

(2000) 05 PAT CK 0006
In the Patna High Court
Case No : Civil Review No. 7 of 1998

Dilip Kumar Sharma and Others	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 12-05-2000

Acts Referred:

Constitution of India, 1950 — Article 137, 226
Criminal Procedure Code, 1973 (CrPC) — Section 369

Citation : (2000) 3 PLJR 264

Hon'ble Judges : S.N. Mishra, J;S.K. Chattopadhyaya, J

Bench : Division Bench

Advocate : Sada Nand Jha and Partha Sarthy, for the Appellant; Mihir Kumar Jha and Mohit Kumar Sah, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard the learned Counsel for the parties on the maintainability of this review application.
2. In this application prayer has been made to review the order passed by the learned Single Judge of this Court dated 9.12.97 and 15.12.97 passed in Cr.W.J.C. No. 741 of 1997.
3. The Stamp Reporter raised a question about maintainability of this review petition and, as such, the learned Single Judge by his order dated 20.1.98 referred the matter before a larger Bench for consideration of this point.
4. It appears that in the writ application prayer was made by the writ-Petitioner to direct the State officials-Respondents to vacate the premises in question, which was occupied by them. Other prayer of similar nature were also made. A counter affidavit was filed stating therein that the house in question has been restored to the Petitioner on 11.12.97 and, as such, by order dated 15.12.97 the learned Single Judge disposed of the writ application having found the same infructuous. Admittedly, the applicants of this review petition were not parties to

the aforesaid writ application.

5. Dr. Jha, learned senior counsel appearing on behalf of the applicants contended that the High Court has power to review any order passed under Article 226 of the Constitution irrespective of the fact that the same has been passed either in its civil jurisdiction or in its criminal jurisdiction. In support of his contention he has relied on the decisions reported in 1963 SC 1909; 1987 PLJR 973; 1988 SC 1531; S. Nagaraj and Others Vs. State of Karnataka and Another, ; Union of India and Another Vs. G.R.K. Sharma, ; Workman of M/s Birla Textiles Vs. Shri K.K. Birla and Others, and Common Cause, A Registered Society Vs. Union of India and Others, . According to him when making false representation the writ-Petitioner obtained order from this Court, the High Court has power to modify or review the said order in order to do justice.

6. Mr. Mihir Kumar Jha, learned Counsel, appearing on behalf of the private opposite parties on the other hand urged that when the applicants were not parties in the writ petition, the review application cannot be entertained at their instance.

7. In the case of Ramachandra Ganpat Shinde and another Vs. State of Maharashtra and others, their Lordships in almost similar circumstances, inter alia, have observed as follows:

10. The question emerges whether the said order is liable to be interfered with and if so in what proceeding and to what extent? The order in the second writ petition cannot be reviewed because the Appellants are not parties to the proceedings. Undoubtedly, the order passed by the High Court under Article 226 is by the exercise of plenary constituent power and jurisdiction. It is neither a void nor voidable order. As seen no fault could be found in the format of legal process in the pleadings and the reliefs sought for. But when it came up for admission, by consent, orders of minutes were drawn up, which have become foundation for avoidance of mandate of Rule 4(1) of the Rules. It is not a case of irregularity in the exercise of the jurisdiction so as to set it right by a review. Since the Petitioners therein, namely, More and Mule being henchmen of Patil cannot be expected to invoke the review jurisdiction of the Court. Third party has no right to file an application for review....

Having observed thus, their Lordships were of the opinion that such third party, who was not a party to the writ application, can file a fresh writ application under Article 226 seeking modification of an order obtained fraudulently or by suppression of fact.

8. The applicants in the instant case has alleged that by suppressing and misrepresenting real facts the writ-Petitioner obtained the aforesaid order from the learned Single Judge and, as such, the same should be reviewed at the instance of the writ Petitioner. In view of the law laid down by the Supreme Court, we are of the opinion that this review application at the instance of the applicants is not maintainable because they were admittedly not parties in the

writ application.

9. Secondly, review of an order passed under Article 226 in exercise of its criminal writ jurisdiction, in our view, is also not maintainable. It is well settled that Criminal Court has no inherent power to review his order and power of authority must be statutory. Article 137 of the Constitution empowers the Supreme Court to review its judgment pronounced or made by it. There is no corresponding provision in the Constitution with respect to the High Court and, as such, authority for a power of review for orders under Article 226 must be drawn from statutory provision if any and since the Criminal Procedure Code does not confer any such provision for review in those proceedings under Article 226, which are recorded as criminal proceeding, in the instant case no review, according to us, is available.

10. In the case of *Mostt. Simrikhia v. Smt. Dolley Mukherjee alias Smt. Chabbi Mukherjee and Anr.* AIR 1990 SC 1605 the Supreme Court has held that the Court is not empowered to review its own decision under the purported exercise of inherent power because inherent power cannot be exercised to do something, which is expressly barred under the Code of Criminal Procedure. Our aforesaid view also finds support from a Division Bench decision of the Madras High Court reported in *In Re: T. Venkateswara Rao and Others*, wherein it is held that an application for a writ of habeas corpus is of a criminal nature and no review is allowed in such matters.

11. The decisions relied on by Dr. Jha are mostly on the power of the Supreme Court to review its order. As noticed above, Article 137 of the Constitution confers specific power to the Supreme Court to review any decision or its judgment but the High Court is not empowered to do that and specially when Section 369 of the Code of Criminal Procedure prohibits exercising of such power.

12. In the instant case the learned Single Judge passed the order in exercising its criminal jurisdiction and, as such in our view no review can be made against the said order.

13. Thus, we find that this review application is not maintainable which is, accordingly, dismissed.