided for the orders of conviction or acquittal etc. made by the

inferior criminal Courts. It would be significant to note that u/s 480 of the Code, cognizance can be taken only in certain special circumstances

and the extent of sentence either by way of fine or imprisonment is also limited. In case when it is not possible to take cognisance in the manner as

provided by section 480 the case has to be sent to a regular criminal Court for trial and decision. It is further significant that appeal against such

orders made by civil or revenue Courts could lie only before such Courts before whom the appeals against the orders decreed made by the Civil

Court or Revenue Court as the case may be would ordinarily lie in civil or revenue matters according to the law governing the same. Thus, it is

apparent that the Legislature wanted that such matters should be dealt by the hierarchy of the Courts on civil and revenue sides in accordance with

the law and procedure applicable to those Courts. It is therefore not possible to hold that for the purposes of applying section 439 of the Code,

such Courts can be treated as inferior Criminal Courts.

8. The other contention regarding the absence of the words of "any inferior criminal Court" qualifying the term "any proceedings" as used in the

language of section 439 of the Code is also of no avail. The language of section 439 of the Code is to be read in the context of the preceding

sections and to read the same divorced from the preceding section and the scheme contemplated by the provisions of the Chapter in question

would lead to anomalous situation. The language used in sub-section (1) of section 439 of the Code provide that in case of any proceedings, the

record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may in its discretion, exercise any of the

powers conferred on Court of appeal by sections 423, 424, 427 and 428 of the Code. The language of these various sections relate to

proceedings before the inferior criminal Courts. With due respects to the learned judges of the Bombay High Court, I find myself unable to agree

with the view that the term "any proceedings" used in section 439 of the Code of Criminal Procedure, would be wide enough as to include the

proceedings of a civil or revenue Court.

9. Lastly it was contended by Shri Kulshrestha that since the High Court has supervisory jurisdiction on all tribunals in accordance with the

provisions of Article 227 of the Constitution, there was no question of lack of jurisdiction. In my opinion, this question cannot be decided by this

Single Bench on criminal side in the present revision. The question whether petition under Article 227 of the Constitution is tenable and liable to be

entertained would be a matter for consideration and decision by the appropriate Bench in an appropriate proceedings, if any brought, For the

purposes of this case it would suffice to observe that no revision u/s 439 of the Code of Criminal Procedure could lie against the order made by

the revenue Courts of the Tahsildar and Sub-Divisional Officer. The Sessions Court was right in not entertaining the revision.

10. This revision, therefore, fails and is dismissed.