

(2001) 02 DEL CK 0161

In the Delhi High Court

Case No : C.M. No. 2797 of 2000 in Criminal Misc. (Main) No. 2693 / 99

Ranbir Singh Dhanjal

APPELLANT

Vs

The State and Another

RESPONDENT

Date of Decision : 09-02-2001

Acts Referred:

Citation : (2001) 4 AD 488 : (2001) 91 DLT 515 : (2001) 1 DMC 779 : (2001) 59 DRJ 1

Hon'ble Judges : Dalveer Bhandari, J

Bench : Single Bench

Advocate : Ms Geetanjali Mohan and Mr. Sarabdeep Singh, for the Appellant; Mr. Rajiv Awasthi, for the Respondent

Judgement

Dalveer Bhandari, J.—This application has been filed on behalf of respondent No. 2 - Mrs Aruna Gupta in which she has prayed that the operation of the order dated 28.04.2000 quashing the FIR No. 422 of 1996 (on joint request of the parties) under Sections 498A/406 IPC registered at police station Badarpur, New Delhi be stayed. The applicant had also asked for directions that the petitioner be directed not to leave the country without the permission of the Court and till then his passport be impounded. It is also prayed that the register of the Oath Commissioner be summoned.

2. The learned counsel for the non-applicant submitted that this is an application for review of the order passed by this Court on 28.4.2000. She submitted that u/s 362 of the Code of Criminal Procedure, no such application is maintainable. Section 362 of the Code of Criminal procedure 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."

In number of cases, the Supreme Court and other courts had occasions to

interpret this Section.

3. In *State of Orissa Vs. Ram Chander Agarwala and Others*, . Their Lordships observed as under :

"once a judgment has been pronounced by a High Court either in exercise of its appellate or its revisional jurisdiction, no review or revision can be entertained against that judgment as there is no provision in the Code which would enable the High Court to review the same or to exercise revisional jurisdiction."

4. In *Hari Singh Mann Vs Harbhajan Singh Bajwa & Others JT 2000 Supp. 2 SC 394*. Their Lordships of the Supreme Court have observed as under :

"Section 362 of the code mandates that 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. The Section is based on an acknowledged principle of law that once a matter is finally disposed of by a court, the said court in the absence of a specific statutory provision becomes *functus officio* and disentitled to entertain a fresh prayer for the same relief unless the former order of final disposal is set aside by a court of competent jurisdiction in a manner prescribed by law. The court becomes *functus officio* the moment the official order disposing of a case is signed. Such an order cannot be altered except to the extent of correcting a clerical or arithmetical error."

5. In *U.J.S. Chopra Vs. State of Bombay*, . Their Lordships of the Supreme Court have observed as under :

"In view of the scheme of the Code there can be no manner of doubt that the provisions of the sections collected in Chap. 26 are concerned with judgments pronounced by the trial Court. There can Therefore be no question that the finality embodied in this section is only in relation to the Court which pronounces the judgment, for it forbids the Court, after it has signed its judgment, to alter or review the same. In other words, after pronouncing the judgment the Court that pronounces it becomes *functus officio*".

6. In *Smt. Sooraj Devi Vs. Pyare Lal and Another*, . The Court observed as under :

"The inherent power of the court cannot be exercised for doing that which is specifically prohibited by the Code. It is true that the prohibition in Section 362 against the Court altering or reviewing its judgment is subject to what is "otherwise provided by this Code or by any other law for the time being in force". Those words, however, refer to those provisions only where the Court has been expressly authorised by the Code or other law to alter or review its judgment. The inherent power of the Court is not contemplated by the saving provision contained in Section 362".

7. The reliance was also placed on *Mosst. Simrikhia Vs Smt. Dolley Mukherjee alias Smt. Chabbi Mukherjee and another*; . The Court observed as under :

"The court is not empowered to review its own decision under the purported

exercise of inherent power. The inherent power under S.482 is intended to prevent the abuse of the process of the Court and to secure ends of justice. Such power cannot be exercised to do something which is expressly barred under the Code. S.362 of the Code expressly provides that 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 save as otherwise provided by the code. If any consideration of the facts by way of review is not permissible under the code and is expressly barred, it is not for the Court to exercise its inherent power to reconsider the matter and record a conflicting decision. If there had been change in the circumstances of the case, it would be in order for the High Court to exercise its inherent powers in the prevailing circumstances and pass appropriate orders to secure the ends of justice or to prevent the abuse of the process of the Court. Where there is no such changed circumstances and the decision has to be arrived at on the facts that existed as on the date of the earlier order, the exercise of the power to reconsider the same materials to arrive at different conclusion is in effect a review, which is expressly barred under S.362."

8. On careful analysis of the provisions of Section 362 of Code of Criminal Procedure and the aforesaid judgments, it is abundantly clear that no review application is maintainable in criminal matters. According to the mandate of the legislature, no Court after signing its judgment or final order shall alter or review the same except to correct a clerical or arithmetic error. There is no doubt that this application is not maintainable. However, even on merits, no case for recalling of the order dated 28.4.2000 is made out. Some facts which are necessary to dispose of this application on merit are recapitulated as under :

9. At the outset, it is mentioned that the learned counsel appearing for respondent No. 2 submitted that the settlement/compromise deed and the affidavit in support of the petition were not signed by Smt. Aruna Gupta. Her signatures have been forged. The learned counsel and Smt. Aruna Gupta first denied the signatures both on affidavit and also on compromise/settlement deed. Since she was present in Court, Therefore, she was asked to give her signatures in Court on another piece of paper. Her signatures taken in Court were compared with her signatures on the affidavit and compromise deed. Both signatures from the naked eyes looked almost identical. Respondent No. 2 was given option to get the signatures verified from a handwriting expert. At that stage she realised her lapse and submitted that these are, in fact her signatures and she had wrongly made the statement. In this view of the matter, it is not necessary to preserve the paper on which her signatures were obtained. She also apologised to the Court and tendered unqualified apology. Since she has tendered her unqualified apology, I do not deem it necessary to take any further action in the matter.

10. Petitioner - Ranbir Singh Dhanjal and respondent No. 2 - Aruna Gupta got married on 23.01.1994. It was the second marriage for both Ranbir Singh

Dhanjal and Aruna Gupta. Respondent No. 2 - Aruna Gupta filed a petition for the grant of divorce in April, 1996 (after two years of marriage) and she had obtained a decree of divorce on 22.07.1997. Therefore, their entire marriage lasted only for about three and a half years.

11. It may be pertinent to mention that in a suit pending between the parties before the Civil Judge, Ludhiana, the learned Civil Judge on 18.12.1999 observed as under :

"But it remains a fact that within a short span from his marriage with defendant No. 1, the plaintiff has given as many as Rs.18,92,417.15ps to her".

12. It is also observed in the said judgment:

"It was only for 5 weeks that plaintiff and defendant No. 1 remained as husband and wife during first sojourn of the plaintiff to India. He returned to India in October, 1994 and within no time relations between him and Aruna Gupta went sour. By no stretch of imagination, a husband can be held liable to maintain his wife, that even in his absence, to the tune of nearly Rs.18/19 lakhs during such a short tenure of marriage of theirs. As per defendant No. 1 herself, she had pashmina shawls with her value whereof was Rs.5 lakhs. A lady having that much of shawls alone of her own, who is owner of landed property worth Rs.20 lakhs, is self sufficient by all means and hardly needs to be maintained. In any case, she had asked for, and got a decree of divorce from a Court of competent jurisdiction at Delhi and if she felt like she could have got an order of maintenance or the like from that Court. She did not do that and the plea of maintenance has been forwarded by her in these proceedings only with the solitary object of not returning the amounts of plaintiff to him. Rather, she has revealed of having deposited parts of those amounts with many investors to earn interest there from. Hardly an act of a person in need of maintenance".

13. The applicant/respondent No. 2 submits that statement made on behalf of petitioner-Ranbir Singh Dhanjal that she received rupees 30 lakhs was erroneously recorded in Court. In fact, she received only Rs.15,02,000/= and out of that she has spent Rs. 3,60,000/= in purchasing the car. She further submitted that when the car was stolen, that money was credited in the account of Ranbir Singh Dhanjal, Therefore, Rs.3,60,000/= be deducted from the amount of Rs.15,02,000/=.

14. Whether the petitioner had given her Rs.30 lakhs or Rs. 15.02,000/= or even less is really of no consequence, particularly, when respondent No. 2 herself has filed a divorce petition. She has also filed the deed of compromise and settlement and the orders were passed on that basis.

15. It may be pertinent to mention that this petition was filed in September, 1999 and this Court issued notice on 07.09.1999. Notice could not be served on respondent No. 2 because respondent No. 2 refused to accept the notice and stated that her daughter is stated to be unwell. On 03.02.2000, the S.H.O.,

Sarita Vihar was directed to serve notice on respondent No. 2. The report submitted by the S.H.O. reads as under :

"After waiting for 30 minutes at L-33 Sarita Vihar Smt. Aruna Gupta replied that I have already filed an affidavit in the High Court and I need not to sign on Court notice. Hence Smt. Aruna Gupta refused to receive the enclosed notice."

16. This demonstrates the conduct of respondent No. 2 and her respect for courts.

17. It may be pertinent to mention that by the order dated 10.7.2000, this Court directed the petitioner Ranbir Singh Dhanjal not to leave the country without prior permission of the Court. In pursuance to the said order, the SHO had sent a message to DCP/FRRO to ensure that the petitioner does not leave the country. In view of dismissal of this petition, I deem it appropriate to direct that the L.O.C. issued in respect of the petitioner, Ranbir Singh Dhanjal shall stand cancelled.

18. I have heard the learned counsel for the parties at length and perused the relevant documents. The applicant has no case either in law or in equity. The petition deserves to be dismissed and I order accordingly.

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