

(1990) 03 DEL CK 0050

In the Delhi High Court

Case No : Criminal Miscellaneous (Main) Appeal No. 635 of 1989

Anand Prakash Mahal and Another

APPELLANT

Vs

Motia Garg and Others

RESPONDENT

Date of Decision : 26-03-1990

Acts Referred:

Citation : (1999) 41 DLT 112 : (1990) 1 ILR Delhi 286

Hon'ble Judges : P.K. Bahri, J

Bench : Single Bench

Advocate : Balraj Trikha and Rajni Anand, for the Appellant;

Judgement

Bahri, J.

(1) This application has been moved seeking restoration of Cri. M. (M) 441 of 1987 and for deciding it after giving an opportunity of addressing the arguments on merits.

(2) Anand Prakash and Shakuntala Mahal have filed the petition u/s 482 of the Code of Criminal Procedure seeking quashment of the proceedings pending against them before the Magistrate in complaint case No. 860 of 1983 for offences punishable u/s 406 and 420 read with Section 34 of the Indian Penal Code pleading that Magistrate had earlier passed an order discharging the petitioner but later on had issued warrants of arrest of the petitioners on their failure to appear before the Court on subsequent hearing.

(3) Notice was issued to the respondents to show cause as to why the petition be not admitted and complainant was duly served in the main petition and matter was being adjourned from one date to another for hearing arguments. Ultimately, H. C. Goel, J. (as his Lordship then was) on May 24, 1988 declined the prayer of the petitioner for adjournment and as petitioner did not advance any arguments himself, the Court dismissed the main petition. Thereafter Cri. Misc. (M) 586 and 569 of 1988 were moved by the petitioners for recalling the order of dismissal of the main petition pleading that counsel for the petitioners

could not appear on the date fixed due to his being busy in some elections and that an opportunity of addressing the arguments may be provided. These applications were dismissed by H.C. Goel, J. on July 4, 1988.

(4) The present application was moved seeking the same relief which was sought in the previous applications. During the pendency of this application, petitioner No. 1 Anand Prakash Mahal had died and his name has been deleted.

(5) I have heard learned counsel for the petitioner Shri Balraj Trikha on the preliminary point whether the application ""s maintainable or not when similar application stand dismissed earlier. It appears from the perusal of the main petition and the copies of the documents filed Along with the petition that due to some "typographical error made by. the learned Magistrate it was mentioned that the petitioners had been discharged although the arguments were partly heard on the application of the petitioners seeking discharge u/s 245 of the Code and case was also adjourned for hearing on the remaining arguments. The learned Magistrate on a subsequent date had noticed the aforesaid typographical mistake and corrected the order and had held that the petitioners were not discharged and had issued non-bailable warrants on failure of the petitioners to appear before the Court.

(6) Be it as it may, the short question which arises for consideration at the present stage whether the present application seeking the same relief which was prayed in the earlier application and which application stood dismissed, is maintainable or not. The learned counsel for the petitioner has cited Raj Narain and Others Vs. The State, where the Full Bench of the Allahabad High Court has held that the High Court has power to revoke, review recall or alter its own earlier decision in criminal revision and re-hear the same and this can be done only in cases falling under one or other of the three conditions mentioned in Section 561A of the old Criminal Procedure Code. The. learned counsel for the petitioner has argued that by virtue of inherent powers of this Court u/s 482 of the new Code which is similarly worded as Section 561A of the old Code, this Court can re-call the earlier order made by H. C. Goel, J. dismissing the application.

(7) I find no merit in the contention of the learned counsel for the petitioner. In State of Orissa Vs. Ram Chander Agarwala and Others, in which the aforesaid judgment of the Full Bench of the Allahabad High Court has been also noticed, it has been clearly laid down by the Supreme Court that once a judgment has been announced by a High Court either in exercise of its appellate or its revisional jurisdiction, no review or revision can be entertained against that judgment as there is no provision in the Criminal Procedure Code which would enable the High Court to review the same or to exercise its revisional jurisdiction. It has laid down by the highest Court that the provisions of Section 561-A of the Code cannot be evoked for exercise of power which is specifically prohibited by the Code.

(8) In State versus Ka Tukanna etc. 1984 RLR 523(3) where a Single Judge of this Court clearly held as follows :

"I am further of the opinion that the petitioner u/s 482 Criminal Procedure Code is a well not martingale .It is now too well settled that inherent powers of the Court have to be very sparingly exercised to prevent abuse of process of Court or to otherwise secure the ends of justice. It cannot be invoked if there is specific provision in the Code for the redress of the grievance of the aggrieved party .It should also not be exercise as against express bar of law engrafted in any other provision of the Code".

The learned Single Judge has placed reliance on Madhu Limaye Vs. The State of Maharashtra, for this proposition of law.

(9) The main petition in the present case was dismissed in liming and the mere fact that an adjournment; was not granted by the Court, does not take away the legal effect" of dismissal of the petition in liming. Once an order had been made by the Court, the same is not open to challenge by resort to any provision of review or inherent powers contained in Section 482, Criminal Procedure Code.

(10) Inherent powers are to be resorted to even otherwise to prevent abuse of process of Court or to otherwise secure the ends of justice. The earlier application of the petitioner seeking a review of the order dismissing the main petition in liming and for re-hearing the main petition on merits was also dismissed by the Court. Filing of the present application seeking the same relief in fact, amounts to an abuse of the process of the Court. I hence hold that this application is not maintainable and, I dismiss the same.