
(2011) 07 GUJ CK 0125

In the Gujarat High Court

Case No : Criminal Miscellaneous Application No. 845 of 2011 in Criminal Appeal No. 1190 of 2005

Anilbhai Maganbhai Parmar

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 04-07-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 360, 360(4), 362, 482

Citation : (2011) 07 GUJ CK 0125

Hon'ble Judges : Z.K. Saiyed, J

Bench : Single Bench

Advocate : M.P. Shah and Kruti M. Shah, for the Appellant; H.L. Jani, APP, for the Respondent

Final Decision : Dismissed

Judgement

Z.K. Saiyed, J.—Rule. Learned APP Mr. H.L. Jani waives service of Rule on behalf of the Respondent - State.

2. Present applicant - original Appellant in Criminal Appeal No. 1190 of 2005 has filed this application for recalling of the judgment and order dated 30.12.2010 passed by this Court in Criminal Appeal No. 1190 of 2005 and to grant the benefit of probation to the applicant under the provisions of the Probation of Offenders Act, after calling the report of the Probation Officer and to extend the time to the applicant to surrender before the Jail Authority.

3. Learned advocate Ms. Kruti Shah contended that as per provisions of Section 360 of Code of Criminal Procedure when any person under 21 years of age is convicted of an offence not punishable with death or imprisonment of life and no previous conviction is proved against the offender and if it appears to the Court having regard to the age, character or antecedent of the offender that the offender should be released on probation of good conduct then the Court may direct that he be released on probation of good conduct. She contended that as

per Sub-section (3) of Section 360, which is specifically pertaining to the conviction of theft, the Court can also release the offender after due admonition. She contended that the said powers can be exercised by the High Court or the Appellate Court under Sub-section (4) of Section 360 of Criminal Procedure Code. She submitted that the applicant has right to get benefit of probation. Therefore, the order of sentence awarded to the applicant deserves to be recalled and it may be considered whether the applicant is entitled for probation or not. Therefore, the order passed by this Court on 30.12.2010 in Appeal may be recalled and case of the applicant for giving him benefit of probation under the Probation of Offenders Act may be considered.

4. Learned APP Mr. H.L. Jani for the State, opposed this application and submitted that when this Court has passed the judgment and order after hearing both the sides and after considering the relevant material, in view of provisions of Section 362 of the Criminal Procedure Code, question of reviewing or recalling the judgment or order cannot arise. Therefore, the application filed by the applicant deserves to be dismissed.

5. Heard both the parties and perused the judgment passed by this Court on 30.12.2010. The applicant is seeking review of the order passed by this Court. I have also considered the submissions advanced by the parties. I have also considered the provisions of Section 362 of the Code of Criminal Procedure, which reads as under:

SECTION 362 Court not alter judgment:

Save as otherwise provided by this Code or by other law for the time being in force, no Court, when it has signed its judgment and final order disposing of a case shall alter or review the same except to correct a clerical or arithmetical error.

Looking to the above provision, it is clear that this Court cannot review its judgment passed, either in exercise of its appellate or revisional or original criminal jurisdiction, except to correct a clerical or arithmetical error. Therefore, in the present case also power of review cannot be exercised with the aid or under the cloak of Section 482 of the Code. Moreover, the Hon"ble Apex Court in the case of State of Orissa Vs. Ram Chander Agarwala and Others, has held that "the High Court has no power to review its own order."

6. Therefore, in view of above legal position, it is clear that this Court has no power to review or recall its own order, except for the purpose of correcting a clerical error. It is, therefore, clear that once a judgment has been pronounced by a High Court either in exercise of its appellate or revisional jurisdiction, no review or revision can be entertained, as there is no provision in the Code of Criminal Procedure which would enable the High Court to review its own order to exercise revisional jurisdiction.

7. I have also considered the decision rendered by the Hon"ble Supreme Court in

the case of Hari Singh Mann v. Harbhajan Singh reported in AIR 2001 SC 43, wherein the Hon''ble Supreme Court has observed that

no review of an order is contemplated under the Code of Criminal Procedure after the disposal of the main petition. There was lis pending in the High Court, wherein the applicant could have filed any miscellaneous petition. The practice of filing miscellaneous petitions after the disposal of the main case and issuance of fresh directions in such miscellaneous petitions by the High Court are unwarranted, not referable to any statutory provision and in substance the abuse of the process of Court

8. In the decision of State of Kerala Vs. M.M. Manikantan Nair, , the Hon''ble Supreme Court has observed that

the Code of Criminal Procedure does not authorise the High Court to review its judgment or order passed either in exercise of its appellate, revisional or original jurisdiction.

9. Therefore, I am of the opinion that the Code of Criminal Procedure does not authorise the High Court to review its judgment or order passed either in exercise of its appellate, revisional or original jurisdiction. From the several pronouncements of the Hon''ble Apex Court and this Court no Criminal Court can review its own judgment or order after it is signed and pronounced. There is no such provision under the Code of Criminal Procedure.

10. In the case of Adalat Prasad v. Rooplal Jindal reported in AIR 2004 (SC) 4674, it has been observed by the Hon''ble Supreme Court that

review of an order is not contemplated under the Code of Criminal Procedure.

11. I have also perused the decision in the case of Vishnu Agarwal v. State of U.P. and Ors. reported in 2011 (1) GLR (NOC), wherein the Hon''ble Supreme Court has held that

there is difference between order of review and order of recall, hence, the order of recall is not barred u/s 362 of the Code of Criminal Procedure.

However, in the facts of that case, learned advocate for the party was not present when the matter was disposed and the matter was decided ex-parte. Thereafter, an application was made to recall the order and High Court recalled its order, which judgment was confirmed by Honourable Supreme Court. However, in the instant case, order disposing the appeal was passed in presence of both the learned advocates, after hearing them, and after considering the record of the case. Therefore, when the order is passed in presence of advocate for the Appellant and after hearing the learned advocates for the parties, then there is no question of recalling the order.

12. In view of the above observations made by the Hon''ble Supreme Court in various cases, it is crystal clear that under the Code of Criminal Procedure, there is no jurisdiction vested in Court to review its own order. Even in the application

made by the applicant, it is not mentioned under which provision the application is made by the applicant for recalling of the conviction order and for benefit of probation. This Court has no power to alter or review its own judgment. After the Court has given its judgment or final order disposing of a case, it shall not alter or review the same except to correct a clerical error or arithmetical error. Therefore, it is crystal clear that there is no power of review after judgment has been rendered. The provisions of Code of Criminal Procedure does not empower the High Court to revise or review its judgment in criminal appeal or revision, after it has been pronounced and signed. Therefore, the relief as prayed for in the application, do not have any substance in view of the observations made in the aforesaid portion of this order. The main Criminal Appeal was heard on merits by this Court and after pronouncing the judgment of the Appeal, the applicant - original Appellant has filed this application after long time, seeking prayer to recall the judgment and order passed by this Court in Criminal Appeal. But as per the provisions and principle laid down by the Hon'ble Supreme Court in various cases, this Court has no power to review or recall its own judgment and order. The application having no substance, is dismissed. Rule is discharged.

13. So far prayer regarding extension of time to the applicant to surrender before the jail Authority is concerned, in interest of justice time is granted for two weeks and the applicant shall surrender before the jail Authority within two weeks from the date of order, without fail.