

(2015) 05 AHC CK 0188
In the Allahabad High Court
Case No : Criminal Revision No. 1300 of 2004

Ashok Chawla and Others

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 18-05-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 352, 353, 362

Citation : (2015) 6 ADJ 144

Hon'ble Judges : Ranjana Pandya, J

Bench : Single Bench

Advocate : B.N. Rai and Adarsh Kumar, for the Appellant; K.K. Tripathi, R.K. Mishra and S.K. Gupta, Advocates for the Respondent

Final Decision : Allowed

Judgement

Ranjana Pandya, J—This recall application has been presented to recall the order dated 3.5.2013 and to hear the revision on merits. Learned counsel for the revisionists has argued that when the revision was dismissed, he was not heard although the order is passed on merits.

2. Learned counsel for the opposite parties has argued that under the provision of Section 353 Cr.P.C., the Judgment shall not be deemed invalid by reason of absence of the parties. The counsel for the opposite party No. 2 has further relied upon Ajit Singh and another Vs. State of Punjab . This ruling does not apply on the facts of the present case because this is based on Section 353 Cr.P.C. and because counsel for the revisionists has not argued that the Judgment is invalid but he has argued that since opportunity was not given for hearing and he could not be present on the date fixed, hence, the order be recalled.

3. Counsel for the opposite party has further argued that under Section 352 Cr.P.C. Judgment should not be recalled and in support thereof, he has also placed reliance on Hari Singh Mann v. Harbhajan Singh Bajwa, in which it has

been held that review of earlier decision is not permissible except to rectify the clerical error.

4. On this, counsel for the revisionists has relied upon the law laid down in State of Punjab Vs. Davinder Pal Singh Bhullar and Others etc., AIR 2012 SC 364 : (2012) CriLJ 1001 : (2012) 1 Crimes 44 : (2011) 14 JT 213 : (2012) 1 RCR(Criminal) 126 : (2011) 3 SCALE 394 : (2012) AIRSCW 207 : (2011) 8 Supreme 577 , in which it has been held that opportunity of hearing should be given to all. In the same context, counsel for the revisionist has placed reliance upon Vishnu Agarwal v. State of U.P. and another, 2011 (74) ACC 609, in which it has been held that if the revisionist does not appear and the recall application is moved, a hyper technical and rigid use should not be taken about Section 362 Cr.P.C.

5. Thus, as per the law laid down by the Apex Court, the order dated 3.5.2013 is set aside. Revision is restored to its original number. List this matter in the first week of July, 2015.