
(2006) 06 PAT CK 0028

In the Patna High Court

Case No : Criminal Miscellaneous No. 5250 of 2006

Balgobind Prajapat @ Balgobind Kumhar

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 28-06-2006

Acts Referred:

Citation : (2006) 06 PAT CK 0028

Final Decision : Dismissed

Judgement

Ram Nandan Prasad, J.—The petitioner has approached this Court u/s 482 of the Code of Criminal Procedure for extension of time to deposit the fine and also for order to release the petitioner, who is in jail in default of payment of fine.

2. The relevant facts of the case are that the petitioner was an accused along with other persons in a criminal case for the offence u/s 302/307 of the Indian Penal Code. He was put on trial along with other accused persons. The trial court convicted one of the accused persons for the offence u/s 302 I.P.C. and convicted the petitioner for the offence u/s 307 of the Indian Penal Code and sentenced to undergo imprisonment for ten years vide judgment and order dated 31.7.1987 passed by the 3rd Additional Sessions Judge, Gaya in Sessions Trial No. 58 of 1982/41 of 1980. The petitioner and other convicts challenged the judgment and order of the conviction in Cr. Appeal No. 351/1987. The appeal was dismissed with modification on 24th of January 2001. While dismissing the appeal the Court considered that the occurrence took place about 22 years ago and the age of the petitioner was assessed in the judgment as 80 years in the year 1987 and, as such, the Court while maintaining the conviction of the petitioner u/s 307 I.P.C. reduced the sentence to the period already undergone and awarded fine of Rs. 10,000/- which was to be deposited by the petitioner in the trial court within two and a half months and the fine deposited by was to be paid to the injured. It was further ordered that in case the fine awarded is not deposited within the aforesaid time the sentence awarded by the trial court shall stand affirmed and the petitioner shall serve the sentence as awarded by the trial court. The

petitioner did not deposit the fine. Consequently, he is in jail with effect from 25.8.2005. He filed an application for permission to deposit the amount of fine after expiry of the period prescribed by the High Court. The said petition was rejected by Incharge Additional Sessions Judge IV, Gava vide order dated 5.9.2005. The petitioner, thus, has filed this application for extension of time to deposit the amount, as indicated above.

3. The submission of the learned Counsel for the petitioner is that the court has inherent power u/s 482 of the Code of Criminal Procedure to extend the time to deposit the fine prescribed by the Court. In this regard it would not be out of place to mention herein that the judgment and order in Cr. Appeal was passed on 24th of January 2001. The time to deposit the fine was allowed two and a half months from the date of passing of judgment and order in the appeal. The fine was not deposited and, as such, as per the order passed in appeal the sentence passed by the trial court revived and the petitioner had to serve the sentence as awarded by the trial court. The judgment and order passed by the Court thus became final and Section 362 of the Code of Criminal Procedure comes into play, which deals with the power of the Court and it says, "Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error". It is evident from the aforesaid provision that after signing of the judgment or the final order the Court has no power to alter or review the judgment and order except to correct the clerical or arithmetic error. However, the counsel for the petitioner relied upon a decision in the case of Mahendra Singh and Ors. v. State of Bihar AIR 2002 SC 387, wherefrom it appears that the person was convicted u/s 324 I.P.C. and sentenced to imprisonment for six months. On appeal the High Court maintained the conviction but reduced the sentence to the period already undergone and directed to pay a fine of Rs. 500/-, in default to undergo R.I. for three months. The fine was not deposited within time. The convict filed repeated applications for extension of time u/s 482 Cr.P.C. The said petitions were dismissed. The supreme Court, in the circumstances, held that the convicts were not entitled to file so many applications before the High Court invoking the jurisdiction u/s 482 Cr.P.C. but having regard to the facts and circumstances and in view of the statement that the convicts were ill-advised to file a number of applications before the High Court, allowed the appeal and granted a month's time to deposit the fine. The aforesid order of the Apex Court has been passed in the facts and circumstances without deciding any ratio and as such it is of no help to the learned Counsel for the petitioner.

4. It is well established rule of law that unless the judgment is pronounced and signed it is not a judgment and is not enforceable. After signing of the judgment it becomes final and Section 362 Cr.P.C. comes into play. It says that the Court has no power to alter or review the judgment or the final order signed except to correct a clerical or arithmetical error. In the case of Smt. Sooraj Devi Vs. Pyare Lal and Another, , the Apex Court while dealing with the scope of Sections 362

and 482 of the Code of Criminal Procedure has held that the prohibition in Section 362 against the Court altering or reviewing its judgment is subject to what is "otherwise provided by this Code or by any other law for the time being in force". Those words, however, refer to those provisions only where the Court has been expressly authorised by the Code or other law to alter or review its judgment. The inherent power of the Court is not contemplated by the saving provision contained in Section 362.

5. In the case of State of Orissa Vs. Ram Chander Agarwala and Others, , the Apex Court while considering the provisions of Sections 369/561-A Criminal Procedure Code, 1898 has held that no alteration in judgment after signature can be made in view of the specific provision of Section 369 Criminal Procedure Code, 1898 (362 Criminal Procedure Code, 1973). Section 561-A Criminal Procedure Code, 1898 (482 Criminal Procedure Code, 1973) is not applicable where specific provision is provided by the Code. Similarly, in the case of Ajit Singh and Another Vs. State of Punjab, , a Full Bench while considering the provisions of Sections 362 and 482 of the Code of Criminal Procedure and also the submission that extension of time for deposit of fine would not amount to alter or revision of the original judgment has held that time for deposit of the fine cannot be extended as it would amount to review or alteration of judgment on the point of sentence, which is not within the power of the Court.

6. In the instant case it is obvious that the sentence was reduced to the period already undergone and awarded a fine to be deposited within two and a half months from the date of judgment passed in appeal, which was not deposited and, as such, the sentence awarded by the trial court revived and the petitioner has to serve the sentence as awarded by the trial court. Any interference/extension of time to deposit the fine, in my opinion, would amount to review/alteration of the judgment, which is not permissible in view of Section 362 Criminal Procedure Code, 1973 and Section 482 Criminal Procedure Code has no application in such matters in view of the specific provision i.e. Section 362 Cr.P.C.

7. Thus, on consideration as discussed above, I find no merit in this application. It is, accordingly, dismissed.

Radha Mohan Prasad, J.

8. I agree.