

(1990) 10 GUJ CK 0007
In the Gujarat High Court

Mohmad Hussein Miya Mohmad Shaikh	APPELLANT
Vs	
Valchand Sukhlal Jani and Another	RESPONDENT

Date of Decision : 09-10-1990

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 18, 18(1)
Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 362, 403, 406, 418

Citation : (1991) 2 GLR 1316

Hon'ble Judges : K.G. Shah, J

Bench : Single Bench

Judgement

K.J. Shah, J.—This purports to be an application u/s 482 of the Code of Criminal Procedure (for short "the Code"), and in para 5 of this petition, this is what is prayed:

This Hon'ble Court, in exercise of inherent powers, conferred by Section 482 of the Code, be pleased to review its earlier order of conviction, to give opportunity of being heard to the petitioner, and thereafter, be further pleased to pass appropriate order in the matter.

2. The petitioner was respondent No. 1 in Criminal Appeal No. 51 of 1983. The petitioner is the landlord of the premises in respect of which the appellant in Criminal Appeal No. 51 of 1983 was a tenant. The appellant-tenant filed a complaint against the petitioner-landlord for offences punishable under Sections 403, 406 and 418 of the I.P. Code as also u/s 18 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short "the Rent Act"). Charges under Sections 403 and 406 of the I.P. Code and u/s 18 of the Rent Act were framed against the petitioner and at the end of the trial, the learned Judicial Magistrate First Class, Surat, acquitted the petitioner of all those charges. The complainant therefore, preferred the aforesaid Criminal Appeal No. 51 of 1983 against the said acquittal. Leave to appeal was granted, and the appeal was admitted. Notice of the appeal was sent to the petitioner, and was served upon him. However, on

the record of the case, the petitioner did not enter appearance. The appeal was thereafter taken up for final hearing on September 13, 1990, and at that hearing, the petitioner was not present. The appellant's Advocate was heard, and the learned Addl. P.P. was also heard, and this Court ultimately partly allowed the appeal and while maintaining the acquittal of the petitioner for offences punishable under Sections 403 and 406 of the I.P. Code, reversed his acquittal for an offence u/s 18(1) of the Rent Act, and convicted the petitioner for the said offence. As the petitioner was being convicted for the offence u/s 18(1) of the Rent Act for the first time in this Court, before imposing the sentence on him, he was required to be heard. Therefore, in order to secure the presence of the petitioner before this Court with a view to enabling him to put forward his say on the question of sentence, a bailable warrant in the sum of Rs. 1,000/- was issued against the petitioner, and in response to the warrant, the petitioner appeared before this Court and he filed this petition for the review of the order convicting him for an offence u/s 18(1) of the Rent Act. On the earlier occasion, this application was heard, and it will now be disposed of by this judgment.

3. Mr. N.N. Gandhi, the learned Advocate for the petitioner, at the hearing of the petition contended that though there is no specific provision in the Code for the review of this Court's order, such a review of this Court's order could be undertaken under this Court's inherent powers u/s 482 of the Code. Conscious as he was about the embargo put on the Court's power to alter its judgment once it was signed u/s 362 of the Code Mr. Gandhi submitted that the Section 362 of the Code could have no application to the facts of the present case for the appeal has not finally been disposed of and what has so far been done was convicting the appellant, and the matter was at large, for the order about sentence was yet to be passed and in that sense, in the submission of Counsel, the order dated September 13, 1990, partially allowing the appeal and convicting the petitioner for an offence u/s 18(1) of the Rent Act, cannot be said to be an order by which the case has been finally disposed of.

4. It is undisputed that in the Code, there is no provisions for the review of the Court's judgment and order. However, the inherent powers of the High Court is saved by virtue of Section 482 of the Code. Section 482 reads as under:

Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

Section 362 of the Code, reads as under:

Save as otherwise provided by this Code or any other law for the time-being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error.

There being no specific provision in the Code to review the Court's own orders,

the question that is required to be considered is whether the inherent powers of the Court u/s 482 of the Code can be invoked for reviewing its own orders. A plain reading of Section 362 of the Code would show that once the Court has signed its judgment or final order disposing of a case, it cannot alter or review the same except to correct a clerical or arithmetical error. In the instant case, it is not a case of the petitioner that there is some clerical or arithmetical error which is required to be corrected. I will presently come to the ground on which the review is sought. But for the present, it may be noticed that the petitioner has put forward in the petition a ground, which according to him, was sufficient for him for not having remained present before this Court when the appeal was taken up for hearing. Whether that ground is or is not justifiable, considering Section 362 of the Code, it is not at all relevant. Section 362 clearly states that once the Court has passed a judgment or final order disposing of a case, it shall not alter or review the same except for correcting the clerical or arithmetical error. Now, what is sought to be achieved here by this petition is that the order passed by this Court partially allowing the appeal and convicting the petitioner for an offence u/s 18(1) of the Rent Act is sought to be reviewed. Meaning thereby it is sought to be set aside and it is craved that the petitioner be given a hearing and the appeal be reheard. If the request contained in this application is granted, it would come to this and nothing short of it. If the request contained herein is granted, and order which has been pronounced in the open Court and signed by this Court on September 13, 1990 shall have to be set aside, and the appeal shall have to be posted for rehearing. In other words, if the prayer herein is granted, this Court will have to alter the order which it has passed and signed. That order is a judgment, is a proposition which cannot be disputed. However, Mr. Gandhi submitted that what this Court has rendered on September 13, 1990 is not a "final order disposing of a case" and therefore Section 362 of the Code is not attracted.

5. The conjoint effect of Sections 482 and 362 of the Code has been considered by Their Lordships of the Supreme Court in a very recent judgment in the case of *Mostt Simrikhia v. Smt. Dolley Mukherjee and Anr.*. Their Lordships of the Supreme Court have, in terms clear and explicit, laid down that the inherent jurisdiction of the High Court cannot be invoked to override the bar of review u/s 362. Their Lordships there have said that the Court is not empowered to review its own decision under the purported exercise of inherent power. The question is whether as contended by the Counsel of the petitioner what this Court, rendered on September 13, 1990, is an order which does not finally dispose of the case. There again, the answer, in my opinion, should be in the negative for the simple reason that though, after September 13, 1990, the case remained with the Court, so far as the guilt finding process was concerned, the matter was finally disposed of, and thereafter no review thereof could be undertaken by resorting to Section 482 of the Code. Once this Court heard the appeal and partly allowed it and convicted the petitioner of an offence u/s 18(1) of the Rent Act, the case so far at that stage was concerned, was finally disposed of. The judgment of the

Court partially allowing the appeal and convicting the petitioner for an offence u/s 18 of the Rent Act became final on the date it was pronounced and signed. Against that judgment no remedy was open to the petitioner so far as this Court is concerned. The petitioner cannot seek to have that judgment altered or reviewed by resorting to Section 482 of the Code. After September 13, 1990, what remained was only to hear the petitioner on the question of sentence, and it was therefore that his presence was necessary, and to procure his presence before the Court, a bailable warrant was issued. At that stage, the only right the petitioner had, was to address the Court on the question of sentence. The matter remained pending before the Court subsequent to September 13, 1990 only for that limited purpose. Otherwise, the matter had already been disposed of by the judgment delivered by the Court on September 13, 1990. Under these circumstances, in law, there is no scope for granting the request for review.

6. Even on facts, the petitioner, I am afraid, has no case. In this petition, on behalf of the petitioner, it is stated as follows:

That in the aforesaid Criminal Appeal No. 51 of 1983, the petitioner was served with the notice dated 17th January 1983, and he came over to Ahmedabad, and engaged Mr. Avinash K. Mankad, as his Advocate for appearing in the matter.

That it appears that, this Hon"ble Court, in absence of the petitioner's Advocate Mr. Avinash K. Mankad, has heard the appeal, and has decided the same, setting aside the order of acquittal, and convicting the petitioner for the offence charged. Petitioner knew about it on the Police Inspector, Athwa Lines Police Station, Surat, executing the bailable warrant requiring him to remain present before this Hon"ble Court at 11-00 a.m. on 28-9-1990, for hearing, on the question of sentence.

That, the petitioner submits that, the order passed by this Hon"ble Court, convicting him for the offence punishable u/s 18(1) of the Bombay Rent Act, is ex parte, inasmuch as the petitioner did not know of the appeal having been fixed for final hearing, and his Advocate Mr. Avinash K. Mankad, did not appear at the time of hearing of the appeal.

On the aforesaid statements, the petitioner in Para 4, of the petition stated that this Hon"ble Court in exercise of the inherent powers conferred by Section 482 of the Code, in the interest of justice, may be pleased to review the order of conviction, and be pleased to give the petitioner an opportunity of being heard before convicting the petitioner for the aforesaid offence. What is stated in the petition would go to show that according to the petitioner, he had engaged Advocate Mr. Avinash K. Mankad to represent him in the aforesaid criminal appeal. However, it was a common ground and admitted by Mr. Gandhi for the petitioner that on the record of the case no Vakalatnama of Advocate Mr. Mankad or for that matter of any other advocate had been filed on behalf of the petitioner. With that being the conceded position, it is just not possible to believe what the petitioner now wants the Court to believe, viz., that he had engaged Mr.

Avinash K. Mankad as his Advocate and that Mr. Mankad did not appear before this Court when the appeal was taken up for hearing. If in reality, the petitioner had engaged Mr. Avinash K. Mankad as his Advocate, I am sure, Mr. Mankad would have filed his appearance on the record of the appeal and he would not have failed to remain present when the appeal was taken up for hearing after being duly notified. The fact that no appearance has been filed by any Advocate and much less by Advocate Mr. Avinash K. Mankad for and on behalf of the petitioner on the record of the appeal would go to show that the stand which is now taken by the petitioner that he had engaged Mr. Avinash K. Mankad as his Advocate is an after-thought. No affidavit of Advocate Mr. Avinash K. Mankad has been produced in support of the statement that the petitioner had engaged Mr. Mankad as his Advocate. Of course, the petitioner has filed his own affidavit swearing the same facts as pleaded in the petition. But the statements made by the petitioner in his petition and in his affidavit cannot be accepted at their face value particularly when, on the record of the appeal, no Vakalatnama of Advocate Mr. Avinash K. Mankad has been produced and no affidavit of Mr. Avinash K. Mankad has been produced stating that the petitioner had engaged him as an Advocate. Under the circumstances, even on facts, the case of the petitioner that he had engaged Mr. Avinash K. Mankad as his Advocate and that Mr. Mankad did not remain present at the hearing of the appeal and that therefore, the petitioner went by default, cannot be accepted.

7. In that view of the matter also, even if it were to be held that the review is competent (and I hold that it is not competent), this is not a case wherein review should be granted. In that view of the matter, the Misc. Criminal Application is dismissed.