

Sarwan Singh
and Harbans
Singh
v.
The State of
Punjab
Gajendragadkar,
J.

considered as a whole, the prosecution story may be true; but between 'may be true' and 'must be true' there is inevitably a long distance to travel and the whole of this distance must be covered by legal, reliable and unimpeachable evidence. We have carefully considered all the arguments which Mr. Gopal Singh urged before us; but we do not think it would be possible to regard the approver as a reliable witness or to hold that the confession of Sarwan Singh is voluntary or true. In the result, the appeal preferred by Sarwan Singh must be allowed, the order of conviction and sentence passed against him must be set aside and he must be acquitted and discharged.

REVISIONAL CRIMINAL.

Before Khosla and Falshaw, JJ.

SHIV PARSHAD,—*Petitioner.*

versus

BHAGWAN DAS,—*Respondent.*

Criminal Revision No. 675 of 1950.

1957
April, 15th

Code of Criminal Procedure (V of 1898)—Sections 417 and 439—Complaint by a private person—Order of acquittal—Revision against—Whether barred by section 439(5)—“Where under this Code an appeal lies”—Whether refers to appeal as of right—Interference by the High Court at the instance of a private person against an order of acquittal—When to be made.

Held, that an appeal against an order of acquittal at the instance of a private complainant is provided by section 417(3) and when the appeal is preferred, section 439(5) is a bar to the complainant's having recourse to a revision petition.

Held also, that before section 417 was amended, an appeal against an order of acquittal could only be filed by the State, but the recent amendment has extended the privilege to a private complainant to apply for leave to appeal against an order of acquittal and the mere fact that such

special leave is necessary before an appeal of this kind can be filed, does not make it any the less an appeal which lies under the Code.

Chairman, Village Panchayath, Nagathihani v. Thimmasetty Gowda (1), followed.

Petition under sections 435/439 of Cr. P.C., for revision of the order of Shri I. M. Lall, Sessions Judge, Ambala, dated 3rd April, 1956, reversing that of Shri P. L. Sanghi, M.I.C., Simla, dated the 16th November, 1954, and acquitting Bhagwan Das accused-respondent, under section 420, Indian Penal Code.

D. N. AWASTHY, for Petitioner.

M. R. CHHIBBAR, for Respondent.

ORDER

Falshaw, J.—The circumstances under which this revision petition filed by Gokal Chand has arisen are as follows. Gokal Chand petitioner alleged that he had lent Rs. 4,000 to Bhagwan Das respondent on a pronote dated the 15th of July, 1949. In October, 1950, Bhagwan Das asked Gokal Chand for the loan of a further sum of Rs. 6,000. He was shown three shops in Lakkar Bazar, Simla, and on the 10th of October, 1950, Bhagwan Das executed a mortgage deed for Rs. 11,000 in favour of Gokal Chand regarding these shops, this deed being registered on the following day when Rs. 6,000 were paid in the presence of the Sub-Registrar.

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Gokal Chand alleged that at the time of this transaction Bhagwan Das and his father Maghi Ram represented to him that the shops were the exclusive property of Bhagwan Das and that they were free from all encumbrances. Gokal Chand later discovered that in fact the shops were the joint family property of the father and son, and

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that they had previously been mortgaged by a registered deed to a third party. Gokal Chand instituted a complaint against the father and son in June, 1952, which was dismissed on the 25th of July, 1952, and the second complaint on the same lines filed on the 12th of August, was dismissed on the 29th of August, 1952. After that Gokal Chand waited for more than a year and then filed the complaint out of which this revision petition has arisen on the 24th of October, 1953. Maghi Ram was also made an accused in the case but he was discharged by the trial Magistrate. Bhagwan Das, however, was convicted under section 420, Indian Penal Code, and sentenced to six months' rigorous imprisonment and a fine of Rs. 1,000 or in default six months' further imprisonment on the 15th of November, 1954.

Bhagwan Das filed an appeal in the Court of the Sessions Judge at Ambala who acquitted him by his order, dated the 3rd of April, 1956. The revision petition was filed on the 19th of June, 1956, in which it was sought that the appellate judgment of acquittal should be set aside and the order of the trial Magistrate restored.

When this petition came up for hearing before Kapur, J., on the 16th of November, 1956, the objection was raised that a revision petition filed by a private complainant against an order of acquittal could not be entertained in view of the provisions of section 417(3) of the Criminal Procedure Code together with the provisions of section 439(5). Section 417 deals with appeals against acquittals and subsection (3) which came into force as from the 1st of January, 1956, reads—

“If such an order of acquittal is passed in any case instituted upon 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."

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Subsection (4) provides that no application under subsection (3) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of sixty days from the date of that order of acquittal. Section 439(5), which is not a recent amendment, reads—

"Where under this Code an appeal lies and no appeal is brought, no proceedings by way of revision shall be entertained at the instance of the party who could have appealed."

The learned Judge was of the opinion that the question whether a revision petition by private complainant against an order of acquittal was barred by section 439(5) was of sufficient importance and difficulty to warrant reference to a Division Bench, and the case has accordingly come before us.

It has been argued by the learned counsel for the petitioner that the words "Where under this Code an appeal lies" in section 439(5) must mean where an appeal lies as of right, and that a revision petition is not barred where an order is only appealable by special leave.

It will be remembered that before section 417 was amended an appeal against an order of acquittal could only be filed by the State, but the recent amendment has extended the privilege to a private complainant to apply for leave to appeal

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against an order of acquittal, and in my opinion the mere fact that such special leave is necessary before an appeal of this kind can be filed does not make it any less an appeal which lies under the Code. It is to be presumed that the Legislature was aware of the provisions of section 439(5) and I should have thought that if the appeals contemplated under that section were to be limited to appeals which could be filed as of right, the necessary amendment should have been made in that subsection so as to make this perfectly clear. It would in fact appear in the present case that the petition was brought as a revision petition because it was only filed after the period of limitation of sixty days provided in section 417(4) had already expired.

There appears to be only one reported case on this point, *Chairman, Village Panchayath, Nagathihani v. N. Thimmasetty Gowda* (1), and in that case Padmanabhiah, J. has taken the view that because an appeal against an order of acquittal at the instance of a private complainant is provided by section 417(3) and no appeal was preferred, section 439(5) was a bar to the complainant's having recourse to a revision petition. In my opinion this is a correct view and I would accordingly hold that the present revision petition cannot proceed, nor can it be treated as a petition under section 417(3) in view of the fact that it was filed after the period of limitation had expired.

In any case there does not seem to be any ground for interfering in revision against the order of acquittal. As I have said this was the third of the three complaints filed regarding the same matter, and even the first of these complaints was not filed until nearly two years after the alleged misrepresentation had taken place. It has

(1) A.I.R. 1956 Mysore 62.

been brought out in cross-examination of Gokal Chand petitioner that he became aware of the deception within about ten days, and also that he has held a money-lender's licence for twenty years, and therefore he presumably is quite experienced, and it seems impossible to me that he could have been deceived by a representation that some shops which stood in the name of the family firm were the sole property of the son whose father was present. Moreover, a man of experience in lending money could hardly have been unaware that in order to find whether a particular property had been mortgaged before, all he had to do was to make enquiries at the office of the Sub-Registrar, and on a point of this kind he need not rely on the assurances of any party to the transaction. In the circumstances the view of the learned Sessions Judge cannot possibly be regarded as perverse, and only in the most glaring cases of injustice would this Court interfere in revision at the instance of a private person against an order of acquittal. I would accordingly dismiss the petition.

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KHOSLA, J.—I agree.

Khosla, J.

LETTERS PATENT APPEAL.

Before Bhandari, C. J. and Mehar Singh, J.

PARDUMAN SINGH AND OTHERS,—Appellants

versus

THE STATE OF PUNJAB AND OTHERS,—Respondents.

Letters Patent Appeal No. 60 of 1953.

Administration of Evacuee Property Act (XXXI of 1950)—Sections 12 and 26—Power of Custodian to cancel allotments—Nature and extent of—Power, whether judicial—"To act judicially"—Meaning of—"Judicial act or decision"—Essential characteristics of—Judicial act and administrative act—Difference between—"Judicial approach"—Meaning of—.