

(1965) 03 MAD CK 0011

In the Madras High Court

Case No : Criminal Miscellaneous Petition No. of 1965 in (S.R. No. 7916 of 1965 in Cr. R.C. No. 476 of 1964)

S. Rangaswami and Another

APPELLANT

Vs

R. Narayanan

RESPONDENT

Date of Decision : 15-03-1965

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 369, 424, 439

Citation : AIR 1966 Mad 163 : (1966) CriLJ 548 : (1965) 78 LW 478 : (1965) 2 MLJ 232

Hon'ble Judges : Kailasam, J

Bench : Single Bench

Judgement

(1) This petition is filed under S. 561-A, Cri.P.C. for reviewing the judgment of this court passed in Cri.R.C. 476 of 1964. This court in revision

confirmed the conviction and sentence imposed on the petitioners for the offences of criminal trespass. Under S. 369, Cri.P.C. no criminal court

when it has signed the judgment shall alter or review the same except to correct a clerical error. It is submitted that this section is not applicable to

the High Court especially when it is disposing of appeals or revisions. It has been repeatedly held by this court from In Re: Arumuga Padayachi

and Others, that a criminal court has no power to review its judgment 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 under S. 561-A Cri.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 Ss. 369 and 424 Cri.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 S. 369 read with S. 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 what the Code specifically prohibits the court from doing.

The learned Counsel submitted that this decision may not be applicable to the exercise of the powers of the High Court as a court of revision under

S. 561-A Cri.P.C. I am unable to accept this contention. Section 561-A Cri.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. The Supreme Court

in a recent decision in *The State of Uttar Pradesh Vs. Mohammad Naim*, cited with approval the Privy Council decisions in AIR 1945 94 (Privy

Council) and AIR 1945 18 (Privy Council) , and held that it is now well settled that the section confers no new powers on the High Court and that

it merely safeguards all the existing inherent powers possessed by the court necessary to secure the ends of justice. The same view is stated by the

Supreme Court in *Dr. Raghubir Sharan Vs. The State of Bihar*, . It is idle to contend that S. 369 Cri.P.C. is not applicable to criminal revisions for

the court exercising its powers of revision under S. 439 Cri.P.C. exercises only some of the powers conferred on a court of appeal. The powers of

revision cannot be stated to be larger than that of a court of appeal. In a recent decision of this court in *In re, Anthony Doss and Others*,

Sadasivam J. also took the view that the High Court has no inherent power to alter or review its own judgment. I am in respectful agreement with

the view expressed by the learned Judge. This petition is dismissed.

(2) Petition dismissed.