
(1969) 10 KL CK 0002
In the High Court Of Kerala

Rajan Kumaran

APPELLANT

Vs

Vijayan Achuthan and Others

RESPONDENT

Date of Decision : 30-10-1969

Acts Referred:

Constitution of India, 1950 — Article 227

Criminal Procedure Code, 1898 (CrPC) — Section 369, 424

Citation : (1970) CriLJ 1547

Hon'ble Judges : K. Sadasivan, J

Bench : Single Bench

Judgement

K. Sadasivan, J.—This criminal miscellaneous petition is in the nature of a review of the order passed by this Court on 10th of January, 1969 in Or. M. P. 776/68. That was a petition filed by the accused in C. C. 377/68 on the file of the Sub-Magistrate, Parur for annul, ling the proceedings in C. C. 377 on the ground that the complaint did not disclose an offence. The petition was filed u/s 561A of the Code. The complaint before the Sub-Magistrate was filed by one Rajan alleging that the accused with three others trespassed into his jewellery Mart known by the name ""Vijaya Jewellery Mart" and removed there-from certain gold ornaments. It was further alleged that when Rajan went to the shop the next day he was scared away by threats of violence. The accused in the meantime filed O. Section 54/68 in the Munsiff Court, Parur for a perpetual injunction to restrain Rajan from interfering with his possession of the shop and the business. In the civil suit he alleged that the business was his and that Rajan was only his paid employee. That suit was decreed granting perpetual injunction as prayed for.

The accused"s possession of the jewellery mart also was declared. In the light of that finding there was no scope for a criminal com. plaint of trespass. Moreover, even according to the complainant, himself and the accused had constituted themselves into a partnership and in that view also he had no cause for a complaint because one partner cannot commit trespass or theft against the other partners or in respect of the partnership property. On these grounds the Or. M. P. 778/68 preferred before this Court u/s 561A was allowed and the criminal

complaint was quashed. The present review petition is by the said Rajan who was the complainant in the criminal case. According to him, his lawyer was not heard and, therefore, in the interests of justice the matter should be re-heard. The petition is opposed on the ground that under the Criminal Procedure Code no review lies against the judgment or order passed by the court.

The learned Counsel's contention is that as soon as the judgment is pronounced and signed by the Judge, the High Court becomes ""functus officio" and it is not afterwards open to the High Court to alter or review the judgment. In support of this position, the learned counsel relied on a Single Bench decision of the Madras High Court in S. Rangaswami and Another Vs. R. Narayanan, wherein the learned Judge observed that : --

It has been repeatedly held by this Court from In re Arumugha Padayachi 1926 Mad W N 147 : AIR 1926 Mad 420 that a criminal court has no power to review its judgement when once it has been signed. The learned Counsel on the authority of the Full Bench decision in Raj Narain and Others Vs. The State, submitted that the High Court has power to review and recall or alter its earlier decision in a criminal revision u/s 561A, Criminal P. C. In a recent decision of the Supreme Court in Sankatha Singh Vs. State of U.P., it was held that the appellate Court has no power to review or restore an appeal which has been disposed of. A sessions Judge cannot set aside the first order passed in appeal dismissing the appeal when neither the appellants nor their counsel appeared and cannot order rehearing of the appeal. Construing Sections 369 and 424, Criminal P. C., the Supreme Court observed that the appellate Court could not pass an order of rehearing of the appeal in exercise of the inherent powers when Section 369 read with Section 424 of the Code specifically prohibit the altering or reviewing of its order by a Court. It was further observed that the inherent powers cannot be exercised to do that the Code specifically prohibits the Court from doing.

It was also argued in that case that the bar of Section 369 may not apply to the exercise of the powers of the High Court as a Court of revision u/s 561A, Criminal P. C. But that Contention was also repelled by the Court saying that Section 561A, Criminal P. C., does not in any way enlarge the powers conferred under the Code, especially when it is provided in the Code that no Court when it has signed the judgment, shall alter or review the same. Raj Narain and Others Vs. The State, referred to by the learned Single Judge of the Madras High Court in the above decision, took the view that the High Court has power to revoke, review, recall or alter its own earlier decision in a criminal revision and rehear the same. The Full Bench also observed that:

This can be done only in cases falling under one or the other of the three conditions mentioned in Section 561A, viz.,

- (i) for the purpose of giving effect to any order passed under the Code of Criminal Procedure;
- (ii) for the purpose of preventing abuse of the process of any Court;

(iii) for otherwise securing the ends of justice. The learned Judges also observed:

An inherent power implied by its very nature a power which cannot be expressed in terms but which must reside in a Court for achieving the higher and the main purpose of a Court, namely, the purpose of doing justice in a cause before it and for seeing that the act of the Court does no injury to any of the suitors. Circumstances requiring the use of such a power cannot be foreseen. The legislature enacts provisions to meet such circumstances which can be foreseen, and once provision has been made in the statute about a certain circumstance the occasion to invoke inherent power in that circumstance practically vanishes. An occasion to invoke the inherent power will not then arise for the simple reason that when the Code has provided for that contingency, that provided method must be considered to be the just method to meet that contingency and any other method thought of by the Court cannot then be said to be a method which would advance the interest of justice. It is in this sense that no occasion for the exercise of any inherent power arises when the statute expressly or by necessary implication provides for what is to be done in that situation.

2. Following this decision a Division Bench of the Mysore High Court has held in *In re, Biyamma* AIR 1963 Mys 326 that the High Court has inherent power to alter or review its appellate judgments. The learned Judges held further that:

Under Section 430 though the judgment shall not be open to any further appeal, the powers of interference otherwise than in appeal are not taken away. The absence of prohibition cannot, however, be considered as a conferment of power. Unlike in the CPC there is no provision in the Criminal Procedure Code conferring power on the Criminal Courts to alter or review their judgments or orders. It is, however, a cardinal principle of administration of justice that an erroneous act of the Court shall not prejudice any party. This rule is embodied in the well-known maxim, "*actus curiae neminem gravabit*" under which every Court whether Civil or Criminal must in the absence of express provision to the contrary be deemed to possess as inherent in its very constitution all such powers as are necessary to do the right and to undo a wrong in the course of administration.

If the Criminal Courts had no inherent jurisdiction to alter or review their judgments there was no need to prohibit the exercise of that power by enacting Section 869 as well as Section 424. The legislature while wisely, prohibited the subordinate courts from altering or reviewing their judgments left the field clear to the High Court because any error or mistake committed by the subordinate courts can be corrected by the High Court either by exercising its revisional powers or by exercising its power of superintendence under Article 227 of the Constitution but such remedies are not available as against any errors or mistake that may be committed by the High Court.

3. In the present case it is contended on behalf of the petitioner that on the former occasion when the petition u/s 561A was taken up for consideration his advocate was absent and he was thus prevented from placing his view points

before court. His contention is that when a judgment is delivered without giving reasonable opportunity to the respondent or his pleader to be heard, it must be held that the judgment was passed without jurisdiction and the High Court has power to make an order for its being heard. On the same line is the reasoning of the Travancore. Cochin High Court in *State v. Kujan Pillai* AIR 1952 Tra. Co 210 . The learned Judges held in that ease:

Practically all the High Courts in India are unanimous in their view that the High Court has no power to review or alter its judgment in a criminal case except in the case mentioned in Section 869 of the Criminal P. C. or where the court has acted without jurisdiction, or where it has decided the case without giving an opportunity to a party for being heard, and that Section 561A does not confer on the High Court any such power.... In the case of absence of jurisdiction the case can be treated as one not valid in law and the passing of a fresh judgment cannot in strict sense be regarded as altering or reviewing a prior judgment. With regard to cases in which the parties were not given an opportunity for being heard it may be taken to be an implied condition of such judgment or order that it should be open to reconsideration at the instance of the party prejudicially affected. The power of the Court to reconsider the matter is implied in the very nature of an ex parte decision.

The position thus is that a criminal court has no power to review its judgment when once it has been signed and pronounced. But a petition disposed of without hearing the opposite party can be reopened and re-heard, because the power is inherent in the High Court that an erroneous act of the court done to the prejudice of one party can be remedied. In the present instance, even though the advocate did not appear in spite of repeated postings and repeated messages having been despatched to him about the posting of the case. I see no reason to reopen the matter since the petition was disposed of on its merits. The petition was not dismissed for mere default of appearance. The order will show that all the view points now put forward by the learned Counsel have been considered there. No new point was ever placed thereafter enabling me to interfere, in the interests of justice.

4. The review petition, in the circumstances, is groundless and it is dismissed.