
(2012) 04 UK CK 0107

In the Uttarakhand High Court

Case No : Recall Application No. 248 of 2012 in Criminal Miscellaneous
Application No. 574 of 2005

Nand Kumar and Another

APPELLANT

Vs

State of Uttaranchal

RESPONDENT

Date of Decision : 13-04-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 190, 362, 460(e), 482
Essential Commodities Act, 1955 — Section 12

Citation : (2012) 04 UK CK 0107

Hon'ble Judges : Servesh Kumar Gupta, J

Bench : Single Bench

Advocate : S.S. Kulshresth, assisted by Mr. Jitendra Chaudhary, for the
Appellant; Hari Om Bhakuni and P.S. Bohara, for the Respondent

Final Decision : Dismissed

Judgement

Hon"ble Servesh Kumar Gupta, J.—The instant Criminal Miscellaneous Application No. 574/2005, Nand Kumar & Another v. State, was finally adjudicated by this Court vide judgment and order dated 23.3.2012, whereby this petition was dismissed. Now, the present MCRC Application No. 248/2012 has been moved seeking recall of the said judgment and order. Heard learned Senior Counsel for the accused applicants as well as learned Counsel for the State.

2. First and foremost contention of the learned Sr. Counsel for the applicants is that while passing the judgment and order, sought to be recalled, the accused applicants was not represented before this Court by a Counsel, well conversant with law. The petition was argued by Mr. B.D. Pandey, Advocate, who was holding the brief of Mr. H.C. Pathak, Advocate, for the applicants. Learned Senior Counsel submitted that Mr. Pandey did not properly argue the matter, and failed to bring the correct position of law before this Court, and as a result thereof, the petition was dismissed.

3. This Court is unable to accept the above submission of the learned Sr. Counsel, firstly, because it was a petition u/s 482 CrPC, and the main purpose of filing a petition u/s 482 CrPC is to prevent any possible abuse of the process of law. It has been categorically laid down by the Hon''ble Apex Court in a number of cases that while deciding a petition u/s 482 CrPC, this Court is not supposed to make a thorough and deep analysis of every aspect and complexities involved in the case. It is the job of trial court. This Court, under its jurisdiction u/s 482 CrPC, is supposed only to prima facie see as to whether it would amount to an abuse of the process of Court if the prosecution were allowed to continue in the trial court. Besides, while passing the judgment and order dated 23.3.2012, this Court considered the relevant aspects which were crucial for adjudication of this petition. All the submissions advanced by the then arguing Counsel Mr. Pandey were duly dealt with and answered by this Court. Hence, it is not possible to recall the impugned judgment and order merely on the plea that Mr. Pandey was not well conversant with the law.

4. Be that as it may, the main question that arises at this stage is whether after finally adjudicating a petition u/s 482 CrPC, this Court is empowered to review the same on its merit

5. Learned Senior Counsel for the applicants, while arguing that this Court can review and recall any such final judgment or order, has relied upon a precedent of Hon''ble Apex Court rendered in *Grindlays Bank Ltd. Vs. Central Government Industrial Tribunal and Others*, , wherein it has been observed that "the expression "review" is used in two distinct senses, namely, (1) a procedural review which is either inherent or implied in a court or Tribunal to set aside a palpably erroneous order passed under a misapprehension by it, and (2) a review on merits when the error sought to be corrected is one of law and is apparent on the face of the record. It is in the latter sense that the Court in *Narshi Thakershi's* case held that no review lies on merits unless a statute specifically provides for it, obviously when a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected ex debito justitiae to prevent the abuse of its process, and such power inheres in every Court or Tribunal".

6. Having gone through the ratio laid down in the above precedent, it is abundantly clear that the Court can review or recall its order when any such order, sought to be recalled, has been passed due to procedural error and that is sought to be corrected, but the Court cannot review its order when it has passed it on its merit. So, this precedent is not applicable in the present case.

7. Learned Senior Counsel for the applicants also relied upon an authority of the Hon''ble Apex Court delivered in the case of *Md. Sukur Ali Vs. State of Assam*, . This precedent is also not applicable in the instant case because the ratio laid down in this case is clearly distinguishable. It has been held by the Hon''ble Apex Court in the said verdict that a criminal appeal should not have been decided in the absence of the Counsel of the appellant as to sustain his conviction. If the

Counsel for the appellant was not present for any reason, whatsoever in the Court, then it was incumbent upon the Court to appoint the Amicus Curiae and then adjudicate the matter. But in the instant petition, it was not the situation. An authorized Counsel Mr. B.D. Pandey, a degree holder of law, duly argued the case and extended his submissions on behalf of the applicants.

8. Rebutting the arguments of learned Senior Counsel for the accused applicants, learned Counsel on behalf of the State, has relied upon a precedent of Hon''ble Apex Court rendered in the case of Hari Singh Mann v. Harbhajan Singh Bajwa, reported in (2001) 1 SCC 169, wherein the Hon''ble Apex Court while explaining the scope of review u/s 362 & 482 CrPC, categorically held that High Court has no jurisdiction to alter or review its own judgment or order except to the extent of correcting any clerical or arithmetical error. Practice of filing criminal miscellaneous petition after disposal of the main case and issuance of fresh directions in such petition is unwarranted and amounts to abuse of process of the court. Once a matter is finally disposed of, the Court, in the absence of a specific statutory provision, becomes functus officio in respect of that matter.

9. It has also been argued by learned Senior Counsel for the applicants that Section 12AA of the Essential Commodities Act, 1955 makes it mandatory that all offences under this Act shall be triable only by the Special Court constituted for the area in which the offence has been committed. Learned Counsel submitted that cognizance in the instant case was taken by the Magistrate and not by a Special Court specified in this behalf. So, this cognizance order could not be allowed to prevail. This argument is also not worthy of acceptance because Section 460(e) of the Criminal Procedure Code makes a provision that if any Magistrate not empowered by law to take cognizance of an offence u/s 190 CrPC and erroneously he does that thing, then the entire proceedings shall not be set aside merely on the ground of his not being so empowered. However, the Court is mindful that it was the provision in the general law enacted by the Parliament while Essential Commodities Act is a special law, and the provisions of the general law cannot override the same of the special law. But at the same time, the fact remains that the said contention was neither raised at the time of finally disposing of this petition, nor any such averment has been taken in the original petition. The same been brought to the notice of this Court now at the time of hearing the present recall application. The Magistrate, who passed the cognizance order in the instant case, must definitely have been conferred with the said powers of Special Court by the competent authority and the notification of such empowerment can be traced in the concerned Judgeship.

10. Learned Counsel for the State has also invited attention of this Court towards Section 362 CrPC, which reads as under:

362. Court not to alter judgment.-Save as otherwise provided by this Code or by 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.

11. In view of the above provision of law and the legal proposition propounded by the Hon''ble Apex Court (supra), it is clear that this Court has now ceased with the powers to do anything now in the matter except to correct clerical or arithmetical error, if any. As such, the impugned judgment and order dated 23.3.2012 cannot be recalled or reviewed by this Court, except to the extent stated above. The only remedy, which is available to the accused applicants is to approach the highest Court of the land and challenge the impugned judgment and order there. For the reasons stated above, the recall application is hereby dismissed.