

(1979) 04 AHC CK 0009
In the Allahabad High Court

Chhotey Singh and Others

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

Date of Decision : 24-04-1979

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 302, 309, 320, 362, 369
Penal Code, 1860 (IPC) — Section 149, 307, 323, 324

Citation : (1980) CriLJ 583

Hon'ble Judges : S.C. Mathur, J

Bench : Single Bench

Judgement

S.C. Mathur, J.—Through this application the applicants have prayed for permission to compromise the offence.

2. The applicants were prosecuted for having committed the offence punishable under Sections 307/149 of the I. P. C. They were convicted and sentenced to five years" rigorous imprisonment. Against this conviction and sentence the applicants preferred appeal to this Court. By judgment and order dated 3-10-1978 I set aside the conviction of the applicants u/s 307 of the Penal Code; instead I convicted the applicants under Sections 323 and 324 of the I. P. C.

3. After the above judgment had been signed by me the present application was moved by the applicants on 19-10-1978. Along with the application the applicants presented compromise which bore the signatures of the injured Ram Gopal and the present four applicants who were convicted by me.

4. The above application has been opposed on behalf of the State by the learned Government Advocate on the plea that the judgment having been signed, this Court has become functus officio and no power of review having been conferred, this Court is not entitled to entertain this application at this stage.

5. The applicants" learned Counsel Shri Shanti Prakash relied upon a number of decisions of this Court and on the basis of those decisions he urged that even after this Court had disposed of the appeal finally, this Court, in exercise of the

inherent power reserved u/s 482 of the Cr. P. C., could accept the compromise and dispose of the case in accordance therewith. The learned Counsel further argued that the applicants had been convicted by the learned Court below for an offence punishable u/s 307 of the I. P, C. which was not compoundable and, therefore, applicants could not move the present application for compromise until their conviction was converted into one under Sections 323 and 324. According to the learned Counsel the occasion for moving the present application for compromise arose only after their conviction u/s 307 was set aside and instead they were convicted under Sections 323 and 324.

6. The learned Counsel strongly relied upon the Full Bench judgment of this Court in *Raj Narain and Others Vs. The State*, . In this case the majority view was that in case covered by Section 561-A of the Cr. P, C., 1898 which is equivalent to Section 482 of the present Cr. P. C. it was permissible for the Court to recall or alter its earlier decision. In this case Mootham, C. J. expressed minority view to the contrary. According to the learned Chief Justice the judgment passed by this Court in exercise of appellate jurisdiction became final in view of the provision contained in Section 430 of the old Code. Accordingly the learned Chief Justice was of the view that once the appeal had been disposed of and judgment had been signed, this Court became functus officio and had no power to revoke, review, recall or alter the order already made.

7. The learned Counsel also relied upon two single judge decisions, one reported in 1966 All 315 (2) (*Raj Karan v. State*) and other reported in 1978 All LJ 39 (*Hardwar Prasad v. State*). The compromise in the earlier case was accepted by S. K. Kaul, J. As against the above judgment the learned Government Advocate invited my attention to Sections 320 and 362 of the Code of 1898. The learned Government Advocate also invited my attention to the decision rendered by their Lordships of the Supreme Court in the case of *State of Orissa Vs. Ram Chander Agarwala and Others*, and by this Court in case of *Badri Prasad Rastogi v. State* 1979 All LJ 59. The learned Government Advocate further urged that in view of the judgment rendered by their Lordships of the Supreme Court in *Ram Chander Agrawal's* case (supra) the majority view of this Court in *Raj Karan's* case stands superseded. The learned Government Advocate, therefore urged that this Court had become functus officio and could not in exercise of the inherent powers u/s 482 of the Cr. P. C. set aside the judgment which would be the necessary consequence of acceptance of the compromise. The argument of the learned Government Advocate is well founded. Section 362 of the present Code runs as follows:

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.

Under the above provision a judgment which has been signed can be altered or reviewed only for correcting clerical or arithmetical errors.

8. Finality is provided in respect of appellate judgments or orders u/s 393. The finality does not, attach to matters covered by Sections 377 378 384(4) or matters stated in Chap. XXX. Finality also does not attach the matters covered by proviso to Section 393. Barring the exception specifically made the judgment or order cannot be altered. To invoke the power reserved u/s 482 of the Code would be to act against the specific mandate of the statute.

9. In Raj Narain's case (supra) this Court was dealing with an application u/s 5C1-A of the old Code. The prayer was for setting aside the judgment by which the appeal had been disposed of and for affording opportunity of hearing to the applicants whose case could not be pressed on merits by their learned Counsel on account of his absence at the time when the case was taken up for hearing. Mootham, C. J. who delivered the minority judgment was of the view that in view of the provision contained in Section 430 of the old Code, the judgment and order passed by Appellate Court became final and could not, .therefore, be reviewed or recalled. He was further of the view that if such a judgment was revoked or reviewed, set aside or cancelled, the same would be inconsistent with the principle of finality prescribed u/s 430 and that inherent powers could not be invoked so as to nullify the effect of statutory provision. In the majority judgment however, the view taken was that finality was provided only in respect of the cases covered by Section 369 of the old Code and that the said provision was inapplicable to the judgment pronounced by this Court. The majority, therefore, was of the view that the judgment of this Court, even after it had been signed, could be reviewed or revoked and case reheard if the conditions prescribed u/s 561-A of the old Code were fulfilled. On merits, however, the Full Bench came to the conclusion that the case was not one which warranted exercise of inherent powers. It was observed that Section 561-B did not authorise this Court to rehear a case where an applicant or appellant was not heard due to some fault of his or his counsel.

10. In State of Orissa v. Ram Chandra Agrawal (supra) their Lordships of the Supreme Court accepted the minority opinion expressed by Mootham C. J. in Raj Narain's case, their Lordships were of the view that the judgment of the High Court once it had been pronounced, became final and the same could not, thereafter, be reviewed, .revised, cancelled, set aside or amended, as there was no provision in the Code which enabled the Court in that behalf. With regard to scope of Section 369 of the old Code which is equivalent to Section 362 of the new Code, their Lordships observed in para 12 as follows:

A reading of Section 369 discloses that this section prohibits all Courts when it has signed its judgment to alter or review the same except to correct a clerical error. While, regarding other Courts, the prohibition is subject to any provision in the Code of ... or any provision of any other law in force, in the case of the High Court it is provided that the prohibition will be subject to the Letters Patent or other instrument constituting such High Court. Thus so far as the High Court is concerned, the prohibition against alteration and the review of the judgment will

be subject to the Letters Patent or other instrument constituting such High Court...

11. The above observations clearly make out that Section 369 of the old Code was not confined in its application to the judgments of the trial Court only but applied to the judgments given by the High Court also. Proceeding further their Lordships observed in paragraph 17 as follows:

If Section 369 of the Cr. P. C. is understood as applying to judgments on appeal by the High Court, Section 561-A cannot be invoked for enabling the Court to review its own order which is specifically prohibited by Section 309 by providing that no Court when it has signed its judgment shall alter or review the same except to correct a clerical error.

12. The above judgment is clear authority for the proposition that the only meddling which this Court can do with its judgment, after it has been pronounced and signed is in respect of clerical errors. Section 302 of the new Code provides as follows:

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 for final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error;

13. There is slight variation in Section 369 of the old Code and Section 362 of the new Code. u/s 369 of the old Code only clerical errors could be corrected. u/s 362 of the new Code the errors which can be corrected are clerical or arithmetical. An arithmetical error would also be a clerical error and, therefore, the addition of the words "arithmetical error" in Section 362 of the new Code has not brought about any substantial change in the position. Thus on the basis of the judgment rendered by their Lordships of the Supreme Court only clerical and arithmetical errors can be corrected after the judgment has been pronounced and signed. These errors can be corrected on account of the provision specifically made in Section 362 of the new Code.

14. It is true that in the cases of Raj Karan and Badri Prasad Rastogi (supra) compromise petitions were accepted by two learned Judges of this Court after judgments had been pronounced and signed in the appeals. These decisions can no longer be followed, as they are directly in conflict with the dictum laid down by their Lordships of the Supreme Court.

15. There is another aspect of the matter on account of which also the present application has to be rejected. Section 320 of the Cr. P. C., 1973 contains the table of the cases which may be compounded. Sub-section (2) of the section provides as follows:

The offence punishable under the sections of the I. P. C. specified in the first two columns of the Table next following may, with the permission of the Court before which any prosecution for such offence is pending be compounded by the

persons mentioned in the third column of the Table.

In the sub-section the words used are "with the permission of the Court before which any prosecution for such offence is pending..." The use of word "pending" indicates that an application for compounding the offence must be made in a pending proceeding. Once the appeal has been finally disposed of, there is nothing pending and, therefore, an application u/s 320 of the Cr. P. C. cannot be entertained.

16. In view of the above, the application for acceptance of compromise preferred by the parties fails and is hereby rejected.