

(2005) 05 GAU CK 0005
In the Gauhati High Court
Case No : Ref. Petition No. 11 of 2004

Krishna Mohan Jamatia

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 13-05-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, 114, 141
Constitution of India, 1950 — Article 226, 227

Citation : AIR 2005 Guw 124 : (2007) 2 GLR 760 : (2005) 4 GLT 122 : (2004) 4 GLT 122

Hon'ble Judges : T. Vaiphei, J

Bench : Single Bench

Advocate : A.K. Bhowmik, S. Ghosh, S.R. Dey and A. Deb, for the Appellant;
U.B. Saha, P. Dutta and S. Chakraborty, for the Respondent

Judgement

T. Vaiphei, J.—This review petition is directed against the judgment and order dated 30-7-2004 passed by this Court in W. P. (C) No. 407 of 2001 and is filed under the following facts and circumstances :--

2. The petitioner filed the writ petition for directing the respondents to pay compensation for the killing of his son, Krishna Mangal Jamatia on 23-3-2001 at Kafrubari, Sough Tripura by unwarranted police firing. According to the petitioner, the respondents did not take the responsibility of the killing on the ground that the deceased was simply the victim of cross firing between them and the extremists, for which the perpetrators were not known and that the deceased himself was a collaborator of the extremists. To cut short the narration, in the wake of denial of the allegations of the petitioner by the respondents, this Court was of the view that such disputed question of facts could not be decided without taking evidence and that the matter called for enquiry by a Judicial officer. Accordingly, this Court by the order dated 16-12-2003 directed the learned District Judge, South Tripura, Udaipur to conduct an enquiry into the cause of death of the deceased and submit his report within a period of four months.

3. In compliance with the aforesaid order, the learned District Judge made the enquiry and after examining the witnesses produced on behalf of both the parties, submitted his report in sealed cover before this Court within the extended period of time. On 16-7-2004, the case was listed before this Court for order. On that day, Mr. Sajib Ghosh, the learned counsel for the petitioner was present. The Government respondents were represented by Mr. S. Chakraborty, the learned counsel, and both the counsel appearing for the rival parties stated before the Court that they have accepted the findings contained in the enquiry report. In the light of the statements made by the counsel, this Court dispensed with hearing of the counsel and reserved the case for judgment, which was delivered on 30-7-2004 by dismissing the writ petition holding that the police personnel were not responsible for the death of the deceased and that the petitioner was not entitled to compensation claimed by him. It is the case of the petitioner that his counsel made the wrong statement before this Court that the petitioner accepted the findings of the learned District Judge when he had not even read the enquiry report or did not even know before hand the contents therein which was admittedly under sealed cover. According to the petitioner, Mr. A.K. Bhowmik, the learned senior counsel was in Europe on that day and was present only on 30-7-2004 when the judgment was delivered by this Court whereupon he came to learn that the enquiry report was adverse to the petitioner. It is thus contended that but for the wrong statement made by Mr. Sajib Ghosh, the learned counsel for the petitioner, the writ petition could not have been dismissed and that the judgment is liable to be set aside and the case be reheard on merit.

4. It is vehemently submitted by the learned senior counsel for the petitioner that the impugned judgment was passed by this Court on the basis of erroneous acceptance of the enquiry report by the learned counsel for the petitioner, which is an error apparent on the face of record or is sufficient reason analogous to an error apparent on the face of record warranting the review of the impugned judgment. In support of his contentions, Mr. A. K. Bhowmik cites the following decisions:-- (i) Babboo alias Kalyandas and Others Vs. State of Madhya Pradesh, (ii) Board of Control for Cricket, India and Another Vs. Netaji Cricket Club and Others, Per contra, Mr. U. B. Saha, the learned senior Government Advocate appearing for the State respondents vehemently submits that the facts and circumstances disclosed in the review petition, even if they are assumed to be true, cannot constitute errors apparent on the face of record. On the contrary, argues the learned counsel, those facts and circumstances unmistakably reveal that (he petitioner already waived his right to peruse the enquiry report. According to the learned counsel for the Government, even if there was a mistake, the mistake occasioned in the instant case cannot be a ground for review, unless the petitioner could show that due to such mistake, this Court came to wrong findings. However, he contends, the order dated 16-7-2004 by which the petitioner accepted the enquiry report has not been challenged by him. Thus, it is contended by the learned counsel for the State-respondents that this

review petition is not maintainable. Strong reliance is placed by him on the following decisions :-- (i) Northern India Caterers (India) Ltd. v. Lt. Governor, Delhi AIR 1960 SC 674 , (ii) Smt. Meera Bhanja Vs. Smt. Nirmala Kumari Choudhury, , (iii) Padmavati Devadatta Kamat and Others Vs. Vijaykumar Narayan Mehendale and Another, and (iv) Government of Tamil Nadu v. M. Ananchu Asari 2005 AIR SCW 646.

5. It is no longer *res integra* that although in view of the explanation appended to Section 141 of the Code of Civil Procedure, the provisions thereof do not apply in a proceeding under Article 226 or 227 of the Constitution, the principle underlying Order 47, Rule 1 of the Code can be invoked while considering an application for review of a judgment of a High Court recorded under Article 226 of the Constitution. Before proceeding further, it may not be out of place to reproduce hereunder the provisions of Section 114 and Order 47, Rule 1 of the Code:--

"114. Review.-- Subject as aforesaid, any person considering himself aggrieved--

(a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed by this Code, or

(c) by a decision on a reference from a Court of small causes, may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit."

Order XLVII, Rule 1

1. Application for review of judgment.--(1) Any person considering himself aggrieved--

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred.

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the

case on which he applies for the review.

(Explanation.-- The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment)"

6. The Apex Court in Board of Control for Cricket, India and Another Vs. Netaji Cricket Club and Others, has succinctly explained the aforesaid provisions in the following words :-- (paras 88, 89, 90)

"Section 114 of the Code empowers a Court to review its order if the conditions precedents laid down therein are satisfied. The substantive provision of law does not prescribe any limitation on the power of the Court except those which are expressly provided in S. 114 of the Code in terms whereof it is empowered to make such orders as it thinks fit.

Order 47, Rule 1 of the Code provides for filing an application for review. Such an application for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason.

Thus, a mistake on the part of the Court which would include a mistake in the nature of the undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefor. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words "sufficient reason" in Order 47, Rule 1 of the Code is wide enough to include a misconception of fact or law by a Court or even an Advocate. An application for review may be necessitated by way of invoking the doctrine "*actus curiae neminem gravabit*".

(emphasis mine)

7. From the foregoing paragraph, it becomes apparent that the scope of review need not be confined to (i) discovery of a new and important piece of evidence and (ii) an error apparent on the face of record, but also to a situation necessitated on account of some mistake or for any other sufficient reason. Thus, the words "sufficient reason" in Order 47, Rule 1 of the Code is wide enough to include a misconception of fact or law by a Court or even an advocate. For instance, where a counsel wrongly explained the rules positioned to a Court i.e. the rules describing reduction to a lower time scale or to a lower stage in a time scale, as a majority penalty whereas the appellant's counsel by mistake stating before the High Court that it was a minor penalty whereupon the High Court hold that promotion could not be denied to the respondent on account of imposition of minor penalty on him and thereafter where the review petition on the ground of an error apparent on the face of record was dismissed by the High Court, the Apex Court in The Oriental Insurance Co. Ltd. and Another Vs. Gokulprasad

Maniklal Agarwal and Another, held that the High Court have allowed the review. In my considered view, on a combined reading of the aforesaid decisions, it can be safely concluded that an erroneous statement made by a counsel can constitute a sufficient reason to review the judgment of this Court. More so, when the explanation added to Section 141 of the Code by the amending Act of 1976 does not affect the High Court's inherent power to review the order made under Article 226 of the Constitution.

8. Coming now to the facts of this case, it is the uncontroverted statement of the petitioner that the enquiry report placed before this Court on 16-7-2004 was under sealed cover and that his counsel, Mr. Sajib Ghosh, did not know the contents thereof beforehand. According to Mr. A. K. Bhowmik, the conducting senior counsel, the said Mr. Sajib Ghosh did not even know that the findings of the learned District Judge was adverse to the petitioner and that had he known the adverse nature of the enquiry report against the petitioner, he would not have accepted the same. Thus, contends the learned senior counsel, the statement of the said Sajib Ghosh was made due to bona fide inadvertence and misconception of the true facts and circumstances. In addition to non-traverse of the aforesaid facts, it is also not disputed by the learned senior counsel for the State-respondent that it was Mr. A. K. Bhowmik and not Mr. Sajib Ghosh, who was to conduct the case of the petitioner. In view of the above admitted position, I have no alternative but to hold that Mr. Sajib Ghosh, when he stated that he agreed with the enquiry report, was under misconception of the true facts and circumstances of the case and had betrayed total non-application of mind.

9. It is, however, contended by Mr. U.B. Saha, the learned senior Govt. Advocate for the State-respondents that even if there be such misconception of fact, it cannot warrant the grant of review of the impugned judgment inasmuch as the judgment was not really based on that ground but was decided by this Court on merit, for which he extensively quoted and adverted my attention to paragraph Nos. 6, 7 & 8 of the impugned judgment. It is true that a perusal of the aforesaid paragraphs will disclose that the impugned judgment cannot be said to be based wholly on the basis of the acceptance by Mr. Sajib Ghosh of the enquiry report. But then, it must be noted that in view of the erroneous statement made by the counsel for the petitioner the case came to be disposed of without hearing the petitioner. Therefore, the issue involved herein cannot be examined with hypertechnical approach but must be considered in the context of denial of principles of natural justice. It cannot be overlooked that in this case, we are dealing of the fundamental right to life of a citizen and alleged infringement of basic human rights. Once this Court is satisfied that the petitioner was the victim of erroneous statement of his counsel and that he was denied of hearing before or at the time of passing the impugned judgment, this Court must, and indeed has the duty, to re-hear the case. In this connection, I may profitably quote the observations of the Apex Court in *S. Nagaraj and Others Vs. State of Karnataka and Another*, (para 18), which reads thus :--

"Justice is a virtue which transcends all barriers. Neither the rules of procedure nor technicalities of law can stand in its way. The order of the Court should not be prejudicial to anyone. Rule of stare decisis is adhered for consistency but it is not as inflexible in Administrative Law as in Public Law. Even the law bends before justice. Entire concept of writ jurisdiction exercised by the higher Courts is founded on equity and fairness, if the Court finds that the order was passed under a mistake and it would not have exercised the jurisdiction but for the erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice then it cannot on any principle be precluded from rectifying the error. Mistake is accepted as valid reason to recall an order. Difference lies in the nature of mistake and scope of rectification, depending on if it is of fact or law, but the root from which the power flows is the anxiety to avoid injustice. It is either statutory or inherent. The latter is available where the mistake is of the Court. In Administrative Law the scope is still wider. Technicalities apart if the Court is satisfied of the injustice then it is its constitutional and legal obligation to set it right by recalling its order. Here as explained, the Bench of which one of us (Sahai, J.) was a member did commit an error in placing all the stipendiary graduates in the scale First Division Assistants due to State's failure to bring correct facts on record. But that obviously cannot stand in the way of the Court correcting its mistake. Such inequitable consequences as have surfaced now due to vague affidavit filed by the State cannot be permitted to continue."

10. The result of the foregoing discussion is that the petitioner has made out a case for review of the impugned judgment. Consequently, the impugned judgment is set aside. The case is directed to be listed for re-hearing.