

(2011) 03 AHC CK 0290

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 30030 of 2009

C.P. Singh

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 03-03-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 340, 362, 369, 482
Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 147, 323, 342, 363, 392
Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 340, 362, 369, 482
Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 147, 323, 342, 363, 392
Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 340, 362, 369, 482
Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 147, 323, 342, 363, 392

Citation : (2011) 2 ACR 1751 : (2011) 3 AWC 209 : (2011) 8 RCR(Criminal) 2003

Hon'ble Judges : Vinod Prasad, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Vinod Prasad, J.—The above two Criminal Miscellaneous Applications arises out of the same Criminal Case No. 6437 of 2008, State v. Raj Kumar Sachan and others, (relating to Crime No. 467 of 2007), under Sections 363, 392, 342, 323, 504, 506 IPC, Police Station Kalyanpur, District Kanpur Nagar pending before VI M.M. Kanpur Nagar and hence it both were clubbed together and are being disposed off by this common order. Challenge in these two Applications by the three Applicants-C.P. Singh, Raj Kumar Sachan and Ramanuj Katiyar, are to their summoning order dated 14.10.2008 and continuance of aforesaid criminal case against them. Criminal Miscellaneous Application No. 33719 of 2009 was ordered to be connected with other Applications and were nominated to this Bench by the order of the Acting Chief Justice dated 18.2.2010 and hence both the aforesaid Applications along with other two Applications are listed before this bench.

2. Background facts relating to aforesaid two surviving Applications have got chequered facts and consequently, in seriatum, they are registered thus.

3. Jagmohan Singh son of Late Jaipal Singh, informant victim, moved an application u/s 156(3) Code of Criminal Procedure before VIII Kanpur Nagar against Raj Kumar Sachan, Ramanuj Katiyar,(both Applicants) Subodh Kumar, C.P. Singh(Applicant) and four or five unknown persons dressed as IIT Security Personnels for committing offences under Sections 147, 363, 392, 342, 323, 504, 506 IPC. Allegations by informant victim were that he had instituted a complaint case No. 1065 of 2007 against Raj Kumar Sachan (Administrator) and Subodh Kumar Sachan (erstwhile Secretary) of Technology Consumer Cooperative Society Limited, IIT, Kanpur, U/S 138 N.I. Act, which was pending. Complainant informant victim was the Store Keeper of the said Co-operative Society. Annoyed and motivated by the proceeding u/s 138 N.I. Act, aforesaid accused persons armed with country made pistol and accompanied by two or three unknown persons dressed as security personnels of IIT Kanpur cordoned off informant on 9.6.2007 at 6.00 p.m., when he was returning to his house, near the main road crossing of IIT Kanpur and at gun point robbed the keys of the godown and Rs. 1900/-from the complainant victim. During the incident Ramanuj Katiyar had also assaulted the victims by fists. Complainant victim was dragged to the store where he was forced to sign on same blank papers. Victim was then pushed out of godown informing him that his services had been terminated. Resistance by victim and his threat that he will seek police help resulted in dragging him by Subodh Kumar Sachan, and then he was pushed into a white Maruti Van and was driven to a house where he was kept in illegal confinement. He was also tied in chair with a rope and there accused persons conspired to falsely implicate him in a cooked up theft case of gas cylinders. With the help of some unknown persons victim, however, got himself freed on 11.6.2007 and then he came to know that place of his wrongful confinement was the house of applicant Raj Kumar Sachan. He vainly endeavoured to lodge a report with PS Kalyanpur, district Kanpur Nagar and left with no option, victim Jagmohan Singh wielded Magistrate's powers u/s 156(3) Code of Criminal Procedure On 14.6.2007 seeking his direction for registration of his FIR and investigation into the crime vide Miscellaneous Application No. 254 of 2007, Jagmohan Singh v. Raj Kumar Sachan. VIII Metropolitan Magistrate, Kanpur Nagar, after obtaining a report from the police, directed for registration of FIR and investigation into the offences on 29.6.2007. It transpires that under the orders of the Magistrate police registered crime No. 467 of 2007,U/Ss 147, 363, 392, 342, 323, 504, 506 IPC on 6.7.2007 at 8.15 p.m. against malefactors Raj Kumar Sachan, Subodh Kumar Sachan, C.P. Singh, Ramanuj Katiyar and unknown persons.

4. Investigation into the crime concluded in filing of FR No. 128 of 2007 on 1.8.2007. Victim informant protested acceptance of FR by filing a protest petition on 30.10.2007. Vide order dated 30.11.2007 M.M. VI, Kanpur Nagar accepted the protest petition, rejected acceptance of FR and directed further investigation

into the offences. Further investigation again concluded in submission of FR for the second time on 26.6.2008. Informant repeated his exercise of filing a protest petition again on 29.8.2008 and this time VI Metropolitan Magistrate registered Criminal Case No. 6437 of 2008, State v. Raj Kumar Sachan And others, summoned the applicant accused to stand trial for aforesaid offence on 14.10.2008 while rejecting FR submitted by the investigating officer.

5. After being summoned all the named accused persons-Ramanuj Katiyar, Subodh Kumar Sachan, Raj Kumar Sachan and C.P. Singh moved to this Court by filing 482 Cr.P.C application No. 2762 of 2009 on 3.2.2009 praying there under that their summoning order dated 14.10.2008, Annexure No. 9 and proceeding of aforesaid Criminal Case No. 6437 of 2008, State v. Raj Kumar Sachan and others be quashed. In the aforesaid 482 Code of Criminal Procedure application, applicant No. 2 Subodh Kumar Sachan was the deponent in the affidavit appended therewith mentioning in paragraph 1 thereof that he himself was applicant No. 2 and was doing parvi on behalf of applicant Nos. 1, 3 and 4. Aforesaid 482 Cr.P.C Application came up for admission on 5.2.2009 and after hearing counsel for the Applicants at a great length the same was dismissed being bereft of merit and not maintainable.

6. Another fact which requires to be taken note of at this juncture is that 138 N.I. Act proceeding was also challenged by the accused Subodh Kumar Sachan and Raj Kumar Sachan by filing 482 Code of Criminal Procedure application No. 2865 of 2008, which was dismissed by this Court on 11.3.2008. Concealing first rejection, those accused, through Sri Sujeet Kumar Rai advocate, filed second 482 Application No. 2966 of 2009 on 4.2.2009. At the time of admission of later 482 Application, Sri D.P. Singh, Advocate appeared for the complainant victim and produced the earlier order and consequently the second exercise by those two accused for getting proceeding u/s 138 N.I. Act quashed recoiled back and their second exercise in 482 Application No. 2966 of 2009 was dismissed by imposing a cost of Rs. 25,000/-by this Court.

7. It was after the aforesaid two failure exercises, that accused applicant C.P. Singh preferred second 482 Code of Criminal Procedure Application being Crl. Misc. Application No. 30030 of 2009 for the same relief which was already rejected by this Court on the earlier occasion of getting the prosecution of Case No. 6437 of 2008, State v. Raj Kumar Sachan and others quashed including summoning order dated 14.10.2008. In original Application applicant had not divulged fact of filing of earlier 482 Cr.P.C Application No. 2762 of 2009 and applicant succeeded in obtaining a stay of proceeding order from this Court on 7.12.2009. Following suit two other accused Ramanuj Katiyar and Raj Kumar Sachan filed another 482 Code of Criminal Procedure Application No. 33719 of 2009 with identical prayer. Noticeable here is another fact that interregnum one of the accused Ramanuj Katiyar had also approached this Court u/s 482 Code of Criminal Procedure and had obtained an order for expeditious disposal of his bail on 7.12.2009 in Application 30266 of 2009.

8. At the time of admission of 482 Application No. 33719 of 2009 this Court on 10.2.2010 noted that the first 482 Cr.P.C Application filed by the two accused Raj Kumar Sachan and Ramanuj Katiyar was dismissed by this Bench in earlier 482 Code of Criminal Procedure Application No. 2762 of 2009 that His Lordship was pleased to send the matter before Acting Chief Justice for nomination along with other 482 Code of Criminal Procedure Applications No. 2762 of 2009 and 30030 of 2009 vide order dated 10.2.2010. All the Applications were placed before Hon"ble The Acting Chief Justice, who was pleased to nominate this Bench on 18.2.2010 and that is how all the Applications came up before this Bench.

9. When the two undisposed off 482 Code of Criminal Procedure Applications 30030 of 2009, C.P. Singh v. State and Crl. Misc. Application No. 33719 of 2009, Raj Kumar Sachan and Anr. v. State of U.P. came up for admission before this Court then Sri D.P. Singh, counsel for the informant, objected to filing of second 482 Code of Criminal Procedure petition on behalf of C.P. Singh as his the earlier Application was dismissed on merits as well as for the reason that the same was not maintainable. Sri Samit Gopal, learned Counsel for C.P. Singh accused filed a Misc. Application on 19.1.2011 with the prayer "to declare the Criminal Misc. Application No. 2762 of 2009, Ramanuj Katiyar and Ors. v. State of U.P. and another as not been filed either by the applicant or on his instructions otherwise applicant may suffer irreparable loss and injury". On such an application, this Court directed for giving notice in writing to the counsel who had filed earlier 482 Code of Criminal Procedure Application and after his appearance has questioned him as to whether he had filed earlier 482 Code of Criminal Procedure application or not, on which, the aforesaid counsel Sri Sujeet Kumar Rai informed the Court that he had filed earlier 482 Code of Criminal Procedure Application No. 2762 of 2009 on behalf of all the accused. To make the pleadings complete and bring entire facts on the record, Sri Sujeet Kumar Rai, Advocate was directed to file an affidavit disclosing his stand. Sri Rai has filed an affidavit of his clerk Sri Gyanendra Kumar Yadav, a copy of which has been duly served on Sri Samit Gopal, counsel for accused-applicant C.P. Singh and also on Sri D.P. Singh, counsel for the informant-victim. On personal knowledge, clerk Gyanendra Kumar Yadav has sworn that the three applicants namely Ramanuj Katiyar, Subodh Kumar and Raj Kumar Sachan had approached Sri Sujeet Kumar Rai, Advocate and had requested him to file 482 Code of Criminal Procedure Application on their behalf as well as on behalf of C.P. Singh. They had also informed the aforesaid counsel that they will disclose the parentage of applicant C.P. Singh later on. By mistake, the parentage of C.P. Singh could not be entered in that 482 Code of Criminal Procedure Application No. 2762 of 2009 but it was under the instructions of C.P. Singh that the aforesaid 482 Code of Criminal Procedure application was filed by him.

10. On the above facts, I have heard Sri G.S. Chaturvedi, learned Senior Counsel assisted by Sri Samit Gopal advocate for the applicant C.P. Singh, Sri D.P. Singh advocate for the informant and learned AGA for the State in opposition.

11. As a preliminary argument, Sri Chaturvedi submits that earlier 482 Application was not filed by C.P. Singh and he had not instructed other three accused to file Application on his behalf as well. C.P. Singh had not engaged Sri Rai as his counsel and therefore instant 482 Application be treated to be first exercise and therefore be considered 9 on merits. It was next submitted that applicant C.P. Singh had no connection with rest of the accused and he has been roped in maliciously and therefore his prosecution be quashed.

12. Per contra, counsels for the informant and learned AGA refuted those submissions and contended otherwise. In their submission second exercise for the same relief is not maintainable or this Court can review it's earlier order in exercise of it's inherent power u/s 482 of the Code. On merits also it was submitted that since prima facie offence are disclosed therefore prosecution should not be scuttled at it's inception and applicants be relegated to face the trial.

13. I have considered rival contentions and have perused all connected 482 Applications. What is unerringly culled out from the facts disclosed above is that the three applicants C.P. Singh, Raj Kumar Sachan and Ramanuj Katiyar had approached this Court earlier also by filing 482 Code of Criminal Procedure Application No. 2762 of 2009 and the aforesaid application was dismissed on merits as well as on the ground of being not maintainable as the offences for which applicants were summoned were prima facie disclosed as was perceptibly clear from their impugned summoning order dated 14.10.2008, which was annexed as annexure No. 9 to that Application. Further for supporting prayer of quashing no material collected during investigation was filed and hence that 482 Application was based on suppression of material and relevant uneshewable facts which were relevant and germane for considering prayer for quashing and hence that Application was also dismissed as not maintainable. Neither any collected material during investigation was filed nor any recorded statement under 161 Code of Criminal Procedure was annexed. Forming such an opinion this Court had no option but to negative prayer for quashing on 5.2.2009, which order has attained finality as the same was not challenged in any higher forum. At that stage no detailed examination was required as there was no material before this Court to undertake such an exercise. Otherwise also from the impugned summoning order sufficient evidences were disclosed for prosecuting applicant and hence detailed order was not required at all. In this respect regard can be had from the apex court decision in Madhumilan Syntex Ltd. and Others Vs. Union of India (UOI) and Another, wherein it has been observed by the apex court as follows:

18. Similarly, we do not see force in the contention that the petition could not have been dismissed in limine without recording reasons. It was not a substantive appeal which was heard by a Court. An application for discharge of accused was rejected by the trial Court. Revision petition was also dismissed by the Sessions Court and the said order was challenged before the High Court u/s

482 of the Code (Inherent power of High Court). If the High Court did not think it fit to exercise inherent powers in the light of the controversy raised, question involved and the stage at which the applicants had approached the Court, it cannot be said that the Court must pass detailed speaking order or record reasons in support of such order. That contention also, therefore, has no force.

14. Turning towards preliminary contention that said 482 Application 2762 of 2009 was not filed by C.P. Singh or on his instructions, it is to be noted that deponent of affidavit filed in support of that Application was one of the co accused and an applicant himself. Paragraph 1 of the affidavit clearly averred that the deponent in the aforesaid affidavit was doing pairvi on behalf of rest of the applicants 1, 3 and 4. Through supplementary affidavit filed in the present 482 Code of Criminal Procedure Application No. 30030 of 2009, C.P. Singh has nowhere averred that the averments of Subodh Kumar in the earlier 482 Code of Criminal Procedure Application No. 2762 of 2009 that he was pairokar of the applicant was a false statement. C.P. Singh has not initiated any proceeding against Subodh Kumar for filing a false affidavit before this Court. He has not moved any application u/s 340 Code of Criminal Procedure Unbelievable is the fact that it was unbeknown to C.P. Singh that said 482 Application No. 2762 of 2009 was also filed on his behalf for complete a year and he did not gain knowledge about it albeit he was a co accused in that very case where prayer for quashing was negative by this Court. Contention of C.P. Singh that he had not instructed anybody to approach this Court on an earlier occasion to get the proceeding quashed is not acceptable as mere ipse dixit of C.P. Singh applicant is unacceptable and unconvincing. Subodh Kumar deponent in earlier 482 Code of Criminal Procedure application will never accept that he was not instructed by C.P. Singh and contrary C.P. Singh had no defence except to plead that he had never instructed Subodh Kumar. This Court has no reason to disbelieve statement by Sri Rai and affidavit by his clerk that earlier Application was also required to be filed on behalf of C.P. Singh as well. Be that as it may, the conduct of all the applicants in approaching this Court repeatedly without disclosing complete material and correct facts are that of unscrupulous litigants indulging into insalubrious and unholy practice.

15. For above view support can be drawn from past conduct of applicants who are in the habit of filing successive Applications for the same relief u/s 482 Code of Criminal Procedure in this Court without change of fact situations and without disclosing factum of filing of earlier 482 Code of Criminal Procedure Applications. Exemplar situation are that for quashing of proceedings u/s 138 N.I. Act, two of the accused Subodh Kumar and Raj Kumar Sachan had approached this Court twice for the same relief without change of circumstances in 482 Code of Criminal Procedure Applications No. 2865 of 2008 and Application No. 2966 of 2009. Two of the accused Raj Kumar Sachan and Ramanuj Katiyar, for the same relief without any alteration of facts, for getting their prosecution for offences of robbery, illegal confinement, abduction and other offences quashed, approached this Court twice, firstly in 482 Code of Criminal Procedure Application No. 2762 of

2009 and secondly in 482 Code of Criminal Procedure Application No. 33719 of 2009.

16. C.P. Singh also filed instant 482 Application without disclosing about earlier Application and it was only when the case was nominated to this bench that he filed supplementary affidavit disowning earlier Application. By change of Advocate, they wanted to cheat the Court by suppression of material facts of dismissal of their identical prayers on the earlier occasions. Their summoning order dated 14.10.2008, which was considered on the earlier occasion in 482 Code of Criminal Procedure Application No. 2762 of 2009 on merits also disentitled them for any relief whatsoever.

17. Another reason for taking opinion against the applicants is that earlier order dated 5.2.2009 dismissing identical prayers, without change of circumstances and materials, on the subsequent occasion, can not and should not be reviewed by this Court. Section 362 Code of Criminal Procedure comes in way of this Court to entertain second exercise for the said relief without change of fact situations. This aspect of the matter had already been concluded by a catena of decisions of this Court as well as by the apex court. Power u/s 482 Code of Criminal Procedure can not be utilized to alter concluded final decisions by the same bench or bench of coordinate jurisdiction and reliance in this respect can be placed on an apex court decisions in: State of Orissa Vs. Ram Chander Agarwala and Others, wherein it had been held by the apex court as follows:

20..... Reliance was placed on a decision of this Court in Superintendent and Remembrancer of Legal Affairs, West Bengal Vs. Mohan Singh and Others, by Mr. Patel, learned Counsel for the Respondent wherein it was held that rejection of a prior application for quashing is no bar for the High Court entertaining a subsequent application as quashing does not amount to review or revision. This decision instead of supporting the Respondent clearly lays down, following U.J.S. Chopra Vs. State of Bombay, that once a judgment has been pronounced by a High Court either in exercise of its appellate or its revisional jurisdiction, no review on revision can be entertained against that judgments as there is no provision in the Code of Criminal Procedure which would enable the High Court to review the same or to exercise revisional jurisdiction. This Court entertained the application for quashing the proceedings on the ground that a subsequent application to quash would not amount to review or revise an order made by the Court. The decision clearly lays down that a judgment of the High Court on appeal or revision cannot be reviewed or revised except in accordance with the provisions of the Criminal Procedure Code. The provisions of S. 561A of the Code cannot be invoked for exercise of a power which is specifically prohibited by the Code.

(underline emphasis supplied)

In Hari Singh Mann V. Harbahjan Singh Bajwa: (2001)1 SCC 169 apex court has taken the same view as follows:

9. There is no provision in the Code of Criminal Procedure authorising the High Court to review the judgment passed either in exercise of its appellate or revisional or original criminal jurisdiction. Such a power cannot be exercised with the aid or under the cloak of Section 482 of the Code. This Court in *State of Orissa Vs. Ram Chander Agarwala and Others*,

Before concluding we will very briefly refer to cases of this Court cited by counsel on both sides, *Talab Haji Hussain Vs. Madhukar Purshottam Mondkar and Another*, *Talab Haji Hussain Vs. Madhukar Purshottam Mondkar and Another*, relates to the power of the High Court to cancel bail. The High Court took the view that u/s 561A of the Code, it had inherent power to cancel the bail, and finding that on the material produced before the Court it would not be safe to permit the Appellant to be at large cancelled the bail, distinguishing the decision in 72 Ind App 120: AIR 1945 94 (Privy Council) and stated that the Privy Council was not called upon to consider the question about the inherent power of the High Court to cancel bail under S.561A. In *Sankatha Singh Vs. State of U.P.*, this Court held that S. 369 read with S. 424 of the Code of Criminal Procedure specifically prohibits the altering or reviewing of its order by a Court. The accused applied before a succeeding Sessions Judge for a re-hearing of an appeal. The learned Judge was of the view that the appellate Court had no power to review or restore an appeal which has been disposed of. The Supreme Court agreed with the view that the appellate Court had no power to review or restore an appeal. This Court, expressing its opinion that the Sessions Court had no power to review or restore an appeal observed that a judgment, which does not comply with the requirements of S. 367 of the Code, may be liable to be set aside by a superior Court but will not give the appellate Court any power to set it aside itself and re-hear the appeal observing that "Section 369 read with S. 424 of the Code makes it clear that the appellate Court is not to alter or review the judgment once signed except for the purpose of correcting a clerical error. Reliance was placed on a decision of this Court in *Superintendent and Remembrancer of Legal Affairs, West Bengal Vs. Mohan Singh and Others*, by Mr. Patel, learned Counsel for the Respondent wherein it was held that rejection of a prior application for quashing is no bar for the High Court entertaining a subsequent application as quashing does not amount to review or revision. This decision instead of supporting the Respondent clearly lays down, following *U.J.S. Chopra Vs. State of Bombay*, 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 against that judgment as there is no provision in the Code of Criminal Procedure which would enable the High Court to review the same or to exercise revisional jurisdiction. This Court entertained the application for quashing the proceedings on the ground that a subsequent application to quash would not amount to review or revise an order made by the Court. The decision clearly lays down that a judgment of the High Court on appeal or revision cannot be reviewed or revised except in accordance with the provisions of the Criminal Procedure Code. The provisions of S. 561A of the Code cannot be

invoked for exercise of a power which is specifically prohibited by the Code.

10. Section 362 of the Code mandates that 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. The Section is based on an acknowledged principle of law that once a matter is finally disposed of by a Court, the said Court in the absence of a specific statutory provision becomes functus officio and disentitled to entertain a fresh prayer for the same relief unless the former order of final disposal is set aside by a Court of competent jurisdiction in a manner prescribed by law. The Court becomes functus officio the moment the official order disposing of a case is signed. Such an order cannot be altered except to the extent of correcting a clerical or arithmetical error. The reliance of the Respondent on Talab Haji Hussain Vs. Madhukar Purshottam Mondkar and Another, is misconceived. Even in that case it was pointed that inherent powers conferred on High Courts u/s 561A (Section 482 of the new Code) has to be exercised sparingly, carefully and with caution and only where such exercise is justified by the tests specifically laid down in the section itself. It is not disputed that the petition filed u/s 482 of the Code had been finally disposed of by the High Court on 7-1-1999. The new Section 362 of the Code which was drafted keeping in view the recommendations of the 41st Report of the Law Commission and the Joint Select Committees appointed for the purpose, has extended the bar of review not only to the judgment but also to the final orders other than the judgment.

Same view has been affirmed by the apex court in Mohd. Yaseen Vs. State of U.P., and hence this Court is bound by the above view.

18. Prosecution of the applicants is pending for more than two years. By indulging into unfair practices, applicants have successfully installed their criminal trial till this date. Dockets of Courts are being saddled because of such unholy practices for which there is so much of criticism in spite of all the best efforts being put in by this Court to clear the racks of backlog cases. Our heuristic experience informs us of filing of successive 482 Code of Criminal Procedure Applications by unscrupulous litigants for the same reliefs without disclosing complete facts, which are burdening this Court with unprecedented load of work.

19. Concluding this order, for the above reasons I find no ground to entertain either of the 482 Code of Criminal Procedure Applications being Criminal Misc. Application No. 30030 of 2009, C.P. Singh v. State of U.P. and Criminal Misc. Application No. 33719 of 2009, Raj Kumar Sachan and Anr. v. State of U.P., and hence both the aforesaid 482 Code of Criminal Procedure Applications are dismissed.

20. Interim order granted by this Court in 482 Code of Criminal Procedure Application No. 30030 of 2009, C.P. Singh v. State, dated 7.12.2009 as is extended from time to time stands vacated. Trial court will do well to take up the

case without delay and end eavour to complete it expeditiously.