
(1997) 01 BOM CK 0003

In the Bombay High Court

Case No : Criminal Application No. 254 of 1997

Gopal Nathan

APPELLANT

Vs

R.S. Oberoi and Another

RESPONDENT

Date of Decision : 30-01-1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (1997) 99 BOMLR 686

Hon'ble Judges : D.G. Deshpande, J

Bench : Single Bench

Judgement

D.G. Deshpande, J.—Heard Mr. Nusrat Shah for the applicant and Mrs. Pawar, the learned APP for the State in Criminal Application No. 254/97, and also heard Mr. Rahul Rao for the applicant, Mr. Y.S. Bhate for Respondent No. 1 and Mrs. Pawar the learned APP for the State in Criminal Application Nos. 267/97 and Cr. Application No. 268/97.

2. So far as Cr. Application No. 254/97 is concerned, Mr. Shah states that he had given notice to this application to Mr. Marvadi, the learned advocate for the petitioner, but, Mr. Marvadi declined to accept the notice. Mr. Shah has tendered a copy of the letter dt. 28th Jan. 1997, sent to the him by speed post to Mr. Marvadi. This application is filed by the original Respondent for setting aside my order dt 8th Jan, 1997, and for rehearing the writ petition No. 137/88 on merits. According to Mr. Shah, firstly, this was an exparte order because he was not given an opportunity of being heard. Secondly, the petition was dismissed in default, was restored and no notice after restoration was given to him. Thirdly, there is a fatal error in my order dt. 8th Jan, 1997, which can only be corrected if the matter is reopened and lastly according to him, this Court has power to review its own order or at any rate, the court can recall its own order u/s 482 Cr.P.C.

3. So far as Cr. Application No. 267/97 and Cr. Application No. 268/97 are concerned Mr. Rahul Rao, was heard on behalf of the applicants and Mr. Bhate for

the Respondent No. 1. i.e. the original petitioner, and the learned APP Mrs. Pawar for the State.

4. In all these three applications, common ground was raised by Mr. Shah and by Mr. Rahul Rao in support of their application for reopening the matter or for reviewing or recalling or setting aside my earlier order. Both of them contended that these three respective writ petitions were dismissed in default, but restored on the same day and no notice were given to them before they were heard and finally decided. Both of them contended that no opportunity was given to them to be heard in the matters. They relied upon some authorities in support of their contention that firstly, this Court has powers of reviewing its own orders and alternatively under the inherent powers, the court can recall its order and the matters.

5. Mr. Shah and Mr. Rao relied upon Nazeem Vs. Asstt. Collector of Customs and another, , Bombay Cycle and Motor Agency Ltd v. Bhagwanprasad Ramragubir Pandey 76 Bom. L.R. 612, Deepak Thanwardas Balwani Vs. State of Maharashtra and another, , Ramchandra Khatik v. Sahadeo Koshti AIR (32) 1945 Nagpur 185.

6. On the Order hand Mr. Bhate the learned advocate for the Respondent No. 1 and Pawar the learned APP for the State relied upon a judgment of the Supreme Court reported State of Orissa Vs. Ram Chander Agarwala and Others, , in support of their contention that once a judgment is pronounced the High Court has no power to review the same, except for the purpose of correcting the clerical errors. I have given my anxious considerations to the submission made by Mr. Shah and Mr. Rao on one side and Mr. Bhate and the learned APP on the other side.

7. So far as Writ Petition No. 137/88 is concerned, the record does not show that I dismissed the petition in default and restored it again on the request of the Petitioner's Advocate and immediately took the matter for hearing. As such, it is not open to the Respondents in the writ petition (applications in Cr. Applications) to contend that no opportunity of being heard was given to them. The case was fixed for hearing on 8th January, 1997, and nobody appeared for the applicants respondents, but, Mr. Marvadi appeared for the petitioner. He advanced his arguments, so also Mr. Borulkar for the State argued the matter, and thereafter, this order dt 8th Jan, 1997 came to be passed by me.

8. It must be noted that this order dt. 8th Jan. 1997 in Cr. Writ Petition No. 137/88, and the common order dt. 9th Jan. 1997 in Writ Petition Nos. 582/89 and 768/89, were the orders passed on merits and after considering the submissions made by the learned advocates for the petitioners who were present and after going through the records.

9. So far as Writ Petition Nos. 582/89 and 768/89 of Mr. Rahul Rao are concerned, it appears that on 9th January, 1997, these petitions were dismissed for default, but on the same day, they were restored and after hearing the Petitioners' Advocate they were disposed of. It was argued by Mr. Rao that no

notice was given to the Respondents (Application in Cr Applications) after the petitions were restored and before they were heard by this Court. It is not the grievance of Mr. Rao that he or his clients were present when the matter was dismissed and that because of the dismissal of the petitions by this Court they were not required to make any enquiry about the fate of the petition. It is also not the case of Mr. Rao or his clients that having once noted the order of dismissal they were entitled for notice after restoration. When neither the respondents nor their advocates were present at the time of dismissal, and when it is not their case that they left the court after noting the order of dismissal they cannot accept any notice before the matter is heard by the court, particularly when the petitions were restored on the same day.

10. So far as powers of this Court regarding review are concerned, I am not in agreement with the submissions of Mr. Rao and Mr. Shah, that this Court can review its own orders. Mr. Rao tried to differentiate between reviewing the order and recalling the order and reopening of proceedings. He made the submissions on the basis of Bombay Cycle case referred to above wherein on Page No. 622, the Divn. Bench has stated that "Surely, when a judgment is reviewed or altered, the judgment itself is reconsidered but when a party prays for rehearing on the ground that the party is not heard, the party prays for treating the judgment as no judgment at all. In our opinion, therefore, an application for setting aside the judgment and for rehearing afresh of the appeal cannot be considered to be an application either for the review of the judgment or for alteration thereof." Similarly, reliance was placed on the judgment reported in 1992 Cri.L.J. which is of this Court of Mr. Justice Saldhana, wherein, it was held that the High Court has inherent powers of reviewing final order, but there was a rider in the observations and it was clarified that this can be done in certain situations. Both these cases relied upon by Mr. Shah and Mr. Rao though not considered by the Supreme Court in the judgment reported in State of Orissa Vs. Ram Chander Agarwala and Others, are of no help to the applicants who have now filed the present applications. The Supreme Court's judgment is absolutely clear and it has not only considered the powers of the High Court under Cr.P.C. but also has considered inherent powers u/s 561 of the old code which is equivalent of Section 482 of Cr.P.C. In unequivocal terms the Supreme Court has stated that once the order is passed or the judgment is pronounced in exercise of its appellate or revisional jurisdiction no review or revision can be entertained.

11. The next contention of Mr. Rao and Mr. Shah was that they were not heard in the matter and as such, they were entitled for an opportunity of being heard. The question is whether an opportunity was given to the parties for being heard. If no opportunity is given and the order is passed, then, this argument can be accepted. Not giving an opportunity and passing an order may arise in different circumstances namely, taking a particular case suddenly on board without notice and then deciding it either suo-moto or on application of one of the parties. If this is done then it can be said that no opportunity was given to the other side. But when the case is fixed by the court on the particular date and it appears on

board on that date, then, default of the party in not appearing before the court when the matter is called out, cannot be converted into the case for canvassing the argument that no opportunity was given. All these three petitions were on board of this Court. They were printed on board. No grievance is made in any of the applications that they were taken on board on the respective dates of the orders, suddenly and without any intimation.

12. It is clear that the applicants in these three applications had an opportunity, were given an opportunity of being heard, but they remained absent when the matters were called out, and as such, the ruling of this Court *Deepak Balwani v. The State of Maharashtra*, 1985 Cri.L.J. 23 has no application. It was argued by Mr. Shah that in my Order dt. 8th Jan., 1997, there is a factual error, in as much as it has been stated that the petitioner was not in the branch of the bank namely, the Bharat Overseas Bank when the loan was advanced to Respondent No. 1 in 1983, Mr. Shah contended that according to the records, the petitioner was in the Bank at the relevant time. I do not find that there is any factual error in the impugned order. The above mentioned fact was noted from the complaint which was before this Court. The petitioner may have numerous documents with him in support, but, what is material is the document placed before the court and if the complainant did not disclose a particular fact it cannot be said that there is a factual error in my aforesaid observations.

13. Apart from this, both the petitions were filed for challenging the issue of process and in Petition No. 137/88, the petition was allowed in favour of the petitioner only, 1 and the other two petitions namely, Petition Nos. 582/89 and 768/89 were allowed and the issue of process was quashed. Admittedly, all the three petitions were pending since 1987-88.

14. For all these reasons, the applications for reviewing or for invoking inherent powers so as to enable the applicants to reopen the case and advance their arguments on merits cannot be allowed.

15. I, therefore, pass the following order.

ORDER

Cr. Application No. 254/97 in Cr.W.P. 137/88, Cr. Application No. 267/97 in Cr.W.P. No. 582/89 And Cr. Application No. 268/97 in Cr.W.P. No. 768/89 are dismissed