

(2009) 12 J&K CK 0035
In the Jammu And Kashmir High Court

Sheikh Mohammad Amin

APPELLANT

Vs

Mst. Rifat Farooq Reshi

RESPONDENT

Date of Decision : 07-12-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 362, 369, 482, 561A
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2010) 1 JKJ 606

Hon'ble Judges : Muzaffar Hussain Attar, J

Bench : Single Bench

Judgement

Muzaffar Hussain Attar, J.—Petition u/s 561-A Cr.P.C 44/09 was filed seeking quashment of the complaint filed by the respondents u/s

138 of Negotiable Instruments Act of 1881 (for short ""Act of 1881"").

2. The said petition came up before the Court on 29th June, 2009 and was heard and dismissed by the Court vide aforesaid judgment.

3. Perusal of the judgment dated 29th June, 2009 reveals that a complaint was sought to be quashed on the ground that the same has been filed

through attorney of the complainant and not by the complainant himself.

4. The Court dismissed the petition by relying on the judgment passed in the identical matter Cr.M.P No. 69/2009, filed u/s 561-A Cr.P.C.

5. The instant petition 561-A Cr. PC read with Section 94 of the Constitution of J & K has been filed to recall the judgment dated 29th June,

2009 passed in 561-A Cr.M.P No. 44/2009 on the ground that all the grounds pleaded in the earlier petition were not considered and decided by

the Court, so, it becomes duty of the Court to recall the Judgment and decide the case on the grounds which were pleaded in the earlier

petition.

6. Notice has not been issued in this case. This Court vide order dated 27th November, 2009 requested the learned Counsel for petitioner to

satisfy the Court about the maintainability of this petition.

7. Mr. Qureshi, learned Counsel appearing for the petitioner submitted that this petition is competent and maintainable as all the grounds pleaded in

the earlier petition have neither been considered nor any finding is returned thereon. Learned Counsel further submitted that the bar contained u/s

369 of Code of Criminal Procedure, Svt. 1989 (for short ""Act of 1989"") is not attracted in the fact situation of this case and, therefore, this petition

is competent and maintainable. Learned Counsel, in order to buttress his arguments, referred to and relied on a judgment of this Court reported in

2001 SLJ 199 J & K. Learned Counsel, thus, submitted that this Court has power to recall the judgment passed in the earlier writ petition and has

also power to rehear and decide the case afresh on the points not considered and decided.

8. The Court, while relying on the earlier Full Bench judgment reported in 1982 KLJ 55 as also the judgment of the Hon'ble Supreme Court

reported in AIR 1979 SC 1987, at paragraph 6, recorded that Section 369 of the Code precludes the High Court from altering or reviewing the

judgment passed in exercise of the appellate or revisional jurisdiction when signed by it. It is also held that Section 561-A Cr.P.C. cannot be

invoked to exercise the power which are inconsistent to specific provisions of the Code.

9. The Full Bench, however, ruled that in case judgment or order has been passed without hearing the party aggrieved, such an order, being nullity,

the same can be recalled. The Court in the said judgment further observed that when an error apparent on the face of record is shown to exist,

then in view of marked difference between the provisions of Section 362 of Code of Criminal Procedure (Central), on which the judgment of the

Hon'ble Supreme Court is based, and Section 369 of Act of 1989, the Court in exercise of its Constitutional powers can recall the judgment.

10. Learned Counsel for petitioner has placed whole hog reliance on the said judgment.

11. In order to appreciate the issues raised,, it becomes imperative to refer to

Section 369 of the Act of 1989, which is reproduced as under:

369. Court, not to alter judgment

Save as otherwise provided by this Code or by any other law for the time being in force or, in the case of the High Court, by the constitution of

High Court, no Court, when it has signed its judgment, shall alter review the same, except to correct clerical error.

12. Section 94 of the Constitution of J & K, which is almost similar to Article 215 of the Constitution of India, is reproduced has under:

High Court to be a Court of Record.- The High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself or of the courts subordinate to it.

13. Section 369 of Act of 1989 precludes the Court from altering or reviewing the judgment or order passed when signed by it, except to correct the clerical error (s).

14. On the plain language of this Section, the present petition on the face of it is not maintainable and would merit dismissal. The Hon'ble Supreme

Court in case State rep. by D.S.P., S.B.C.I.D., Chennai Vs. K.V. Rajendran and Others, has held that in view of the bar contained in Section 362 of the Central Code, petition u/s 482, (561-A of the State code) is not maintainable to seek review or re-hearing of a case already heard and decided and signed.

15. Learned Counsel, however, while referring to the judgment of this Court in Nissar Ali's case (supra) argued that in view of the Constitutional powers u/s 94, this Court is a court of record and is duty bound to correct the mistakes so as to keep the records of the Court straight.

16. It is true that in terms of Section 94 of the Constitution of J & K, this Court is a court of record and a duty is cast on this Court to maintain the correct record because the records roll into perpetuity.

17. The question which begets answer is as to which mistake or error has crept in, in the record of this Court which requires to be corrected. It was argued that the issues pleaded in the petition have not been considered and petition has been dismissed only on the one ground.

18. At the time the petition was argued, only one issue was raised and that was considered and decided. If a learned Counsel raises issues in this

petition but only takes one issue at the time of hearing of the case and seeks disposal of the case on that issue, it cannot be said that by not

considering the other issues which were pleaded in the petition, an error has been crept in the record of the Court.

19. Learned Counsel may plead many things in the petition, but may choose to argue only one or two issues. When only one issue is raised and

argued, it cannot be said, in law, that an error has been committed and record of the Court is to be corrected. The correction of the record in

terms of Section 94 of the Constitution of J & K would mean that what has already come on record requires to be corrected for some valid

reasons.

20. Nothing is shown to be corrected in what has already come on record. New issues and points are raised, which the Court in view of Section

369 Cr.P.C. is precluded from considering.

21. For the above stated reasons, this petition is held to be not maintainable and is, accordingly, dismissed along with all connected CMP(s).

Caveat No. 857/2009 stands discharged.