
(1989) 03 RAJ CK 0023

In the Rajasthan High Court

Case No : Criminal Miscellaneous Application No. 766 of 1987

Smt. Maina

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 14-03-1989

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 362, 482
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (1989) WLN 237

Hon'ble Judges : Pana Chand Jain, J;G.K. Sharma, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

P.C. Jain, J.—This petition u/s 482, Cr.P.C. has been filed by Smt. Maina with the prayer that the property which has been ordered to be confiscated to State by the order passed while disposing the D.B. Cr. Appeal No. 353/84 decided on 9-9-1986, be recalled and the articles seized by the Police may be ordered to be given to the petitioner.

2. The Police submitted a challan against Kailash Chand and others and the learned Additional Sessions Judge No. 1, Ajmer in Sessions Case No. 40/84 found both the accused-persons guilty of the offence u/s 302 and 302/34, IPC and sentenced them. An appeal was preferred by the accused persons which was registered as DB Cr. Appeal No. 353/84. This appeal has been decided by this Court on 9th September, 1986 and while accepting the appeal and acquitting the accused appellant this Court ordered that the ornaments seized in this case by the Police are confiscated to the State. The present petition has been moved u/s 482, Cr.P.C. for recalling the order of confiscation and prayed that the ornaments be handed over to the petitioner Mst. Maina.

3. The learned Public Prosecutor raised the objection that the judgment was pronounced by this Court on 9-9-1986 but the present petition has been filed on 10-10-1987, so the petition has been filed with great delay. It was also argued

that no petition u/s Cr.P.C. is maintainable in view of Section 362 of Cr.P.C. The contention of the learned Public Prosecutor is that once an order has been passed by the Court than in view of Section 362, Cr.P.C. the Court has no jurisdiction to alter or review the judgment. He has relied on the case of Smt. Suraj Devi v. Pyare Lal and Anr., 1981 Supreme Court 736.

4. The learned Counsel for the petitioner contended that Smt. Maina was the daughter of deceased and when this Court passed the judgment and ordered for confiscation of the property, Smt. Maina was not granted an opportunity to put her case about the ownership of the seized ornaments. It was also contended that the accused persons were acquitted on the ground that the Identification Parade conducted by the Magistrate was not properly conducted and so disbelieved the identification of the ornaments by Mst. Maina. It was also argued that Smt. Maina (petitioner) be granted opportunity to prove her ownership over the ornaments because these ornaments have not been claimed by the accused persons.

5. We have given our thoughtful consideration to the arguments advanced by both the learned Counsel. Section 362, Cr.P.C. reads as under:

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 arithmetic error.

6. In the case of Smt. Suraj Devi (supra), their Lordships have observed as under:

A clerical or arithmetical error is an error occasioned by an accidental slip or omission of the Court. It represents that which the court never intended to say. It is an error apparent on the face of the recorded and does not depend for its discovery on argument or disputation. An arithmetical error is a mistake a calculation, and a clerical error is a mistake in writing or typing;

Where the applicant sought that the earlier order of the High Court directing restoration of possession of the property to the respondent be clarified by a declaration that it was not binding on her and did not affect her possession, and the respondent disputed the allegations it was held that the controversy could not be brought within the description "clerical or arithmetical error." The applicant, in fact asked for an adjudication that the right to possession alleged by her, remained unaffected by the earlier order;

Further, the inherent power of the Court also cannot be invoked. The inherent power of the Court also 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. Thus, keeping in view the provisions of Section 362 Cr.P.C. and the principles laid down in the case of Smt. Suraj Devi (supra) the petition u/s 482, Cr.P.C. is not at all maintainable. The judgment was pronounced on 9-9-86 and once a judgment is signed and pronounced the Court has no power to alter or review the same. The inherent power of the Court is not contemplated by saving provision contained in Section 362 Cr.P.C.

8. Under such circumstance we see no substance in this petition, which is here by dismissed.