
(2008) 11 RAJ CK 0016
In the Rajasthan High Court

Jahoor Ahmed

APPELLANT

Vs

Shri Lal Chand Sethi and Another

RESPONDENT

Date of Decision : 07-11-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2009) 2 RLW 941

Hon'ble Judges : G.S. Sarraf, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

G.S. Sarraf, J.—This criminal misc. petition u/s 482 Cr.P.C. has been filed for recalling the order dated 9.5.2008 passed by this Court in the absence of the Counsel for the petitioner.

2. Briefly stated the facts are that by order dated 4.6.2004 passed by Additional Chief Judicial Magistrate, Ramganj Mandi, district Kota cognizance was taken against the petitioner of the offence u/s 138 of the Negotiable Instruments Act. The petitioner filed a revision against the above order which was dismissed by order dated 10.10.2005 passed by Additional District and Sessions Judge, Ramganj Mandi, district Kota in Criminal Revision No. 12/2005. Aggrieved, the petitioner filed a misc. petition before the High Court u/s 482 Cr.P.C. This Court on 9.5.2008 passed following order:

None is present for the petitioner

Mr. Arun Sharma, P.P.

None is present on behalf of the petitioner even in the second round. None was present on his behalf on the last date also.

After hearing the learned P.P. and after examining the impugned order I am of the opinion that there is no ground for interference while exercising the jurisdiction u/s 482 Cr.P.C.

The petition stands dismissed.

3. The petitioner has filed this application for recalling the above order.

4. Learned Counsel for the petitioner submits that right of hearing is-very important of which no litigant should be deprived. He submits that since the order dated 9.5.2008 has been passed in the absence of the petitioner and his Counsel, therefore, that order deserves to be recalled. He places reliance on Habu Vs. State of Rajasthan,

5. Learned public prosecutor opposes and submits that after pronouncing of the order of judgment the Court becomes functus officio and Section 362 Cr.P.C. prohibits the Court from altering or reviewing its own judgment except to correct a clerical or arithmetical error. He places reliance on AIR 2001 SC 43, 2145.

6. From the perusal of the impugned order it is clear that the order dismissing the petition filed by the petitioner u/s 482 Cr.P.C. has been passed on merits.

7. In State of Kerala Vs. M.M. Manikantan Nair, , Hon"ble Apex Court has held as under:

The Code of Criminal Procedure does not authorize the High Court to review its judgment or order passed either in exercise of its appellate, revisional or original jurisdiction. Section 362 of the Code prohibits the Court after it has signed its judgment or final order disposing a case from altering or reviewing the said judgment or order except to correct a clerical or arithmetical error. This prohibition is complete and no criminal Court can review its own judgment or order after it is signed.

8. It is thus clear that this Court is not authorized to review its judgment or order passed either in exercise of its appellate, revisional or original jurisdiction and Section 362 Cr.P.C. imposes a clear bar to such review.

9. As regards Habu Vs. State of Rajasthan, it is based on different facts.

10. For the reasons stated above I find no merit in this application.

11. Consequently, the application stands dismissed.