
(2020) 08 MP CK 0083

In the Madhya Pradesh High Court

Case No : Review Petition No. 772 Of 2020

Pradeep Singh Bhadouria

APPELLANT

Vs

Union Of India & Others

RESPONDENT

Date of Decision : 20-08-2020

Acts Referred:

Army Act, 1950 — Section 164(2)
Armed Forces Tribunal (Procedure) Rules, 2008 — Rule 6(2)
Code Of Civill Procedure, 1908 — Order 47 Rule 1

Citation : (2020) 08 MP CK 0083

Hon'ble Judges : Vishal Mishra, J

Bench : Single Bench

Advocate : Shiva Nand Mishra, Vivek Khedkar

Final Decision : Dismissed

Judgement

In the wake of unprecedented and uncertain situation due to outbreak of the Novel Corona virus (COVID-19) and considering the advisories issued by

the Government of India, this petition has been heard and decided through video conferencing to maintain social distancing. The parties are being

represented by the respective counsel through video conferencing, following the norms of social distancing/ physical distancing in letter and spirit.

The review petition is being filed seeking review of the order dated 28.07.2020 passed in Writ Petition No.10307/2020 whereby the writ petition

preferred by the petitioner was dismissed for want of territorial jurisdiction. It is submitted by the counsel for the petitioner that while passing the

impugned order, this Court has failed to consider the provision of 6 (2) of the Rules of the Armed Forces Tribunal (Procedure) Rules, 2008. Rule 6 (2)

of the aforesaid rule has not been taken into consideration by this Court while disposing off the writ petition. It is submitted that although a statutory

appeal has been preferred by the petitioner against the order by which the petitioner has been sent to jail in view of the order passed in the General

Court Martial proceedings at Hyderabad. It is submitted that the appeal is provided under the Act and the petitioner has preferred an appeal under

Section 164 (2) of the Army Act, 1950. But as the AFT Jabalpur who is having the original appellate jurisdiction the Administrative Member and the

Judicial Member are not available. Therefore, the AFT is not regularly functioning. In such circumstances, the appeal cannot be heard. It is submitted

that the petitioner is due to complete his period of conviction and only six months remain and in view of the judgment passed in the case of Balkrishna

Ram Vs. Union of India & Anothers in S.L.P. (Civil) No.6999/2017 Civil Appeal No.131/2020 by the Hon'ble Supreme Court. There is no rider

before this Court to entertain the writ petition. It is submitted that it is only a question with respect to suspension of sentence of the present petitioner

who is undergoing the conviction. It is submitted that the Procedural Rules of 2008 Rule 6 Sub-Rule 2 has not been taken into consideration by this

Court while deciding the writ petition. No other ground is being raised by the petitioner for seeking review of this order.

Per contra, learned counsel for the respondent has opposed the contentions raised by the counsel for the petitioner and has argued that a detailed and

exhaustive order has been passed by this Court taking into consideration all the relevant aspects of the case and placing reliance upon several

judgments passed by this Court as well as the Supreme Court has passed the impugned order. Counsel for the petitioner has not pointed out any

glaring irregularities apparent on the face of the record to enable this Court to entertain this review petition. In absence of glaring irregularities

apparent on the face of the record no review is maintainable. At the most the petitioner ought to have filed a writ appeal against the impugned order if

he is not satisfied with the order. Learned counsel for the respondent has prayed for dismissal of the review petition.

Heard the learned counsel for the parties and perused the record. From the perusal of the record, it is seen that the writ petition was dismissed for

want of territorial jurisdiction of this Court. This Court has not decided on the merits of the case. Only the jurisdiction aspect was taken into

consideration and the order was passed. The petitioner has not pointed out any glaring irregularities apparent on the face of the record to enable this

Court to entertain the review petition. The scope of review is limited for which the law is well settled in the case of the Hon'ble Supreme Court in the

case of *S. Bagirathi Ammal vs. Palani Roman Catholic Mission*; (2009) 10 SCC 464 has held as under :-

12. An error contemplated must be such which is apparent on the face of the record and not an error which has to be fished out and searched. In other words, it must be an error of inadvertence. It should be something more than a mere error and it must be one which must be manifest on the face of the record. When does

an error cease to be mere error and becomes an error apparent on the face of the record depends upon the materials placed before the Court. If the error is so apparent that without further investigation or enquiry, only one conclusion can be drawn in favour of the appellant, in such circumstances, the review will lie.

Further in the case of *State of West Bengal and Ors. v. Kamal Sengupta and Anr*; (2008) 8 SCC 612 the Hon'ble Supreme Court has held as under:-

22. The term "mistake or error apparent" by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 CPC.

Furthermore, a five-Judge Bench of the Federal Court in *Hari Sankar Pal Vs. Anath Nath Mitter* reported in 1949 FCR 36 while considering the

question whether the Calcutta High Court was justified in not granting relief to non-appearing party, whose position was similar to that of the

successful appellant, has held as under :

That a decision is erroneous in law is certainly no ground for ordering review. If the Court has decided a point and decided it erroneously, the error could not

be one apparent on the face of the record or even analogous to it. When, however, the court disposes of a case without advertting to or applying its mind to a

provision of law which gives it jurisdiction to act in a particular way, that may amount to an error analogous to one apparent on the face of the record sufficient to bring the case within the purview of Order XLVII, Rule 1, Civil Procedure Code.

Taking into consideration the the aforesaid law laid down with respect to the jurisdiction of this Court to entertain the review petition, this Court does

not find it appropriate to entertain the review petition.

Accordingly, the review petition is dismissed.

E-copy of this order be provided to the petitioner and it is made clear that E-copy of this order shall be treated as certified copy for practical purposes

in respect of this order.