

(2004) 09 MP CK 0044

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 4436 of 2003

Rekha

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 06-09-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 362, 482
Penal Code, 1860 (IPC) — Section 498A, 506(II)

Citation : (2005) 1 DMC 151 : (2005) 1 MPHT 445 : (2005) 1 MPLJ 29

Hon'ble Judges : S.L. Kochar, J

Bench : Single Bench

Advocate : V.K. Gangwal, for the Appellant; Desai, Dy. A.G. for the Non-applicant No. 1, Chandrawade, for the Non-applicant Nos. 2 and 9 and A. Upadhyaya, for the Non-applicant No. 10, for the Respondent

Final Decision : Allowed

Judgement

S.L. Kochar, J.

This petition u/s 482 of the Code of Criminal Procedure has been preferred by the applicant for recalling the order dated 31.10.2003 passed by this Court in Misc. Cr. Case No. 3541/03 whereby this Court has quashed the entire proceedings pending before the learned Judicial Magistrate, First Class, Kasrawad in Cr. Case No. 415/96 relating to the complaint lodged by the applicant Rekha and her sister Sandhya against the non-applicant Nos. 2 to 9.

Necessary and relevant facts of the case for disposal of this petition are that the applicant Rekha and non-applicant No. 10 Smt. Sandhya are the real sisters and both were married with Omprakash and Chandrakant, both of them are real brothers. After their marriage, there was a dispute between both the spouses and both sisters namely, Rekha and Sandhya lodged a joint report {criminal complaint} before the Police Station, Kasrawad on 29.7.1996 on the basis of which Crime No. 267/96 was registered under Sections 498A and 506 (II), Indian Penal Code by the police against non-applicant Nos. 2 to 9 herein in this petition.

After investigation, charge-sheet was filed before the learned Judicial Magistrate, First Class, Kasrawad. On 19.9.1998, the applicant and her sister non-applicant No. 10 Smt. Sandhya submitted an application before the Trial Court regarding compromise with their husbands and others accused persons. This application was dismissed by the learned Judicial Magistrate, First Class, Kasrawad on the ground that the above mentioned offences are not compoundable. Therefore, the Court had no jurisdiction to grant permission u/s 320(2) of the Cr.P.C. for compounding the offences.

After this, on 6.4.1999, the applicant Rekha submitted an application retracting with the previous application for compromise dated 19.9.1998. In this application, she has also alleged that the signatures were obtained on the application of compromise by force without apprising her about the facts mentioned therein and in fact no compromise or settlement had arrived at between them before the community-Panchayat of the relatives. In this application, she prayed for dismissal of the application dated 19.9.1998. This application was supported by her affidavit.

According to the learned Counsel for the parties, the learned Trial Court has not passed any order on this application. In the application, the appellant has also alleged that on 1.1.1999, her husband Omprakash brought her from Indore to attend the Court at Kasrawad and left her without any reason. She asked for taking her back with him, he misbehaved and abused her and also did not allow to talk even with her Advocate. Learned Counsel for the parties submitted that on this application dated 6.4.1999, no order has been passed by the Trial Court. The applicant has filed the certified copy of this application and affidavit, along with this application. The husband of the applicant Omprakash (non-applicant No. 9) had filed a civil suit u/s 9 of the restitution of conjugal right. In that Civil Suit (No. 35/97) on 7.4.1998 they had filed joint application regarding compromise and the said application was accepted and the civil suit was closed by order dated 9.11.1998. The non-applicant Nos. 2 to 9 have also filed an affidavit of applicant Rekha dated 21.9.1998 with the petition, duly sworn before the Notary, Indore wherein she has stated that on instigation by her father and other relations, she lodged the report against the non-applicant Nos. 2 to 9. It appears that this affidavit has not been filed before any Court and now is filed by the non-applicant Nos. 2 to 9 in reply to the petition filed by the applicant.

The non-applicant Nos. 2 to 9 have filed a petition u/s 482 of the Cr. P. Code on 23.6.2003 for quashing the criminal proceedings under Sections 498A and 506 (II), Indian Penal Code before the Trial Court against them. Along with this application, they have filed the affidavit dated 29.4.2003 of non-applicant No. 10 Smt. Sandhya before the Trial Court for dropping of the proceedings. It appears that no order has been passed by the learned Trial Court in regard to this affidavit also and the criminal case was continued. The petition filed by the non-applicant Nos. 2 to 8 was heard by this Court on 30.9.2003 and in this petition, the State of M.P. and non-applicant No. 10 Smt. Sandhya were made parties and

non-applicant Nos. 1 to 9 Were represented by their respective Advocates while non-applicant No. 10 Smt. Sandhya was present in person.

Learned Counsel for the non-applicant Nos. 2 to 9 Mr. Chandrawade submitted that both the sisters viz., Rekha and Smt. Sandhya had filed an application for compounding the offences dated 19.9.1998 and non-applicant No. 10 Smt. Sandhya had also filed her affidavit on 29.9.1998 for dropping the proceedings, but the application for compounding the offence dated 19.9.1998 was dismissed by the learned Trial Court on the ground that the offences were not compoundable. They filed petition relying on the judgment passed by the Apex Court in the case of B.S. Jashi v. State of Haryana 2 (2003) DMC 524 (SC):2 (2003) CCR 57 (SC):2 (2003) S.L.T. 689, this Court has power to quash the proceedings u/s 482 of the Cr.P.C. because the Supreme Court, after considering the aims and ambit of the provisions of Section 498A of the Indian Penal Code held that in view of the affidavit filed by the wife, there was no reasonable likelihood of the accused being convicted of the offence. The wife had also resolved the dispute with her husband and other family members and started living again with her husband. The non-applicant No. 10 Smt. Sandhya has also stated before this Court regarding amicable settlement of the dispute. This Court, relying on the judgment passed by the Supreme Court in the case of B.S. Joshi and Others (supra) and the facts presented by the accused persons, their Advocate Mr. Chandrawade and non-applicant No. 10 quashed the proceedings vide order dated 30.9.2003.

Against this, the applicant Smt. Rekha wife of non-applicant No. 9 Omprakash has filed this petition for recalling the order dated 30.9.2003. According to the learned Counsel for the applicant Smt. Rekha, Mr. V.K. Gangwal, the non-applicant Nos. 2 to 10 have not submitted the true facts before this Court in their petition (Misc. Cr. Case No. 3541 /03) regarding filing of affidavit by the applicant dated 29.4.1998 whereby she has alleged against the non-applicant Nos. 2 to 9 for taking her signatures on the compromise application by force and she was and is not willing to compromise with the accused persons. It has also been contended that she was also not made a party in the Misc. Criminal Case No. 3541/03 and behind her back the order was obtained by the non-applicant Nos. 2 to 10. According to the Counsel for the applicant, the non-applicant Nos. 2 to 10 have played fraud with the Court and obtained the orders of quashing of the criminal proceedings without unfurling all the true facts as existed between the parties as well as before the Trial Court. If the applicant would have been made a party in the petition, she would have contested the matter and she would have prayed for continuation of the criminal case against the non-applicant Nos. 2 to 9 on the basis of her complaint because the complaint was lodged jointly by her and her sister Smt. Sandhya non-applicant No. 10. Learned Counsel for the applicant submitted that the moment the applicant came to know about quashing of the criminal proceedings by this Court, she applied for certified copy and immediately filed this application without any delay for recalling the order. Learned Counsel for the applicant further submitted that the impugned order has

been passed by this Court without affording any opportunity of hearing to the applicant and she was also not made a-party by the non-applicant Nos. 2 to 9. Therefore, the order is without jurisdiction and this Court has ample powers u/s 482 of the Code of Criminal Procedure to recall the same.

Learned Counsel for the applicant placed reliance on the judgment passed by the Full Bench of Rajasthan High Court in the case of Habu v. State of Rajasthan AIR 1987 Raj 83; Deepak Thanwardas Balwani v. State of Maharashtra and Anr. 1985 Cri. LJ. 23; Bhagwandas Babulal v. State of Madhya Bharat AIR 1954 MP 10; and Shyam Bihari Vs. State of Madhya Pradesh, In all these judgments, it has been held that the power of recalling is different than the power of altering or reviving the judgment and powers u/s 482 can be and should be exercised by the High Court for recalling the judgment in case the hearing is not given to the accused and the case falls within one of the three conditions laid down u/s 482 of the Code of Criminal Procedure.

To combat, the learned Counsel for the non-applicant Nos. 2 to 9 and non-applicant No. 10 have heavily placed reliance on plethora of judgments and submitted that once the order or the judgment is finally passed the Court cannot review or alter its earlier order which is prohibited by Section 362 of the Cr.P.C. Once an order pertaining to an issue attains finality, the said issue should not be reopened and now this Court is fimctus officio to take cognizance on the petition filed by the applicant by which the prayer is made for reviving the earlier order. The judgment relied upon as under:

- (1) State of Orissa Vs. Ram Chander Agarwala and Others, ,
- (2) Union Public Service Commission Vs. S. Papaiah and others,
- (3) State of Rajasthan v. Gurcharandas Chadha AIR 1979 SC 1985.
- (4) Hindustan Construction Co. Ltd and Anr. v. Gopal Krishna Sengupta and Ors. (2003) 3 SLT 219:2 (2003) CCR 84 (SC):2004 SCC (Cri) 81.
- (5) Radha Devi Vs. Shafiq alias Shafaq and Another,
- (6) Hari Singh Mann Vs. Harbhajan Singh Bajwa and Others,
- (7) State of Kerala Vs. M.M. Manikantan Nair,
- (8) Nazar Vs. Varghese,
- (9) R. Annapurna v. Rama 2004 SCC (Cri) 1135.

Having heard learned Counsel for the parties and after giving my anxious thoughts on the issue involved this Court is of the opinion that the non-applicant Nos. 2 to 9 did not disclose the fact that the applicant Rekha wife of Omprakash (non-applicant No. 2) who has lodged the complaint along with non applicant No. 10 Smt. Sandhya was not ready on the date of passing of the impugned order by this Court to compound the offence or to withdraw the complaint and filed affidavit dated 29.4.1998 before the Trial Court and the same was in the record.

The question of passing any order on that affidavit could not arise because, the application filed by the parties for grant of permission to compound the offences dated 19.9.1998 was already dismissed by the Trial Court saying that the offences are not compoundable. The non-applicant Nos. 1 to 8 have also not impleaded the applicant Smt. Rekha who is one of the complainants and material witnesses in the criminal case, as a party in the petition. Therefore, this fact is not at all disputed that the applicant was not given opportunity of being heard while deciding the petition for quashing the proceedings on the basis of the application filed by the parties on 19.9.1998, for compounding the offences. In the case of *Habu v. State of Rajasthan* (supra), the Full Bench of Rajasthan High Court, after considering the provision u/s 482 of the Cr.P.C. and Section 362 of the same Code in detail, held that the judgment given in the absence of the appellant or his Counsel on merits can be recalled by the Court in its inherent powers u/s 482, Cr.P.C. The same is the view taken by the Bombay High Court, M.P. High Court and the Madhya Bharat High Court in *Deepak Thanwardas Balwani*, *Shyam Behari* and *Ratanchand*'s cases respectively (supra).

The case of the applicant stands on better footing than the facts of the cases cited by the learned Counsel for both parties. In this case Smt. Rekha is the complainant and is an aggrieved party. She has not been made a party in an earlier petition for quashing the proceedings and the Counsel for the non-applicant Nos. 1 to 8 was knowing well that the applicant had filed application dated 6.4.1999 before the Trial Court retracting from earlier compromise and even now she is not ready to compound the offences or to withdraw the complaint. Before this Court also, the applicant was present almost on all dates of hearing and this Court has specifically asked her about the application dated 19.9.1998, filed for compounding the offences and she has stated that her signatures were obtained by force and, thereafter, when she came to know about this fact, she had filed the application making the averments that she did not file the application on 19.9.1998 and also filed affidavit before the Trial Court on 6.4.1999. She also was not made party in the earlier petition filed by non-applicant Nos. 2 to 8. This shows without any doubt that they were in know of the fact of filing of the affidavit by the applicant on 6.4.1999 and the fact that even now she is not ready to compound the offences or settle the dispute amicably otherwise when they have made party to her sister Smt. Sandhya as non-applicant No. 2 in the earlier petition, they could have also made the applicant a party because the First Information Report was jointly lodged by both the sisters. On the date of passing of the impugned order of quashing criminal proceedings by this Court on 30.9.2003, the non-applicant No. 10 Smt. Sandhya was present who is the sister of the applicant, but she has also not disclosed the abovementioned facts about the applicant Rekha. Therefore, on the basis of these facts, it is easy to discern that the order of quashing the proceedings was obtained by the non-applicant Nos. 2 to 9 by suppressing the material facts and without giving opportunity of hearing to the applicant.

Thus, the order of quashing the criminal proceedings was obtained by an abuse

of process of the Court which would really mean to be without jurisdiction. None of the cases relied upon by the non-applicant Nos, 2 to 9 is having such facts as are present in the instant case. In all the aforesaid cited cases, the law has been propounded by the Apex Court and various High Courts that once the judgment or order is passed and the said judgment and/or order attained finality, the Court has no jurisdiction to review its own order which is specifically prohibited by Section 362 of the Code of Criminal Procedure. But such is not the factual situation in the present case.

In the result, the petition filed by the applicant is allowed. The order passed by this Court on 30.9.2003 in Misc. Cr. Case No. 3541/03 is hereby recalled and the Trial Court is directed to proceed with the case in accordance with law.

Office is directed to transmit a copy of this order to the Trial Court immediately.