

(1964) 06 KL CK 0033

In the High Court Of Kerala

Case No : Criminal M.P. No's. 590 and 591 of 1963 in Criminal Appeal No. 204 of 1963

Kannan

APPELLANT

Vs

Food Inspector, Cannanore Municipality

RESPONDENT

Date of Decision : 05-06-1964

Acts Referred:

Constitution of India, 1950 — Article 32
Limitation Act, 1963 — Section 5

Citation : (1964) KLJ 559

Hon'ble Judges : P. Govinda Menon, J

Bench : Single Bench

Advocate : V. Bhaskaran Nambiar, for the Appellant; K. Velayudhan Nair, for the Respondent

Final Decision : Dismissed

Judgement

Govinda Menon, J

1. These two petitions u/s 561 A of the Criminal Procedure Code relate to the inherent power of the High Court to review or revise its own judgment. Cr.M.P. 590 of 1963 is for reopening Criminal Appeal 204 of 1963 disposed of by this court, on the ground that the petitioner's advocate was not heard in the matter. Cr. M. P. 591 of 1963 is to review the order passed by this court in Cr. M. P. 122 of 1963 condoning the delay in filing the application for leave to appeal u/s 417 (3), on the ground that the Supreme Court has held recently that Section 5 of the Limitation Act would not apply to applications u/s 417, Cr.P.C. Section 369, Cr. P.C., enacts that save as otherwise provided by this code or by any other law for the time being in force or, in the case of High Court by the Letters Patent or other instrument constituting such High Court no court, when it has signed its judgment, shall alter or review the same except to correct a clerical error. But Section 369 appears in Chapter XXVI of the Criminal Procedure Code, which relates only to judgments pronounced by the trial court including the High Court

in the exercise of its original criminal jurisdiction and so we have to go to section 430, Cr. P.C., which relates to the finality of judgments pronounced by the High Court in the exercise of its appellate jurisdiction. It enacts that judgments and orders passed by an appellate court upon appeal shall be final except in the cases provided for in Section 417 and Chapter XXXII.

The Supreme Court in *U.J.S. Chopra Vs. State of Bombay*, has observed:

It therefore follows that while, subject to the other provisions of the code or any other law and of the Letters Patent, the finality of Section 369 attaches to the judgments pronounced by all trial courts including the High Court in the exercise of its original criminal jurisdiction, it certainly has no bearing on the question of finality of appellate judgments which is specifically provided by section 430 of the Code.

So far as the finality of the judgments pronounced by the High Court in the exercise of its revisional jurisdiction, the learned Judge stated:

It is also true that although the revisional power is not expressly or in terms controlled either by Section 369 or Section 430, the general principle of finality of judgments attaches to the decision or order of the High Court passed in exercise of its revisional powers.

Their Lordships made a distinction in the case of an application made by the State in revision for enhancement of sentence.

2. The right of review is a creature of statute and in the absence of any provision in the Code of Criminal Procedure, judgments cannot be reviewed by the High Court. It was suggested by the learned counsel that even though there is no provision for review in the Code of Criminal Procedure, it is open to this court on a proper application being made u/s 561 A to set it aside. Learned counsel would argue that if this court had no power to excuse the delay and admit the appeal there is an inherent lack of jurisdiction and the judgment pronounced is null and void and could be set aside u/s 561 A for the purpose of securing the ends of justice. If a court has no jurisdiction to pass the order complained against, this court would have the jurisdiction to declare the judgment a nullity but there is difference between inherent want of jurisdiction to entertain the matter and an irregular exercise of it. If there is no lack of jurisdiction, but there is an illegal or irregular exercise of jurisdiction, the course open to the parties is only by way of appeal or revision. The law is summed up in *Corpus Juris Secundum* (Vol. XLIX, section 401) in the following terms:

A judgment rendered by a court having jurisdiction on parties and the subject-matter, unless reversed or annulled in some proper proceedings, is not open to contradiction or impeachment in respect of its validity, verity or binding effect by parties or privies in any collateral action or proceeding except as discussed infra, Section 434, for fraud in its procurement. Even if the judgment is voidable, that is, so irregular or defective that it should be set aside or annulled on proper

direct application for that purpose, it is well settled as a general rule that it is not subject to collateral impeachment as long as it stands unreversed and in force. On the other hand, a judgment which is absolutely void is entitled to no authority or respect and therefore may be impeached at any time in any proceeding in which it is sought to be enforced or in which its validity is questioned by any one with whose rights or interests it conflicts.

Mahajan, J. (as he then was) observed in *Ebrahim Aboobakar and Another Vs. Custodian General of Evacuee Property*, that if a court has jurisdiction "but while exercising it, it made a mistake, the wronged party can only take the course prescribed by law for setting the matters right inasmuch as the court has jurisdiction to decide rightly as well as wrongly."

To the same effect is the earlier decision of the Supreme Court in *Janardan Reddy and Others Vs. The State of Hyderabad and Others*, Fazl Ali, J. pointed out the distinction between want of jurisdiction and an illegal or irregular exercise of jurisdiction in the following terms at page 220:

There is a basic difference between want of jurisdiction and an illegal or irregular exercise of jurisdiction and our attention has not been drawn to any authority in which mere non-compliance with the rules of procedure has been made a ground for granting one of the writs prayed for. In either case the defect, if any, according to the procedure established by law, be corrected only by a court of appeal or revision. Here, the appellate court which was competent to deal with the matter has pronounced its judgment against the petitioners and the matter having been finally decided is not one to be reopened in a proceeding under Article 32 of the Constitution.

The question that arose for decision in that case was whether the decision of a court was vitiated by misjoinder of charges and was liable to be quashed under Article 32 of the Constitution, the application for special leave to appeal against the judgment of the High Court having been already dismissed by the Supreme Court.

The Andhra Pradesh High Court in a recent case, *Public Prosecutor Vs. Devireddi Nagi Reddi*, has considered the question in great detail and held that in cases where there is no lack of jurisdiction the High Court cannot review its own judgment.

3. So the question that arises for decision in the instant case is whether there was an inherent lack of jurisdiction when the delay was condoned and appeal was admitted. It is true that the application u/s 417 (3) was filed after the expiry of 60 days. The respondent had filed an application Cr. M. P. 122 of 1963 for excusing the delay in filing the application for leave to appeal. Notice was ordered to the petitioner and the petitioner was heard and this court found it a fit case to condone the delay. It cannot be said that there is any inherent lack of jurisdiction merely because in a later decision of the Supreme Court it had been held that Section 5 of the Limitation Act would not apply to an application u/s

417(3). That would not make the order without jurisdiction. If aggrieved, the remedy of the petitioner was to have taken the matter in appeal. Similarly in the criminal appeal, it was only after the perusal of the records and hearing the Public Prosecutor that orders were passed setting aside the order of acquittal and sending it to the court below for a rehearing. When a party is served with notice it is up to him to arrange for the appearance of his lawyer and this court cannot be asked to re-hear a case, because the petitioner was not heard due only to the fault of his or his counsel. The scope and nature of the inherent powers of the High Court u/s 561 A have been summed up by the Supreme Court in Talab Haji Hussain Vs. Madhukar Purshottam Mondkar and Another, . The relevant observations at p. 378 are as follows:

It is obvious that this inherent power can be exercised only for either of the three purposes specifically mentioned in the section. This inherent power naturally cannot be invoked in respect of any matter covered by specific provisions of the Code. It cannot also be invoked if its exercise would be inconsistent with any of the specific provisions of the Code. It is only if the matter in question is not covered by any specific provisions of the Code that section 561A can come into operation, subject further, to the requirement that the exercise of such power must serve either of the three purposes mentioned in the said section.....It is only when the High Court is satisfied either that an order passed under the

Code would be rendered ineffective or that the process of any court would be abused or that the ends of justice would not be secured that the High Court can and must exercise its inherent powers u/s 561A.

This matter has been considered in a recent judgment of the Madras High Court in *In re Anthony Doss* (1963 1 M. L. J. 393), where after a consideration of all the decisions it was held that the High Court had never any inherent power to alter or review its own judgment in a criminal case once it has been pronounced and signed.

In the Full Bench decision of the Andhra Pradesh High Court referred to earlier, it was held that Section 561 A does not confer any new powers on the High Court and that it only preserves such inherent powers as the High Court already possessed and that the High Court has in the exercise of its inherent powers no right to set aside its own judgment on the ground that it is erroneous in law or in fact.

The same view has been expressed in the Full Bench decision in *State v. Kunjan Pillai* (A. I. R. 1952 T. C. 210).

I am in respectful agreement with the views expressed in these cases. It is unnecessary to refer to the decisions taking a contrary view as they have all been considered in the cases referred to by me.

For these reasons, I am unable to accede to the request of the learned counsel for the petitioner to review and quash the orders in Cr. M. P. 122 of 1963 or

restore and re-hear the criminal appeal which has been disposed of on merits.
The petitions are dismissed.