

(2015) 11 PAT CK 0057

In the Patna High Court

Case No : Civil Review No. 124 of 2014 in LPA 227 of 2012

Arbind Kumar Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 27-11-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, 114
Criminal Procedure Code, 1973 (CrPC) — Section 173(2)
Penal Code, 1860 (IPC) — Section 120B, 34, 364A

Citation : (2015) 11 PAT CK 0057

Hon'ble Judges : I.A. Ansari, Actg. C.J. and Ashwani Kumar Singh, J.

Bench : Division Bench

Advocate : S.W. Haider and Raj Shekhar, Advocates, for the Appellant; Anjani Kumar, AAG-VI and Shailendra Kumar Singh, AC to AAG-VI, for the Respondent

Judgement

Ashwani Kumar Singh, J.—By the present application under section 114 read with Order XLVII Rule 1 of the Civil Procedure Code, 1908 (for short "CPC"), the petitioner (the appellant in the Letters Patent Appeal) seeks review of the order, dated 12.03.2014, passed by the Division Bench, in Letters Patent Appeal No. 227 of 2012, whereby the Letters Patent Appeal of the petitioner herein was dismissed finding no merit in the appeal against the judgment and order, dated 6th January, 2012, passed in C.W.J.C. No. 7410 of 2007 preferred by the petitioner whereby a learned Single Judge of this Court has dismissed the writ petition.

2. Shorn of details, the brief facts, necessary for disposal of this petition, are as under:-

(a) The petitioner was recruited as a Constable in Bihar Police in 1999. While he was posted as a Constable with Motihari District Police, his complicity transpired in Raxaul P.S. Case No. 20 of 2012, dated 13.02.2002, registered under Sections 364A /34 and 120B of the Indian Penal Code, for abduction of one Ajay Kumar. By order, dated 15th April, 2002, he was placed under suspension and a

departmental proceeding was initiated against him on the following three charges:-

(i) That, his home telephone was used in kidnapping of Ajay Kumar and demanding ransom;

(ii) That, kidnapped Ajay Kumar was kept at his house for some days; and

(iii) That, he had close relationship with an accused Madan Rai, a veteran criminal, of the locality.

(b) In the departmental proceeding, the Sub-Divisional Judicial Magistrate, Raxaul, was made the enquiry officer. In support of the charges, certain witnesses were examined during enquiry. However, the petitioner chose not to cross-examine them. On completion of enquiry, the enquiry officer found the petitioner guilty of the charges levelled against him. Agreeing with the findings of the enquiry officer, the disciplinary authority, the Superintendent of Police, Motihari, held the petitioner guilty of the charges and visited him with the punishment of withholding of three increments without future effect. The said order of punishment passed in the disciplinary proceeding was not challenged by the petitioner either before the appellate authority or in the Court. Hence, the order of punishment attained finality.

(c) Subsequently, the Deputy Inspector General of Police reviewed the order passed by the Superintendent of Police, East Champaran, Motihari. In his opinion, the punishment of withholding of three increments without future effect imposed upon the petitioner was not commensurate with the gravity of the misconduct proved against him. The Deputy Inspector General of Police, Champaran Range, Bettiah, therefore, recommended for review of the order of the disciplinary authority under Rule 853A of the Bihar Police Manual, 1978.

(d) After being satisfied with the opinion of the Deputy Inspector General of Police, Champaran Range, Bettiah, and considering the materials on record, the Director General-cum-Inspector General of Police, Bihar, Patna, issued a notice to the petitioner, on 4th July, 2005, to submit his show cause reply against the proposed punishment for removal from service and after receipt of the reply to the show cause, the Director General-cum-Inspector General of Police dismissed the petitioner from service vide order, dated 31st January, 2006.

(e) By way of a writ petition bearing C.W.J.C. No. 7410 of 2007, the petitioner challenged the aforesaid order, dated 31st January, 2006, passed by the Director General of Police-cum-Inspector General of Police, Bihar, Patna before this Court. After hearing the parties, the learned Single Judge dismissed the writ petition vide order, dated 06.01.2012. The said order, dated 06.01.2012, was challenged before the Division Bench in Letters Patent Appeal No. 227 of 2012, which was also dismissed vide order, dated 12.03.2014. In the present application, the petitioner has sought for review of the aforesaid order, dated 12.03.2014.

3. Mr. S.W. Haider, learned Counsel appearing for the petitioner, seeks review of

the order, dated 12.3.2014, on the following grounds:-

(a) That, on completion of investigation, in Raxaul P.S. Case No. 20 of 2012, the petitioner was not sent up for trial along with other charge-sheeted accused. In the police report submitted under Section 173(2) of the Code of Criminal Procedure, he was simply shown as a suspect and while taking cognizance of the offence, the Court of Magistrate did not summon the petitioner as an accused;

(b) Though the charges in both the proceedings were the same, there are apparent contradictions about the findings in the departmental proceeding and the investigation of the criminal case.

(c) That, the disciplinary proceeding, conducted against the petitioner, was vitiated for violation of principles of natural justice, because the petitioner was not furnished with the copy of deposition of the witnesses examined in the disciplinary proceeding and the documents relied upon by the department. Further-more, the petitioner was not allowed to lead any evidence in his defence;

(d) That, the petitioner had filed a representation against the order of punishment imposed upon him by the Superintendent of Police, Motihari. Unfortunately, the copy of the same is not available with him and despite best possible efforts, he is unable to find the same. This misconception of fact has led this Court to reach a conclusion that the disciplinary proceeding was not ever challenged.

(e) That, complicity of the petitioner had transpired in Raxaul P.S. Case No. 20 of 2012, on the basis of confessional statements of co-accused, who were put on trial. However, their trial also ended in acquittal. In that view of the matter, neither the confessional statements of the co-accused nor the charge-sheet, showing the petitioner as a suspect, was existent and enforceable against the petitioner and, therefore, the dismissal order is totally on erroneous and false grounds, which should not be permitted to continue.

4. Per contra, Mr. Anjani Kumar, learned Additional Advocate General No. 6, appearing for the State, has submitted that by filing the present application, the petitioner is seeking review of the judgment merely for the purpose of re-hearing and a fresh decision of the case, which is not permissible in law. He has submitted that the arguments, advanced by the petitioner, were duly considered by this Court and the appeal was dismissed by a reasoned order. Mr. Anjani Kumar, learned Senior Counsel, has submitted that the learned Senior Counsel appearing for the petitioner, in Letters Patent Appeal No. 227 of 2012, had fairly conceded before the Court that at no point of time, the petitioner had challenged the punishment order passed against him by the disciplinary authority. The contention of the petitioner in the present application that the petitioner had filed a representation against the order of punishment passed by the disciplinary authority is nothing more than an afterthought.

5. We have given our thoughtful consideration to the respective submissions

raised at the Bar.

6. In our opinion, the present application is beyond the purview of the provisions of Order XLVII rule 1 of the CPC. The petitioner, in the present case, is seeking a re-hearing of his case in the garb of review application. It is well settled that a review proceeding cannot be equated with original hearing of the case. A review proceeding has to be strictly confined to the ambit and scope of Order XLVII Rule 1 CPC. Learned Senior Counsel for the State is correct in his submission that the contention of the petitioner that he had filed a representation against the order of punishment passed by the disciplinary authority is an afterthought. It was admitted in appeal that neither the disciplinary proceeding nor the punishment of withholding of three increments without future effect was ever challenged by the petitioner. We are of the opinion that there was no misconception of fact, while passing the order in the Letters Patent Appeal.

7. Taking into consideration the pleadings of the parties, this Court had dismissed the Letters Patent Appeal. It is settled principle of law that simply because a party is not satisfied with the judgment of a Court or there was possibility to take another view on the facts and law involved in a case would, by itself, be not a ground to review a judgment. Further, the power of review may be exercised for correction of a mistake or an error apparent on the face of the record. It cannot be treated as an appeal in disguise. An error, which is not evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record.

8. In *Satyanarayan Laxminarayan Hegde and Others Vs. Millikarjun Bhavanappa Tirumale*, , the Supreme Court, in paragraph 17, made following observations in connection with an error apparent on the fact of the record:-

"17...An error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. As the above discussion of the rival contentions show the alleged error in the present case is far from self evident and if it can be established, it has to be established by lengthy and complicated arguments. We do not think such an error can be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ..."

9. In *Sow Chandra Kante and Another Vs. Sheikh Habib*, , the Supreme Court observed as under:-

"A review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. A mere repetition, through different Counsel, of old and overruled arguments, a second trip over ineffectually covered ground or minor mistakes of inconsequential import are obviously insufficient..."

10. In *S.L. Sachdev and Another Vs. Union of India (UOI) and Others*, , the

Supreme Court held, in paragraph 12, as under:-

"12. A review is not a routine procedure. Here we resolved to hear Shri Kapil at length to remove any feeling that the party has been hurt without being heard. But we cannot review our earlier order unless satisfied that material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice. In *Sow Chandra Kante and Another Vs. Sheikh Habib*, , this Court observed: (SCC p. 675, para 1)

"A review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility.... The present stage is not a virgin ground but review of an earlier order which has the normal feature of finality."

11. The scope of Order XLVII Rule 1 CPC, dealing with review of a judgment, has been succinctly stated by the Supreme Court, in *Parsion Devi and Others Vs. Sumitri Devi and Others*, , held as under:-

"7. It is well settled that review proceedings have to be strictly confined to the ambit and scope of Order 47 Rule 1 CPC. In *Thungabhadra Industries Ltd. Vs. The Government of Andhra Pradesh*, this Court opined:

"What, however, we are now concerned with is whether the statement in the order of September 1959 that the case did not involve any substantial question of law is an "error apparent on the face of the record"). The fact that on the earlier occasion the Court held on an identical state of facts that a substantial question of law arose would not per se be conclusive, for the earlier order itself might be erroneous. Similarly, even if the statement was wrong, it would not follow that it was an "error apparent on the face of the record", for there is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterised as vitiated by "error apparent". A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error."

12. This principle was reiterated by the Supreme Court in, *Lily Thomas, Vs. Union of India and Others*, , wherein it has been observed that the power of review can be exercised for correction of a mistake, but not to substitute a view. The review cannot be treated like "an appeal in disguise". The mere possibility of two views on the subject is not a ground for review.

13. In the light of the settled legal position as discussed above and having gone through the present review application, we find that no error apparent on the face of the record has been brought out by the review petitioner warranting review of the order, dated 12.03.2014. A perusal of the review application would make it evident that the same is nothing, but an appeal in disguise. We are of the opinion that in the application, under consideration, the petitioner has failed to establish that there was an error or a mistake apparent on the face of the

record or there was such other material available with the petitioner, which, if not taken into consideration, would cause miscarriage of justice.

14. Thus, we find that the review application is beyond the ambit and scope of Order XLVII Rule 1 of the Civil Procedure Code and is an attempt, on the part of the petitioner, to have re-hearing of the matter on merits.

15. The application, being devoid of any merit, is dismissed.

16. However, there shall be no order as to costs.

I.A. Ansari, Actg. C.J.

I agree.