
(1990) 09 PAT CK 0008

In the Patna High Court

Case No : Criminal Miscellaneous No. 9657 of 1990

Kalipada Sengupta and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 13-09-1990

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 362, 421, 482

Citation : (1990) 2 PLJR 711

Hon'ble Judges : Surendra Narain Jha, J

Bench : Single Bench

Judgement

S.N. Jha, J.—The application u/s 482 of the Code of Criminal Procedure, 1973 (in short "the Code") has been filed for restoring Criminal Miscellaneous No. 4640 of 1990 which stood dismissed as not pressed vide order dated 7th July, 1990. It has been stated in the petition that the aforesaid case was never printed in the daily cause list. Therefore, the learned counsel did not know about the position of the case and consequently no step could be taken to press the same.

2. It appears that the aforesaid case was printed in the daily Cause List of 5th, 6th and 7th July, 1990 as Criminal Miscellaneous No. 4648 of 1990 and even the name of the learned counsel was not correctly printed. Therefore, the learned counsel could not get any opportunity to press the application as it was never printed in the daily cause list.

3. Mr. B.C. Ghosh, learned Senior Counsel appearing on behalf of the petitioners, contended that it can be corrected u/s 362 of the Code as it was a clerical mistake, but it was directed by the Court to file an application u/s 482 of the Code.

4. No doubt, it is true that this Court has no power to review or alter its own judgment in a criminal case, but in my view if it is brought to the notice of the court that the order has been passed in default of appearance without an adjudication on the merit, the High Court can in such circumstances review its

own judgment.

5. In the instant case, it is not disputed that the case was printed in the daily cause list as Criminal Miscellaneous No. 4648 of 1990 and the name of the learned counsel was also wrongly printed as Sanjay Kumar Ghosh instead of Swaraj Kumar Ghosh. Therefore no opportunity was given to the learned counsel to press his application and it was dismissed as not pressed. In this connection, I may refer to the decision in the case of Swarth Mahto and Another Vs. Dharmdeo Narain Singh, , where the Hon'ble Supreme Court held as follows:

It is clear from the record that the appellants or their advocate was not heard. Though Criminal Appeal No. 52 of 1966 was duly shown in the cause list on December 16, 1968, the cause list had failed to show either the name of the appellants or their advocate. When an advocate examines the cause list he is generally not guided by the number of the case but by his name appearing against the case, Therefore, when Shri Kedar Nath Verma or, his clerk examined the cause list, they must not have noticed that the case is on the board either on December 4, 1968 or December 16, 1968. In case of this type which has been filed in Court in 1966 and came up for hearing two and half years later, it will be wrong to post the advocate with notice when the cause list is improperly published on the name of the advocate who appears. If the case is not shown, there would be a good reason to think that he has no notice of the case being posted for hearing. Therefore, when an application is later made by the parties who were not heard, it would be an exercise of sound discretion if an opportunity is given to the party who is not heard.

6. Similar view has also, been taken by a Division Bench of this Court in the case of Ramballabh Jha Vs. The State of Bihar, in which it has been held that where a judgment in appeal has been delivered without giving reasonable opportunity to the appellant of his pleader to be heard in the case, as required u/s 421 of the Code, the judgment must be held to have been passed without jurisdiction and the High Court has inherent power to make an order for its being reheard. In the instant case, as I have already indicated above, the number of the case as well as the name of the learned counsel was wrongly printed in the daily cause lists of 5th, 6th and 7th July, 1990. Therefore, after having heard the learned counsel for the petitioner and the State, I am disposing of this application at the admission stage itself to avoid any further delay with a direction to restore Criminal Miscellaneous No. 4640 of 1990 to its original file and place for admission before an appropriate Bench in due course.