
(1996) 09 MP CK 0022

In the Madhya Pradesh High Court

Case No : Criminal Rev. No. 595 of 1990 (J)

Gulam Ahmad

APPELLANT

Vs

Hazi Maula Mohammad Zahoor through L.Rs.

RESPONDENT

Date of Decision : 24-09-1996

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 362, 482
Penal Code, 1860 (IPC) — Section 420

Citation : (1997) 2 MPJR 131

Hon'ble Judges : N.P. Singh, J

Bench : Single Bench

Advocate : R.P. Tiwari, for the Appellant; Ravindra Shrivastava, for the Respondent

Final Decision : Dismissed

Judgement

N.P. Singh, J.

They are heard on the objection u/s 362 of the Code of Criminal Procedure by the applicant. This Court, while allowing the revision tiled by the applicant, reversed the order of the First Addl. Sessions Judge, Jabalpur dated 12.7.1990 passed in Criminal Revision No. 19/89 and affirmed that of the Addl. Chief Judicial Magistrate, Jabalpur dated 18.12.1988 passed in Complaint Case No. 1154/82, discharging the applicant from the liability of an offence u/s 420 I.P.C.

Subsequent to the dismissal of the revision petition, the non-applicant filed an application u/s 482 of the Code of Criminal Procedure in Misc. Criminal Case No. 3680/95 and this court while exercising the inherent powers, recalled the order dated 8.8. 1994 passed in Criminal Revision No. 595/90.

Shri Tiwari, learned counsel for the applicant has contended that section 362 of the Code of Criminal Procedure prohibits the Court from altering or reviewing the final order passed, except correction of clerical errors. Therefore, the order dated 15.5.1995 passed in Misc. Criminal Case Me. 3680/95 is bad in law. Shri Tiwari

also placed reliance on a decision of the Apex Court in *State of Orissa Vs. Ram Chander Agarwala and Others*, wherein the Apex Court has held that once judgment has been pronounced by a High Court either in exercise of its appellate or its revisional jurisdiction, no review or revision can be entertained against that judgment as there is no provision in the code which would enable the High Court to review the same or to exercise revisional jurisdiction.

However, in the facts and circumstances of the instant case, the above decision has no application. There is distinction between review and recalling of the order. By order dated 10.5.1995, this Court recalled the order dated 8.8.1994 passed in Criminal Revision No. 595/98 and not reviewed the same. It is well settled that where a petition u/s 482 of the Code has been filed for recalling of the order of the Court on the ground that the opposite party has not been heard, the petition is maintainable. Section 362 does not impose any prohibition for recalling the order. In this connection reference may be made to the case of *Giridharilal & others v. Pratap Rai Mehta & another* 1989 Cri. L.J. 2382 . A Full Bench of the Rajasthan High Court in *Habu Vs. State of Rajasthan*, has also observed that the power to recall is different from the power to alter or review the judgment and the powers u/s 482 can and should be exercised by the High Court for recalling the judgment in case hearing is not given to the accused and the case falls within one of the three conditions laid down u/s 482 of the Code.

In the instant case, it is obvious that the order dated 8.8.1994 passed in Criminal Revision No. 595 of 1990 that it was heard in the absence of the respondent or his counsel, as they failed to appear despite service of notice.

For the reasons mentioned above, the order dated 10.5.1996 passed in Misc. Criminal Case No. 3680/95 recalling the order dated 8.8.1995 passed in Criminal Revision No. 595/90 does not suffer from any infirmity. There is no merit in the application. Accordingly it is dismissed.