
(2009) 03 OHC CK 0035
In the Orissa High Court
Case No : RVWPET No. 196 of 2008

Mamata Mohanty

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 24-03-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, 114

Citation : (2009) CLT 4 Supp : (2009) 1 ILR (Ori) 683 : (2009) 2 OLR 977 Supp

Hon'ble Judges : S.C. Parija, J;I.M. Quddusi, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S.C. Parija, J.—The writ Petitioner has filed this review petition seeking review of the order dated 25.06.2008, passed in W.P.(Crl.) No. 54 of 2008, on the following grounds:

(2) That the Petitioner files this petition for review of the final order purporting to be dated 25.6.2008 as well as for correction of mistakes in the nature of grave and palpable errors causing miscarriage and failure of justice and mistakes creeping into the order passed contrary to law laid down by the Hon"ble Supreme Court as well as statutory provisions. Besides the review on the ground that the final order has taken away Petitioner's own valuable (exclusive) right of prosecution inhering in her to prosecute the two named Police officers who are highly connected, on the judiciary executive and hospital/medical side, for serious offences committed by them alongwith Ramesh Verma, Suresh Verma and another Rabi Singh against the Petitioner in being made over the C.B.I. which has not come and has not been communicated with final order by the Hon"ble High Court as yet as it appears and thus grave prejudice has resulted to the Petitioner in as much as every day she is being given perforce arsenic injection for the last few months by the named police officers, Devasis, Satyajit and Ramesh Verma, Suresh Verma and another Rabi Singh with incriminating involvement of Police Officers hired criminals and last such injection was given a

day or two back and on many dates such arsenic injection was given to the Petitioner more than two to three times a day obviously with one common object to eliminate the Petitioner in life in order that the two Police Officers viz; Satyajit Mohanty and Devasis Panigrahi escape the pending criminal proceedings in which they have been summoned to stand trial for offences committed by them, against the Petitioner and Ramesh Verma and Suresh Verma who have grabbed the Petitioner's mother's very big bungalow Cantonment 12-B with six gunths of land and out houses will escape the Civil suits filed against them and their respective wives in whose name they have got such property committing all fraud and forgeries in obtaining void documents subsequently discovered as sale deeds.

(3) Review of the order is sought on the ground that subsequent event E-mails disclosing that arsenic injections have been given daily for last few months by these O.P.-Police Officers Devasis and Satyajit and others Ramesh Verma, Suresh Verma and Rabi Singh and their hired criminals to cause death of the Petitioner by way of murder by regularly slow poisoning of the Petitioner in injecting perforce arsenic etc. to veins.

(4) Review is also being prayed for on the ground that non communication of the order by High Court to C.B.I. since 25th or 27th July, 2008 after receipt of records by the office after the order was passed bearing dt. 25.6.2008 has practically become infructuous.

2. The exercise of power of review of a order/judgment passed in a writ petition under Article 226 of the Constitution has been clarified by the Supreme Court in the case of Shiv Deo Singh v. State of Punjab AIR 1963 SC 1908, wherein the Hon"ble Court observed that there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave or palpable errors committed by it.

3. Coming to the question regarding maintainability of the review petition, it is now well settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order XLVII, Rule 1 Code of Civil Procedure. A perusal of the said provisions of Order XLVII, Rule 1 show that review of a judgment or an order could be sought: (a) from the discovery of new and important matters or evidence which after the exercise of due diligence was not within the knowledge of the applicant; (b) such important matter or evidence could not be produced by the applicant at the time when the decree was passed or order made; and (c) on account of some mistake or error apparent on the face of record or any other sufficient reason.

4. The scope of review came up for consideration before the apex Court in the case of Thungabhadra Industries Ltd. Vs. The Government of Andhra Pradesh, wherein the Supreme Court held as follows:

There is a distinction which is real, though it might not always be capable of

exposition, between a mere erroneous decision and a decision which could be characterized as vitiated by "error apparent". A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. Where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out.

5 In *Aribam Tuleshwar Sharma Vs. Aribam Pishak Sharma and Others*, , the Supreme Court held as under:

It is true as observed by this Court in *Shivdeo Singh v. State of Punjab* AIR 1963 SC 1908 there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter of evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made, it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a Court of appeal. A power of review is not to be confused with appellate power which may enable an Appellate Court to correct all manner of errors committed by the Subordinate Court.

6. In the case of *Northern India Caterers (India) Ltd. Vs. Lt. Governor of Delhi*, , it has been held that a party is not entitled to seek a review of a judgment delivered by the Court merely for the purpose of a rehearing and a fresh decision of the case. The normal principle is that a judgment pronounced by the Court is final and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so. Whatever may be the nature of the proceeding, it is beyond dispute that a review proceeding cannot be equated with the original hearing of the case and the finality of the judgment delivered by the Court will not be reconsidered except where a glaring omission or a patent mistake or a grave error has crept in earlier by judicial fallibility.

7. The decision in *Aribam's* case (supra) has been followed by the Supreme Court in the case of *Smt. Meera Bhanja Vs. Smt. Nirmala Kumari Choudhury*, , wherein the Hon'ble Court has reiterated that an error apparent on the face of the record for acquiring jurisdiction to review must be such an error which may strike one on a mere looking at the record and would not require any long drawn process of reasoning.

8. In a later decision in the case of *Parsion Devi and Others Vs. Sumitri Devi and*

Others, , the Supreme Court relying upon the decisions in the cases of Aribam's (supra) and Smt. Meera Bhanja (supra) observed as under:

Under Order XLVII, Rule 1, Code of Civil Procedure. a judgment may be open to review inter alia, if there is a mistake or an error apparent on the face of the record. An error which is not self evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review under Order XLVII, Rule 1, Code of Civil Procedure.. In exercise of the jurisdiction under Order XLVII, Rule 1, Code of Civil Procedure. it is not permissible for an erroneous decision to be reheard and corrected. A review petition, it must be remembered has a limited purpose and cannot be allowed to be an appeal in disguise.

9. The ambit and scope of a review, as has been held in the aforementioned cases, has been considered, affirmed and reiterated in a recent decision of the apex Court in the case of Haridas Das Vs. Smt. Usha Rani Banik and Others, wherein the Hon"ble Court observed as under:

In order to appreciate the scope of a review, Section 114 of the Code of Civil Procedure. has to be read, but this section does not even adumbrate the ambit of interference expected of the Court since it merely states that it "may make such order thereon as it thinks fit." The parameters are prescribed in Order XLVII of the Code of Civil Procedure. and for the purposes of this lis, permit the Defendant to press for a rehearing "on account of some mistake or error apparent on the face of the records or for any other sufficient reason." The former part of the rule deals with a situation attributable to the applicant, and the latter to a jural action which is manifestly incorrect or on which two conclusions are not possible. Neither of them postulate a rehearing of the dispute because a party had not highlighted all the aspects of the case or could perhaps have argued them more forcefully and/or cited binding precedents to the Court and thereby enjoyed a favourable verdict. This is amply evident from the explanation in Rule 1 of the Order XLVII which states that 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. Where the order in question is appealable the aggrieved party has adequate and efficacious remedy and the Court should exercise the power to review its order with the greatest circumspection.

10. On a analysis of the aforesaid decisions, it is seen that the law is well settled that the power of review is available only when there is a mistake or an error apparent on the face of the record and not for correcting an erroneous decision. Hence the plea that the decision is erroneous on merit due to wrong interpretation of law or because of illegal and erroneous finding, whether on fact or in law, cannot be a ground for review. The said power of review cannot be exercised for rehearing and correcting an erroneous decision. The only remedy available to the aggrieved party, is to assail such erroneous decision in appeal.

The power to review is a restricted power which authorizes the Court, which passed the judgment sought to be reviewed, to look over through the judgment not in order to substitute a fresh or a second judgment but in order to correct it or improve it, because some material which it ought to have considered had escaped its consideration or failed to be placed before it for any other reason.

11. In the present case, the Petitioner has not specified as to what is the glaring omission or error apparent on the face of the record which requires reconsideration by way of review. All the grounds taken in the review petition are vague and frivolous and it appears that the Petitioner has sought for rehearing of the case and for passing of a fresh or a second order, which would be more to her liking. The order sought to be reviewed may have been erroneous or even illegal but the same cannot be a ground for review.

12. Applying the principles of law as discussed above to the facts of the present case, the conclusion is irresistible that the review application as laid is not maintainable and the same is accordingly dismissed.