

(1967) 09 GAU CK 0002
In the Gauhati High Court

Nongmaithem Modhu Singh and Another	APPELLANT
Vs	
Wahengbam Nodiachand Singh and Another	RESPONDENT

Date of Decision : 16-09-1967

Acts Referred:

Citation : (1968) CriLJ 1147

Hon'ble Judges : C. Jagannadhacharyulu, J.C.

Bench : Single Bench

Judgement

C. Jagannadhacharyulu, J.C.

1. This is an application u/s 561A, Criminal P.C., for reviewing the order passed on 22.8.1967 in Criminal Revision Case 9 of 1966 on the file of this Court.

2. The petitioners state that Criminal Revision 9 of 1966 was posted to 22.8.1967 for hearing that the petitioner's Counsel fell ill and suffered from giddiness, that he could not attend the Court, that the Court refused to grant an adjournment and passed an order, that the said order should be reviewed and that Criminal Revision Case 9 of 1966 should be disposed of after hearing the petitioners' counsel. The petitioners further state that a question of law involving limitation, after the expiry of which the legal representative of the deceased was added and the propriety of the orders of the S.D.M. Imphal West u/s 145(6), 145(7) and 146(1)(B), Criminal P.C. are involved.

3. The application is opposed by the first respondent on the ground that the Court has no power to review the order passed on 22.3.1967.

4. Section 561A, Criminal P.C. gives ample power to the High Court to review its own order when the conditions mentioned therein are satisfied. It runs as follows:

561A. Saving of inherent power of High Court: Nothing in this Code shall be deemed to limit or affect the inherent power 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.

There are a number of decisions of the various High Courts which have recognised this power. Vide *Chandrika Vs. Rex*, where-in it was laid down that rehearing of an appeal under certain circumstances neither amounts to a review of a judgment nor to alteration of a judgment (under Section 869, Criminal P.C.). In the *Crown v. Habibullah* AIR 1950 Lah 250 it was held that there is inherent jurisdiction in every Court over its own record, which is more than saying that every Court can correct an accidental slip or omission in its judgment and that since Section 561A merely keeps alive the inherent jurisdiction of the High Court as it existed before 1928, it follows that a power to correct its own records is included in that jurisdiction. In *Ram Cherey Vs. Baba Ram Priya Das*, it was ruled that the inherent powers of the High Court as well as of Criminal Courts generally are wide, but that the powers so recognized by law are designed to meet only those cases for which there is provision in the Code. In *Mohammad Wasi and Another Vs. State*, the Court held that where an order has been passed which, upon the face of the record, is erroneous and unjust, and the defect is of such a glaring nature that it could be said that having regard to the materials on the record, the Court had no jurisdiction to pass it or that it failed to exercise a jurisdiction vested in it by law, the Court may, and, indeed is bound to, review its own order and modify or set it aside, in order to secure the ends of justice. In *Janaki Nath Kaul v. State* AIR 1952 J & K 2 it was held that Section 561A, Cr.P.C. can be applied when the facts of the case warrant its application. *Bhagwandas Babulal v. State* AIR 1954 M B 10 lays down that Section 561A, Cr.P.C. is not governed by Section 869, Cr.P.C. and that if the High Court thinks it necessary it can review its own judgment to secure the ends of justice. In *The State of Bombay Vs. Nilkanth Shripad Bhawe and Another*, it was laid down that the High Court has the widest jurisdiction to pass orders to secure the ends of justice u/s 561A and that it can entertain applications thereunder (not though contemplated by the Criminal Procedure Code) and make the necessary orders to secure the ends of justice. In *Ramautar Thakur v. State of Bihar* AIR 1957 Pat 38 it was held that there is no statutory provision for restoration of a criminal revision application dismissed for default and that the power to restore such a case is an inherent power, which is saved by the provisions of Section 561A, Cr.P.C. In *Raj Narain v. State* AIR 1939 All 315 (FB) the Court held that the High Court has power to revoke, review, recall or alter its own earlier decision in a criminal revision and rehear the same when one of the three conditions mentioned in Section 561A, Cr.P.C. is satisfied. Vide also *Ram Narain Vs. Mool Chand and Others*, to the same effect.

5. As against the above rulings, the learned Counsel for the first respondent relied on *Maledath Bharathan Malyali Vs. The Commissioner of Police*, and *In re, In Re: T. Venkateswara Rao and Others*, in which it was held that an order on an application for proceedings for habeas corpus, which are of a criminal nature, cannot be reviewed. These are distinguishable on the ground that both of them relate to applications for habeas corpus. In *Jagannath Singh and Another Vs.*

Bidheshi and Others, it was held that in normal circumstances the High Court has no power to review its previous decision in a criminal case. But it was also held that where a reference to the High Court; arising out of the proceedings u/s 145, Cr.P.C. is decided ex parte, without hearing the successful party, there is no contravention of any mandatory provision of law and that the High Court is not entitled to review its decision. It was held further that where a mandatory provision of law has been contravened resulting in abuse of the process of the Court, it is entitled to correct an obvious error. So, this decision recognizes the inherent powers of the High Court, when the conditions mentioned in Section 561A are fulfilled.

6. There is a decision of this Court in Wahengbam Tomchou Singh and Others Vs. Chingakham Amusna Singh, which held that a Criminal Court has got the inherent power to revive a complaint in a warrant case, which has been dismissed u/s 259, Cr.P.C. for the absence of the complainant on the date of commencement of the preliminary enquiry. The scope of that ruling is much wider than the provisions of Section 561A, Cr.P.C. which governs the present case. As the petitioners allege that the S.D.M. passed an order adding the legal representative of the deceased after the expiry of the period of limitation and as the petitioners further allege that the order of the S.D.M. violates the provisions contained in Sections 145(6) and 146 (1)(B) Cr.P.C. and that important questions of law are raised in the revision petition, I consider that the order dated 22.3.1967 should be reviewed and that an order on merits should be passed after the counsel for the petitioners are also heard.

7. In the result, the petition is allowed.