

(1948) 10 PAT CK 0012
In the Patna High Court

Raghunandan Yadav and Another

APPELLANT

Vs

Province of Bihar

RESPONDENT

Date of Decision : 27-10-1948

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 369, 491, 491(2)

Citation : AIR 1949 Patna 262

Hon'ble Judges : Narayan, J;Das, J

Bench : Full Bench

Judgement

Narayan, J.—These are two applications u/s 491, Criminal P.C. Criminal Miscellaneous Case No. 468 of 1948, arises out of an application filed by one Raghunandan Yadav who had filed two previous applications on the same grounds, one of which was disposed of by myself and by my Lord the Chief Justice and the other by my Lord the Chief Justice and my brother Imam J. Criminal Miscellaneous No. 469 of 1948, arises out of an application filed by one Chhedilal who had also filed a previous application on the same grounds which was disposed of by my Lord the Chief Justice and my brother Imam J. A preliminary objection has been taken on behalf of the Province of Bihar, and it is this that no second application lies on the same grounds which were the subject matter of the previous application. The applicant's learned lawyer has relied on a Privy Council decision reported in *Eshugbayi Eleko v. Officer administering the Government of Nigeria* AIR 1928 P.C. 300, which lays down that each Judge of Supreme Court of Nigeria has jurisdiction to entertain an application for a writ of habeas corpus in term time or in vacation, and that he is bound to hear and determine such an application on its merits notwithstanding that some other Judge of the same Court has already refused a similar application. It would appear from the judgment of his Lordship the Lord Chancellor that the common law of England applies in Nigeria. In India we are not guided by the common law of England, but by the statute as embodied in the Criminal P.C. Section 491 Criminal P.C., lays down inter alia that any High Court may, whenever it thinks fit, direct that a person illegally or improperly detained in public or private

custody within the limits of its appellate Criminal Jurisdiction be set at liberty. Subsection (2) of this section lays down that the High Court may, from time to time, frame rules to regulate the procedure in cases under this section. This Court has not framed rules as contemplated by Sub-section (2) of Section 491. It has however been argued before us that u/s 561A, Criminal P.C., this Court has got the inherent power 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, and we are asked to review the orders, already passed u/s 491, under the inherent power, of the Court. But, in our opinion, Section 369 which lays down that save as otherwise provided by this Code or by any other law for the time being in force, or, in the case of a High Court established by Royal Charter, by the Letters Patent of such High Court, no Court when it has signed its judgment, shall alter or review the same, except to correct a clerical error. The previous applications were considered on their merits, and were disposed of because a Bench of this Court was of opinion that they had no merits. These applications were not dismissed on technical grounds and without any consideration of their merits. Mr. Thakur Prasad was wrong in asking us to apply the Privy Council decision and his view that the previous applications were not disposed of on merits is also wrong. The previous applications were dismissed after considering the grounds of detention, and though instead of writing a long judgment, a Bench of this Court passed the order in a single line dismissing the applications, the provisions of Section 869 would be applicable and another Bench of this Court cannot review or alter the order passed on the previous applications. I am supported in the view which I have taken by a decision of the Allahabad High Court in *Mt. Haydari Begam Vs. Jawad Ali Shah*, and by a decision of the Special Bench of the Bombay High Court in *Malhari Ramaji Chikate v. Emperor A.I.R.1948 Bom. 326*. In both these cases, it was pointed out that it was not open to a detenu to ask for a review of an, order already made u/s 491 and that successive applications could not be made for a writ of habeas corpus on behalf of a detenu. Their Lordships negated the contention that the common law of England was applicable and held that the entertaining of a second application on the same facts would amount to a review of the earlier judgment and would be clearly barred by Section 369, Criminal P.C. We respectfully agree with the view which has been taken by the Special Bench of the Bombay High Court and by a Division Bench of the Allahabad High Court, and we are of opinion that these applications on the same grounds, which were taken up in the previous applications cannot be entertained. The applications are dismissed.

Das J.

2. I agree that these two applications must fail on the preliminary ground that successive applications u/s 491, Criminal P.C. cannot be entertained. As at present advised, I agree with the view expressed in the Allahabad and Bombay decisions referred to by my learned brother. In the Allahabad decision a reference was no doubt made to Section 8 of the Rules made by that Court. I

have not been able to trace any corresponding rule, in the Rules of this Court, but as pointed out by Chagla C.J. in the Bombay decision, the Allahabad decision was based not merely on a rule framed by that Court, but on the broad principle that this High Court has not the common law right of issuing a writ of habeas corpus, but has only the power, conferred upon it by Section 491 of the Code.