
(2013) 07 AHC CK 0289

In the Allahabad High Court

Case No : Criminal Miscellaneous Recall Application No. 168570 of 2013 in
Criminal Revision No. 2708 of 2010

Smt. Jyoti Belur

APPELLANT

Vs

Central Bureau of Investigation

RESPONDENT

Date of Decision : 09-07-2013

Acts Referred:

Citation : (2013) 83 ALLCC 11

Hon'ble Judges : Aditya Nath Mittal, J

Bench : Single Bench

Advocate : B.B. Suri, A.K. Awasthi, Manish Tiwari, R.K. Awasthi, Vimal Chandra Tiwari and Anoop Trivedi, for the Appellant; G.S. Hajela, A.G.A. and Nazrul Islam Jafri, for the Respondent

Judgement

Aditya Nath Mittal, J.—This application has been filed to recall the order dated 9.4.2013 passed by this Court on merits in Criminal Revision No. 2708 of 2010 "Smt. Jyoti Belur v. C.B.I. through Inspector". Learned Counsel for the applicant-revisionist has submitted that the adjournment slip was sent by learned Counsel for the applicant-revisionist and as such he was under a bona fide belief that the matter might have been adjourned. But subsequently he came to know that the criminal revision has been dismissed. It has also been submitted that this Court has the power to recall its order in which the opportunity of hearing has not been afforded to learned Counsel for the applicant-revisionist.

2. Learned Counsel appearing for opposite party has submitted that there is no provision in Code of Criminal Procedure to recall an order passed on merits.

3. Learned Counsel for the applicant-revisionist has relied upon an order dated 20.8.2010 passed by Single Judge of this Court in Criminal Revision No. 163 of 2001 "Shri Aleemuddin and another v. State of U.P. and another", in which the ground was taken that the Counsel for the applicant was not present hence could not be heard on matter in issue.

4. Learned Counsel for the applicant-revisionist has further relied upon a judgment of this Court passed by Single Judge in Criminal Revision No. 3629 of 2004 "Anil Kumar Garg and others v. State of U.P. and another", in which the ground was taken that due to mistake of clerk of the Counsel, the revision could not be marked.

5. Learned Counsel appearing for opposite party has relied upon Hari Singh Mann Vs. Harbhajan Singh Bajwa and Others, in which Hon"ble the Apex Court has held 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. The reliance of the respondent on Talab Haji Hussain's case (supra), is misconceived. Even in that case it was pointed that inherent powers conferred on High Courts u/s 561-A (Section 482 of the new Code) has to be exercised sparingly, carefully and with caution and only where such exercise is justified by the tests specifically laid down in the section itself. It is not disputed that the petition filed u/s 482 of the Code had been finally disposed of by the High Court on 7.1.1999. The new section 362 of the Code which was drafted keeping in view the recommendations of the 41st Report of the Law Commission and the Joint Select Committees appointed for the purpose, has extended the bar of review not only to the judgment but also to the final orders other than the judgment.

The impugned orders of the High Court dated 30.4.1999 and 21.7.1999 which is not referable to any statutory provisions having been passed apparently in a review petition in a criminal case is without jurisdiction and liable to be quashed. In view of what has been stated hereinabove, the appeals are allowed and the impugned order of the High Court dated 30.4.1999 and 21.7.1999 are set aside restoring its original order dated 7.1.1999.

6. Learned Counsel appearing for opposite party has further relied upon Harjeet Singh Vs. State of West Bengal, , in which the Calcutta High Court has held as under:--

We have given our anxious consideration to the issue involved while striking a balance between the procedure to be followed, protecting the interest of justice in the light of the valuable right to property and the valuable right of audience we feel that in the light of the clear dictum of the law the Court cannot review or recall its final Order, even in cases where the parties may come up before it

feeling that they have not been heard or they have left out something, which if placed before the Court, may have resulted in a different decision and that the decision arrived in their absence was an impaired finding. Once the Court lifts its pen after signature it cannot put it once again; except of the situations like for the purpose of rectifying a clerical or arithmetical error.

We hold that in view of section 362 of the said Code there is a clear bar for any Court, which includes the High Court, to either review or recall an Order or judgment passed even if it is found subsequently that it offends the principles of natural justice as this is the language of section 362 of the said Code.

7. Reliance has further been placed on State of Orissa Vs. Ram Chander Agarwala and Others, in which Hon"ble the Apex Court has held as under:--

Before concluding we will very briefly refer to cases of this Court cited by Counsel on both sides. Talab Haji Hussain Vs. Madhukar Purshottam Mondkar and Another, relates to the power of the High Court to cancel bail. The High Court took the view that u/s 561-A of the Code, it had inherent power to cancel the bail, and finding that on the material produced before the Court it would not be safe to permit the appellant to be at large cancelled the bail distinguishing the decision in 1945 Law Reports and 72 Indian Appeals (supra) and stated that the Privy Council was not called upon to consider the question about the inherent power of the High Court to cancel bail u/s 561-A. In Sankata Singh v. State of U.P., (1) this Court held that section 360 read with section 424 of the Code of Criminal Procedure specifically prohibits the altering or reviewing of its order by a Court. The accused applied before a succeeding Sessions Judge for rehearing of all appeal. The learned Judge was of the view that the Appellate Court had no power to review or restore an Appeal which has been disposed of. The Supreme Court agreed with the view that the appellate Court had no power to review or restore an appeal. This Court, expressing its opinion that the Sessions Court had no power to review or restore an appeal observed that a judgment, which does not comply with the requirements of section 369 of the Code, may be liable to be set aside by a superior Court but will not give the Appellate Court any power to set it aside himself and re-hear the appeal observing that "section 369 read with section 424 of the Code makes it clear that the Appellate Court is not to alter or review the judgment once signed, except for the purpose of correcting a clerical error. Reliance was placed on a decision of this Court in Superintendent and Remembrance of Legal Affairs W.B. v. Mohan Singh and others, (2) by Mr. Patel, learned Counsel for the respondent wherein it was held that rejection of a prior application for quashing is no bar for the High Court entertaining a subsequent application as quashing does not amount to review or revision. This decision instead of supporting the respondent clearly lays down, following Chopra's case (supra), that 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 are no provisions in the Criminal Procedure Code which would enable the High Court to review the same or to

exercise revisional jurisdiction. This Court entertained the application for quashing the proceedings on the ground that a subsequent application to quash would not amount to review or revise an order made by the Court. The decision clearly lays down that a judgment of the High Court on appeal or revision cannot be reviewed or revised except in accordance with the provisions of the Criminal Procedure Code. The provisions of section 561-A of the Code cannot be revoked for exercise of a power which is specifically prohibited by the Code.

8. Section 362 Cr.P.C. provides 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.

9. The present matter was filed in the year 2008 in which the stay order was granted. The matter was adjourned various times on the request of learned counsel for the revisionist. On 18.9.2012, the following order was passed:--

A mention has been made on behalf of the revisionist to pass over the case for today. Record shows that revision has been listed time and again but hearing is being postponed on one ground or the other. On 30.7.2012, last opportunity was given to Mr. Awasthi to file rejoinder affidavit but so far as no such affidavit has been filed.

In the interest of justice, the case is passed over for today.

List peremptorily in the next cause list.

Till the next date of listing, interim order is extended.

It is made clear that if arguments are not advanced, interim order will not be extended on the next date.

10. Again on 6.2.2013, the following order was passed:--

List has been revised. None present for the revisionist.

On 18.9.2012 it was directed that the case has been listed so many times but hearing is being postponed on one ground or the other. It was also made clear that if arguments are not advanced then interim order will not be extended on the next date.

Again the illness slip has been sent by learned Counsel for the revisionist. It appears that the interim order is being misused by the revisionist, therefore, the interim order is vacated.

List on 5.3.2013, for hearing.

11. Even after aforesaid order, the case was again passed over on the illness slip of learned Counsel for the revisionist and on 18.3.2013, the following order was

passed:--

Learned Counsel for the revisionist has again prayed to pass over this case. The case is pending since long and so many adjournments have been taken by the Counsel for the revisionist. The interim order has also been vacated on the ground that it is being misused. In the interest of justice one more opportunity is given to argue the matter.

List on 2.4.2013 peremptorily.

It is made clear that no further adjournment shall be granted on any ground whatsoever.

12. On 2.4.2013, the following order was passed:--

Case called out in the revised list.

Learned Counsel for the revisionist has sent mention slip today. The same be taken on record and be made part of the record.

List this matter in the next cause list.

As the revision pertains to years 2010 and the proceedings of the lower Court are held-up on account of pendency of this revision, it is requested that learned Counsel for the revisionist to positively argue the matter on the next date fixed.

13. Despite of the aforesaid strict orders, learned Counsel for the revisionist again had not argued the matter and had sent the adjournment slip which was rejected with the following observations:--

Learned Counsel for the revisionist has again sent adjournment slip. From the perusal of the order sheet it reveals that the case is being adjourned on repeated illness slips of Counsel for the revisionist. The interim order has also been vacated by order dated 6.2.2013. Again last opportunity was given by order dated 18.3.2013 and it was made clear that no further adjournment shall be granted on any ground whatsoever, even then the case was again adjourned on 2.4.2013. It is thus clear that the adjournment/illness slips are being misused, therefore, the adjournment slip is rejected.

14. After hearing learned A.G.A. and Counsel for the opposite party, the aforesaid criminal revision was dismissed on merits by order dated 9.4.2013.

15. As far as the provisions of section 362 Cr.P.C. are concerned, the Court including the High Court has no power to alter or review its judgment or final order disposing of a case except to correct a clerical or arithmetical error. In the present case, ample opportunities were afforded to the Counsel for the revisionist to argue the matter but the matter was adjourned on one pretext or the other. This Court was compelled to pass even strict order and had also requested learned Counsel for the applicant to argue the matter but the request of the Court was not taken seriously. I have no hesitation to mention that the illness slips/adjournment slips have been grossly misused by learned Counsel for

the revisionist and no heed has been paid to comply with the directions of this Court. It is also relevant to mention that apart from present Counsel Sri Anoop Trivedi, there were other counsels for the revisionist namely Sri B.B. Suri, Sri A.K. Awasthi, Sri Manish Tiwari, Sri R.K. Awasthi. It cannot be presumed by any stretch of imagination that none of the Counsel was available for argument, therefore, taking into consideration the background and the conduct of the revisionist, the adjournment slip was rejected. This Court while passing the final order has considered the grounds of revision and the merits of the case.

16. Hon"ble the Apex Court in Hari Singh Mann (supra), has clearly held that after signing of the judgment or the final order, disposing of a case, only the clerical or arithmetical error can be corrected and in absence of a specific statutory provisions, the Court becomes functus officio.

17. Hon"ble the Apex Court has further held that even the inherent powers conferred u/s 482 Cr.P.C. have to be exercised sparingly, carefully and with caution. The legal position is clear that an inherent power cannot be invoked for exercise of a power which is specifically prohibited by the Code. The matter has been considered by Hon"ble the Calcutta High Court in Harjeet Singh v. State of West Bengal (F.B.) (supra) and I agree with the view of Hon"ble the Calcutta High Court. With humble regards, I do not agree with the decisions in Criminal Revision No, 163 of 2001 and Criminal Revision No. 3629 of 2004 passed by Single Judges of this Court because the provisions of section 362 Cr.P.C. are not helping the present revisionist and the law declared by Hon"ble the Apex Court in Hari Singh Mann (supra) and Harjeet Singh v. State of West Bengal (supra), makes it clear that a judgment of the High Court on appeal or revision cannot be reviewed or revised except in accordance with the provisions of the Cr.P.C. In the Code of Criminal Procedure, there is no provision to recall an order passed on the merits. For the facts and circumstances mentioned above, I do not find any merits in the submission of learned Counsel for the revisionist to recall an order passed on merits. The recall application is rejected.