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SATIN CHANDRA PEGU

v.

STATE OF ASSAM

NOVEMBER 15, 2006

B

[ARIJIT PASAYAT AND LOKESHWAR SINGH PANTA, JJ.]

Code of Criminal Procedure, 1973:

C

s. 397 r/w ss.401 and 482—Criminal revision before High Court—Counsel for revisionist not present as he had been appointed State Counsel—Revision dismissed after hearing counsel for State—Held, in peculiar circumstances, matter remitted to High Court for hearing afresh—Practice and Procedure.

D

The appellant was convicted by trial court under s.409 IPC. His appeal was dismissed by the Sessions Judge. He filed a revision before the High Court. When the matter was taken up, none appeared for him. However, the High Court dismissed the revision petition after hearing counsel for the State.

E

In the present appeal it was contended for the appellant that the counsel engaged by him in the High Court was appointed as a Counsel for the State and this position was not conveyed to him.

Disposing of the appeal, the Court

F

HELD: It has not been disputed that the counsel who was appearing for the appellant in the criminal revision had been appointed as a counsel for the State and could not have appeared for the appellant. There is also no material to show that the appellant after having knowledge of such appointment of his counsel failed to appoint another lawyer to conduct the case before the High Court. In view of the peculiar circumstances, the order of the High Court is set aside and the matter is remitted to it for fresh hearing. [1174-B-C]

G

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.1166 of 2006.

From the Judgment and Final Order dated 12-5-2006 of the High Court

H

of Gauhati in Criminal in Revision No.255 of 1999.

P.K. Goswami, A. Henry and Rajiv Mehta for the Appellant.

N.G., J.R. Luwang (for M/s. Corporate Law Group), for the Respondent.

The Judgment of the Court was delivered by :

ARIJIT PASAYAT, J. Leave granted.

Challenge in this Appeal is to the order of a learned Single Judge of the Guwahati High Court dismissing the Criminal Revision filed by the appellant.

The background facts in a nutshell are as follows:

The appellant was convicted for an offence punishable under Section 409 of the Indian Penal Code, 1860 (in short the 'IPC') by learned sub-Divisional Judicial Magistrate, Jonai. The allegation against the appellant was that he had mis-appropriated a sum of Rs.91,006/-. While taking over charge as Deputy Inspector of Schools on 12.11.1991, he had received cash amounting to Rs.91,796/-, as per the accounts maintained. When the cash was physically verified only Rs.790/- was found, and it was, therefore, inferred that he had committed misappropriation of cash. He faced trial for alleged commission of offence punishable under Section 409 IPC. Questioning his conviction and sentence of two years with fine as imposed by the trial Court, an appeal was filed before the Sessions Court. Learned Sessions Judge, Dhemaji dismissed the Criminal appeal upholding the conviction and the sentence imposed. A Criminal Revision in terms of Section 397 read with Section 401 and Section 482 of the Code of Criminal Procedure, 1973 (in short the 'Cr.P.C.') was filed. When the matter was taken up on 12.5.2006, none appeared for the petitioner. Therefore, learned Single Judge dismissed the revision petition after hearing learned counsel for the State.

In support of the appeal, learned counsel for the appellant submitted that learned counsel who was appearing for the appellant in the High Court had been appointed as a counsel for the State and, therefore, could not have appeared for the appellant. Unfortunately, this position was not brought to the notice of the appellant and, therefore, the appellant should not be made to suffer. It is pointed out that the appellant has always pursued the remedies and there was never any negligence on his part.

A In response, learned counsel for the State submitted that though the appellant had not been represented by a counsel, learned Single Judge elaborately dealt with the factual and legal position after hearing learned counsel for the State and perusing the records.

B It has not been disputed that the learned counsel who was appearing for the appellant in the Criminal Revision had been appointed as a counsel for the State and could not have appeared for the appellant. There is also no material to show that the appellant after having knowledge of such appointment of his counsel failed to appoint another lawyer to conduct the case before the High Court.

C In view of this peculiar circumstances, it would be in the interest of justice to set aside the impugned order of the High Court and remit the matter to it for fresh hearing. To avoid unnecessary delay, we direct that the matter shall be listed before an appropriate Bench on 11.12.2006 and learned Chief Justice of the High Court shall pass necessary orders in that regard. It is undertaken by learned counsel for the appellant that another counsel shall be engaged to appear for the appellant before the High Court before the aforesaid date. Since the matter was pending before the High Court for nearly seven years, we request the High Court to explore the possibility of disposal of the Criminal Revision as early as practicable. Learned counsel for the appellant stated that an application for bail shall be filed before the High Court. Needless to say that if such application is filed, the same shall be dealt with in accordance with law.

The appeal is disposed of accordingly.

R.P.

Appeal disposed of.