

Criminal Revision
Present: The Hon'ble Justice Ashim Kumar Roy
Judgment On : 05-05-2010.
C.R.R. No. 945 of 2010
Tapan Kr. Das
versus
State of West Bengal & Anr.

Points:

Contradiction of witness: Court directed denovo trial from the stage of 251 of the code of criminal procedure -whether court can permit to contradict the witnesses with reference to their statement recorded during the earlier trial- Code of Criminal Procedure, 1973 S.251

Facts:

The petitioner was tried and was convicted for an offence punishable under Section 138 of the Negotiable Instruments Act. The said order of conviction was challenged before the appellate Court and the appellate Court set aside the order of conviction and sentence and directed the trial Court to proceed with the trial de novo from the stage of 251 of the Code of Criminal Procedure. During the course of such trial, the petitioner moved an application praying for permission to contradict the witnesses with reference to their statement recorded during the earlier trial. However, the learned trial Court rejected the said application and when the said order was challenged before the Sessions Court, the Session Court affirmed the said order, hence this criminal revision.

Held:

Indisputably, the consequence of such order of de novo trial from the stage 251 of the Code of Criminal Procedure, the evidence recorded during the previous trial stands expunged and the same cannot be taken into consideration for any purpose, as such, the question of contradicting the witnesses with reference to their evidence recorded during the previous trial does not at all arise.

Para-5

For Petitioner : Mr. Prabir Mitra
Ms. Pyali Chatterjee

The Court:

The present petitioner was tried and was convicted for an offence punishable under Section 138 of the Negotiable Instruments Act. The said order

of conviction was challenged before the appellate Court and the appellate Court

set aside the order of conviction and sentence and directed the trial Court to proceed with the trial de novo from the stage of 251 of the Code of Criminal Procedure. During the course of such trial, the petitioner moved an application

praying for permission to contradict the witnesses with reference to their statement recorded during the earlier trial.

However, the learned trial Court rejected the said application and when the said order was challenged before the Sessions Court, the Session Court

affirmed the said order, hence this criminal revision.

2. Admittedly, this is a second revision and in view of clear prohibition contained in Section 397 (3) of the Code of Criminal Procedure, no revision against the same can be entertained unless it is shown the order impugned suffers from manifest illegality and brings out a situation which is completely an

abuse of process of Court.

3. Heard Mr. Prabir Mitra, learned advocate appearing on behalf of the petitioner. Perused the impugned order.

4. It appears from the records, that the order passed by the appellate Court, setting aside the order of conviction and sentence passed against the petitioner with a direction upon the learned trial Court to hold the trial de novo

from the stage of 251 of the Code of Criminal Procedure has never been challenged and same has reached its finality.

5. Indisputably, the consequence of such order of de novo trial from the stage 251 of the Code of Criminal Procedure, the evidence recorded during the

previous trial stands expunged and the same cannot be taken into consideration

for any purpose, as such, the question of contradicting the witnesses with reference to their evidence recorded during the previous trial does not at all arise.

In my opinion, both the Trial Court as well as the revisional Court has not committed any mistake in turning down the prayer of the petitioner.

This criminal revision has no merit and stands dismissed. Interim order, if any, stands vacated.

Criminal Section is directed to deliver urgent Photostat certified copy of this Judgement to the parties, if applied for, as early as possible.

(Ashim Kumar Roy, J.)