

(1992) 12 SHI CK 0013
In the High Court Of Himachal Pradesh
Case No : Criminal M.P. (M) No. 273 of 1992

Sona Spices Suppliers	Vs	APPELLANT
State of Himachal Pradesh		RESPONDENT

Date of Decision : 31-12-1992

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 362, 482, 561A
Prevention of Food Adulteration Act, 1954 — Section 16(1)

Citation : (1993) 1 ShimLC 362

Hon'ble Judges : Devinder Gupta, J

Bench : Single Bench

Advocate : T.R. Chandel, for the Appellant; M.L. Chauhan, Assistant A.G., for the Respondent

Final Decision : Dismissed

Judgement

Devinder Gupta, J.—This is a peculiar case of its own type in which the Petitioner has approached this Court for the third time by filing a petition u/s 482 of the Code of Criminal Procedure (hereinafter referred to as the Code), praying for exercising court's inherent jurisdiction for quashing the complaint, the charge and the other resultant proceedings in a case pending before the Court of Chief Judicial Magistrate, Mandi, for offence under the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the Act).

2. A resume of few dates and facts will highlight the circumstances under which the instant petition came to be filed by the Petitioner.

3. On 7th May, 1980, the Food Inspector, Mandi, took a sample of Agmark Haldi powder under the provisions of the Act and the rules framed thereunder for analysis from one Rajinder Mohan. According to the information supplied by the vendor and as per the description given on the packets of the food sample, manufacturer thereof was stated to be the Petitioner, which was described as "M/s. Sona Spices Suppliers, 50, Industrial Area, Chandigarh". As per the report of the Public Analyst, Punjab, dated 3rd June, 1980, the sample was found to be

adulterated one. Ash insoluble in dilute HCl was found to be 1.54% against the maximum prescribed standard of 1.50%. The same was also found to contain 0.45% of grit. The Medical Officer (Health) thereafter sent the requisite information to the manufacturer alongwith the copy of the report of the Public Analyst informing that in case it intended to get the sample analysed by the Director Central Food Laboratory, a requisite application may be filed in the Court of Chief Judicial Magistrate, Mandi, within 10 days. On 18th March, 1981, the complaint was lodged against the said vendor Rajinder Mohan and the Petitioner, the manufacturer. On 9th April, 1981. From the perusal of the documents filed alongwith the complaint, prima facie case was found against both the accused u/s 16(1)(a) of the Act. Accordingly, the accused were directed to be summoned for 27th May, 1984. On 17th May, 1982, the trial Magistrate recorded the following order:

In this case accused firm M/s. Sona Spices Suppliers 50 the Industrial Estate Chandigarh is not being served and from the report of the summons, which were issued thrice, all through the report has been coming that there is no firm of the name and style as above at 50-Industrial Area, Chandigarh. From the cash memo shown to me by the present accused it appears that the summons have been issued at the correct address of the firm. The present accused also produced another cash memo showing that the firm is now named and styled as "Sona Spices Pvt. Ltd. 136-140/50, Industrial Area, Chandigarh-160002. It appears to me that the present firm is the successor firm of Sona Spias Suppliers and thus is liable for any acts of the previous firm. Since the case is being delayed unnecessarily to the prejudice of the present accused and from the record it appears that in case ordinary summons are issued against this firm service may not be possible. Therefore bailable warrant in the sum of Rs. 2,000 against the Managing Director of the firm of M/s Sona Spices Pvt. Ltd 136-40/50 Industrial Area, Chandigarh-110002 be issued for his production in the Court on 29-6-1982. The police be directed to get the warrant executed by adopting special measures as the case has been unnecessarily delayed.

4. On 7th August, 1982, the name of G.L. Jindal on behalf of M/s. Sona Spices Private Ltd., was nominated, which is at page 23 of the trial Court's record. Copy of the resolution passed by the Board of Directors of the Company was also attached thereto which is at page 24 of the file.

5. On 12th October, 1982, notice of accusation was given to the said Girdhari Lal Jindal, being the nominee of M/s Sona Spices Private Limited, Chandigarh the trial of the case proceeded thereafter. Evidence of the complainant was concluded. Statements of accused u/s 313 of the Code of Criminal Procedure were recorded on 29th December, 1984. Accused alsoed evidence in defence, which was concluded on 29th April, 1986. Arguments were heard on 3rd June, 1986. On 13th June, 1986, the Court recorded the following order:

Final judgment in the case is not being announced since perusal of the evidence led by Girdhari Lal nominee of firm namely Sona Spices Private Limited reveals

that he has been wrongly arrayed as accused. It appears that not Sona Spices Private Limited but it is Sona Home Products which is the successor firm of accused No. 2 namely M/s. Sona Spices Supplier.

Facts germane to the passing of this order are that Shri I.D. Verma the then Food Inspector Mandi lifted a sample of "AG" Mark Haldi powder from the shop of accused No. 1 Rajinder Mohan on 7-5-1980. The retailer disclosed to the Food Inspector the name of firm which had supplied the commodity. The firm was "Sona Spices Supplier" and in proof of this he also produced a cash memo dated 4-3-1980. For quite sometime the accused firm could not be served. Then accused No. 1 Rajinder Mohan produced another cash memo on 17-5-1982 showing that the said firm had changed its name and style and was now called "Sona Spices Private Limited." The process was issued at the latest address in response to which Girdhari Lal appeared as a nominee of the firm, But he contended that not Sona Spices Private Limited but it was "Sona Home Products" which was the successor firm of M/s Sona Spices Supplier. In support of his contention Girdhari Lal examined one Surinder Singh Bedi as DW-1, a clerk from the office of the Excise and Taxation, Union Territory, Chandigarh and produced documents Ex. DA to D.H. It is apparent from documents Ex. DB, Ex. DC, DD and DE that the original accused firm, Sona Spices Suppliers changed its name and style with effect from 5-10-1983 and was now called as "Sona Home Products". Girdhari Lal who is the nominee of a different firm is thus not concerned with the perpetration of the crime and he is acquitted.

It is a common experience that the big shots, manufacturing the commodities hoodwink the Courts by changing the name and style of their firms on learning that a case has been filed against them. The instant is also one of the similar cases where Sh. J.L. Jindal who was a proprietor of Sona Spices Supplier, changed the name of his firm as Sona Home Products and screened himself for quite sometime from the process of this Court. I am aware that the Courts cannot assume the role of investigators and become inquisitive in launching manhunt against those screening themselves from the clutches of law, but where the identity of the accused is established beyond a reasonable suspicion I am afraid if he can be left off in a light hearted manner. After all why should a manufacturer, whose product has been found adulterated, be allowed to escape his liability. From the material placed on record I am satisfied that J.L. Jindal who was the proprietor of M/s. Sona Spices Supplier changed the name and style of his firm which is now called as Sona Home Products, and I array him as accused. Let he be summoned through non-bailable warrant for 2-7-1986. As the case is very old service be effected through special messenger.

6. The aforementioned order gives an impression, of the manner in which the second accused, namely, the manufacturer wanted to get avoided its prosecution or delayed the proceedings.

7. At one stage the firm was known as "M/s. Sona Spices Suppliers" but later on Girdhari Lal Jindal was nominated by M/s. Sona Spices Private Limited. During

the course of evidence documents were produced showing that M/s. Sona Spices Suppliers had changed its name and style with effect from 5th October, 1983 and was called as "Sona Home Products". Girdhari Lal Jindal was found to be the nominee of a different firm. Accordingly, the Court in pursuance of the order dated 13th June, 1986 directed Shri J.L. Jindal; the brother of Girdhari Lal Jindal and proprietor of "M/s. Sona Spices Suppliers", who had ultimately changed the name of his firm to "Sona Home Products" to be summoned to face the trial. The service was directed to be effected through non-bailable warrants for 2nd July, 1986.

8. On 1st September, 1986, Cr. M.P. (M) No. 429 of 1986 was instituted in this Court by Shri J.L. Jindal through Shri R.S. Cheema and Umesh Wadhwa, Advocates, seeking to quash the complaint as well as the order dated 13th June, 1986, passed by Judicial Magistrate First Class, Mandi. This petition was supported with an affidavit of Shri J.L. Jindal. The petition was admitted on 17th September, 1986. The record of the trial Court was also summoned. The petition was ultimately heard and disposed of on merits on 30th December, 1988.

9. Certain observations, which the learned Judge made, while disposing of the petition, deserves notice and are as under:

Before parting with this revision petition, however, it would not be improper to take note of the fact how the manufacturing company/firm of this "Haldi" powder, namely M/s. Sona Spices Suppliers had been hoodwinking the courts of law if not defrauding them. Apparently this "Haldi" powder in question was supplied to Rajinder Mohan by M/s Sona Spices Suppliers, 50-Industrial Estate, Chandigarh. Then in response to the processes of the trial Court, Sh G.L. Jindal appeared as a nominee of this firm/Co. continued being tried as a co-accused on behalf of the firm/Co. as its nominee till the end of the proceedings and during the course of the trial, as is apparent from the record, he has been playing the usual delaying tactics in not attending the Court on various hearings on one pretext or the other. As already stated, the complaint was filed on March 18, 1981. This Girdhari Lal Jindal put in a document showing himself as the nominee of the firm some time in 1981 and thereafter he even suffered the framing of the charge against him as nominee of accused firm/Co. and ultimately disclosed that he was not the nominee of the firm/Co. which had actually supplied this "Haldi" powder in question to said Rajinder Mohan on December 29, 1984, when he was being examined u/s 313 of the Code of Criminal Procedure. It can be safely presumed that the revisionist J.L. Jindal and this Girdhari Lal Jindal belong to the same family and the latter intentionally kept quiet during the entire trial and even delayed the trial by absenting himself on flimsy excuses although he knew that the camouflage that these Jindals have created by resorting to strategem and subterfuge of creating, dissolving and recreating different firms/Companies of almost the same nomenclature with slight differences was likely to put the court on the wrong track and he obviously succeeded in his evil design. It is also clear that after it came to the knowledge of the Court that M/s. Sona Home

Products was the successor of M/s. Sona Spices Suppliers which nomenclature was changed in May 1983 issued processes against it, the revisionist and his henchman evaded the service of the processes of the trial Court for quite some time and when he found that the hands of that Court were closing upon him, he rushed to this Court and by getting the revision petition admitted, succeeded in getting the trial hanged again in midair by obtaining a stay order from this Court and for the last two years the proceedings of the case have again regained in suspended animation and thus obviously even after a period of eight long years the revisionist has not seen the inside of the trial Court at Mandi. To say the least, it is a gross abuse of the process of Court.

10. The Court, after having dismissed the petition, which had been Pled u/s 482 of the Code of Criminal Procedure gave the following directions for expeditious disposal of the case:

This Court, therefore, while rejecting the revision petition orders as follows:

1. The case is remanded to the Court of the Chief Judicial Magistrate, at Mandi for retrial in accordance with law.
2. Since, as already observed, this case has been hanging fire for such an inordinately long time, it is directed that the learned Chief Judicial Magistrate will try the case now on top priority basis by fixing it for day-to-day hearing.
3. The revisionist J.L. Jindal shall attend each and every hearing in this case in person and for that purpose the learned Chief Judicial Magistrate shall obtain adequate and satisfactorily security from him by way of personal bond and surety bond(s) and in case he absents himself from any of the hearing for insufficient grounds, to be inquired into and determined by the Court carefully in case of such lapse, the learned Chief Judicial Magistrate shall send the revisionist to the judicial custody and keep him there till the trial of the case is concluded.

The parties are directed to attend the Court of the Chief Judicial Magistrate, at Mandi on January 30, 1989, which date has been given after consulting the learned Counsel for the revisionist.

11. The record reveals that after the file was received in the trial Court, it was taken up on 30th January, 1989. The order which the trial Court passed is also worth noticing:

Case filed has been received by remand from the Hon"ble High Court alongwith copy of order dated 30-12-1988, directing the parties to appear in this Court today, on the revision having been filed by accused J.L. Jindal, with the direction to try the case on top priority basis by fixing it for day to day hearing and in case accused J.L. Jindal fails to appear in the Court from any of the hearing for insufficient ground, to send him to judicial custody till trial of the case is concluded; in the meantime a copy of the order dated 20-1-1989 has been received from the Hon"ble High Court staying the proceedings in the meanwhile.

It be registered. Adjourned for further proceedings on 3-3-1989. Matter be also brought to the notice of Hon"ble High Court in the light of order dated 30-12-1988 for day to day hearing of the trial of the case on priority basis by this Court but now proceedings having been stayed by subsequent interim order dated 20-1-1989.

12. The petition which was filed by J.L. Jindal in this Court, namely, Cr. M.P. (M) No. 429 of 1986 was disposed of in the presence of his" Counsel. It is presumed that J.L. Jindal was well aware of the decision and of the observations made by this Court in its judgment dated 30th December, 1989, as quoted above. The circumstances that the accused wanted to avoid facing the trial are evident.

13. Before putting an appearance in the trial Court and within 20 days of the dismissal of earlier petition another Cr. M.P. (M) No. 41 of 1989 alongwith an application for stay was filed in this Court. This petition and the application for stay instituted on 19-1-1989 were now titled as M/s. Sona Spices Suppliers, Chandigarh and were supported on the affidavit of Jawahar Lal (J.L. Jindal). On 20th January, 1989, the learned single Judge, on the basis of the averments made in the petition, passed an interim order staying the proceedings before the trial Court. An important fact, which deserves notice at this stage is the total--absence of any averments, in any part of the said petition, of the fact of the Petitioner or J.L. Jindal having approached this Court earlier or about the result of the said proceedings. This time the petition was got instituted by the Petitioner through M/s. D.S. Sawhney, G.S. Sawhney and C.B. Barowalia, Advocates. When the petition ultimately came up for hearing on 31st October, 1991, none appeared on behalf of the Petitioner. Arguments addressed at the Bar on behalf of the Counsel representing the State were partly heard. The case was again taken up on 4th December, 1991 when Shri Naresh Sood appeared vice-Counsel for the Petitioner and stated that one of the Petitioner"s Counsel, namely, Shri Barowalia was out of station in connection with his own marriage and prayed for an adjournment, which was allowed. The case was directed to be listed for further hearing on 23rd December, 1991. On the said day again no body appeared for the Petitioner. Arguments were heard and the judgment was reserved. The judgment was pronounced on 3rd January, 1992. The petition was dismissed after noticing the judgment of the Supreme Court in State of Punjab Vs. Devinder Kumar and Others, and making the following Observations:

As noticed above, the proceedings are still at initial stages except in case of Cr. M.P. (M) No. 44 of 1989 in which an additional accused had been ordered to be impleaded therein and proceedings will have to take place afresh. In all cases it cannot be said there is no legal evidence at all in support of the prosecution. The prosecution still has to lead its evidence. It will neither be expedient nor possible to record any findings on the points raised by the Petitioners without there being any evidence on record. The same can be adjudicated only after evidence has been led. The Supreme Court in Devinder Kumar"s case (supra) also noticed these circumstances as follows:

Before concluding we should observe that the High Court committed a serious error in these cases in quashing the criminal proceedings in different Magistrates' Courts at a premature stage in exercise of its extraordinary jurisdiction u/s 482. Code of Criminal Procedure. These are not cases where it can be said that there is no legal evidence at all in support of the prosecution. The prosecution has still to lead its evidence. It is neither expedient nor possible to arrive at a conclusion at this stage on the guilt or innocence of the accused on the material before the Court. While there is no doubt that the onus of proving the case is on the prosecution, it is equally clear that the prosecution should have sufficient opportunity to adduce all available evidence.

In view of the ratio of Devinder Kumar's case. I do not feel inclined to interfere in the proceedings which are pending before the trial Courts.

14. The fact of the Petitioner having approached this Court earlier with a similar and same petition and having not apprised this Court of the said proceedings was also noticed in the judgment in the following words:

While deprecating the act of Petitioners in Cr. M.P. No. 44 of 1989 and Cr. M.P. (M) No. 490 of 1990, in not having disclosed the fact of filing petitions earlier in this Court arising out of the same proceedings as also their results, the petitions are hereby dismissed. Liberty, however, is reserved to the Petitioners to raise all the contentions which were raised in these petitions, before the trial Courts.

15. The trial Court was directed to strictly comply with the earlier directions made by this Court on 8th December, 1988 while disposing of Cr. M.P. (M) No. 429/86.

16. The trial Court on the receipt of the record again took up the matter on 8th January, 1992 and directed the accused to be summoned again through bailable warrants for 31st January, 1992. The accused J.L. Jindal could not be served for the said date. Again fresh warrants were directed to be issued for 5th March, 1992 for which date also J.L. Jindal was not served. On 5th March, 1992, the court, in view of the observations made by this Court, directed non-bailable warrants to be issued for 23rd April, 1992. The record of the trial Court reveals that the non-bailable warrant could not be served and the same appears to have been avoided by J.L. Jindal. There is a report of the Manager of Sona Spices (Pvt.) Ltd. dated 21st April, 1992 that J.L. Jindal was out of Chandigarh in connection with his business tour towards Delhi and other big cities. This also on the face of it appears to have been a manipulation on the part of the Petitioner, which is evident from the fact that on 10th April, 1992, the instant petition, which is dated 9th April, 1992 was instituted in this Court alongwith an application for stay, both of which are duly supported by the affidavits of Jawahar Lal Jindal. It is pertinent to mention here that in para 20 of the petition, the following averments have been made:

No application on the similar grounds has been filed earlier in any Court of law.

17. These words are incorporated in ink whereas the rest of the petition is entirely typed one. It was stated at the Bar that these words were incorporated by Ms. Anjali Mahajan, Advocate, at the time of filing the petition. Her initials are there on this addition but there is no signatures or initials of the Petitioner or of the other two Advocates.

18. The petition came up before this Court for admission on the same date and the learned single Judge of this Court on the same day, namely, 10th April, 1992, on the basis of the averments made in the petition admitted the same for hearing and directed stay of further proceedings before the trial Court. Incidentally, it may be noticed that this petition was again filed by the Petitioner through M/s. D.S. Sawhney, G.S. Sawhney, Advocates of Chandigarh, who earlier represented the Petitioner in Cr. M.P. (M) No. 44 of 1989. Ms. Anjali Mahajan was also engaged by the Petitioner as a local Counsel.

19. On 3rd August, 1992, when the case came up for final hearing, on perusal of record. It was found that on earlier two occasions the Petitioner had filed similar petitions seeking to quash the same orders. It will be necessary to reproduce the order passed by this Court on 3rd August, 1992, which is as under:

It has been pointed out to Mr. Sawhney from the record of the trial Court, which has been summoned in the present petition, that Cr. M.P. (M) No. 44 of 1989 filed by the Petitioner on similar grounds was dismissed by this Court on 13th January, 1992, and on an earlier occasion also Cr. M.P. (M) No. 419/86, filed on almost similar grounds was dismissed, with directions for expeditious disposal of the case pending in the trial Court.

Without disclosing the fact that the Petitioner had, on two earlier occasions filed petitions on similar grounds and that they were dismissed by this Court, the present petition has been filed. Mr. Sawhney has been asked to state as to why this petition be not dismissed solely on this ground, He prays and is allowed time till 28th August, 1992, on which date the case will be listed before this Court for further orders

Mr. Jawahar Lal Jindal son of Shri S.S. Jindal of M/s. Sona Spices Suppliers, 15, Industrial Area, Chandigarh, who has sworn an affidavit in support of the present petition as also Mr. G.L. Jindal son of Shri S.S. Jindal, Kothi No. 22, Sector 8-A, Chandigarh, Director of Sona Spices Private Limited, a person nominated by the Company shall attend the hearing on 28th August, 1992 at 10 a.m.

The record of Cr. M.P. (M) No. 429/86 and Cr. M.P. (M) No. 44/89 should be sent into court on the next date of hearing.

20. In the aforementioned background it has been urged by Mr. Chauhan appearing for the State that in view of the dismissal of the two earlier petitions, the present petition is neither competent, nor maintainable and filing of the instant petition is nothing but gross abuse of the process of law.

21. Mr. Chandel who now appears for the Petitioner, has urged that there is no

bar for filing successive petitions for quashing the proceedings u/s 482 of the Code. The decisions in the earlier petitions will not operate as res-judicata and even if the earlier petitions had been dismissed, in the absence of any prohibition in the Code, it will be admissible for an accused to approach this Court for quashing of the proceedings. Mr. Chandel in support of his submissions placed reliance upon judgment in Superintendent and Remembrancer of Legal Affairs, West Bengal Vs. Mohan Singh and Others, as also two other judgments of Andhra Pradesh High Court and Delhi High Court viz., Rakesh Palta and Anr. v. State of A.P. through the Food Inspector, Municipal Corporation of Hyderabad 1983 (11) FAC 241 and Dr. A.M. Berry v. Ravi Arora and Ors. 1991 (2) CLR 656, respectively.

22. As has been noticed above, the first petition presented in this Court was dismissed on 30th December, 1983. It was not a dismissal in limine but dismissal of the petition on merits after having heard the learned Counsel for the Petitioner and recording a finding that there was no merit in any of the point urged before it. It is not in dispute that all points which are now raised in the petition were, in fact, raised in the first petition, except the objection of want of sanction to prosecute, which objection otherwise was available earlier and ought to have been taken. The reason as to why while instituting the first petition this objection was not taken is not forthcoming. After rejecting all the contentions raised by Petitioner, the court had also taken note of the Petitioner's conduct by observing that "Petitioner and his henchmen, in order to avoid the prosecution evaded the process of the trial Court for quite some time and when he found that the hands of the Court were closing upon him, he rushed to this Court and by getting the revision petition admitted and succeeding in getting the trial hanged again in mid air by obtaining stay order from this Court and in this process, proceedings were further delayed for two years". It was also noticed by this Court that even after a period of eight long years, after the complaint had been lodged, the Petitioner had not seen the inside of the trial Court at Mandi and observed that approaching this Court for quashing of the proceedings in these circumstances was nothing but gross abuse of the process of the Court.

23. In view of the findings recorded in the first petition, which findings had been arrived at after perusal of the record of the proceedings before the Magistrate, in my opinion, it will not be open for this Court again to reappraise the same, unless there is any change in the circumstances.

24. The second petition was also dismissed on merits after noticing and applying the ratio of the judgment of the Supreme Court in Devinder Kumar's case (i supra). This time also there was no change in the circumstances. On both the occasions, after dismissal of the petitions by this Court, before even caring to appear before the trial Magistrate, the Petitioner again knocked the door of this Court, without disclosing the result of the earlier proceedings.

25. In Mohan Singh's case (supra), the apex Court considered provisions of Section 561-A of the Code of Criminal Procedure, 1898 (corresponding to Section

482 of the Code) and held that the said provision preserved the inherent power of the High Court to make such orders as it deems fit to prevent abuse of the process of the Court, in order to secure the ends of justice. The Court further held that the High Court must exercise its inherent powers, having regard to the situation prevailing at the particular point of time when its inherent jurisdiction is sought to be involved. These observations the apex Court made after noticing the facts and circumstances of the case before it, in which, at the time of instituting the subsequent application there was a material change of circumstances. Moreover, the facts and circumstances were different from what they were at the time of earlier application. The Andhra Pradesh High Court and Punjab and Haryana High Court, following the ratio in Mohan Singh's case (supra) held the second petition to be maintainable.

26. In the instant case, there is absolutely no change in the facts and circumstances while existed when the first petition was filed. As a matter of fact, what the Petitioner expects, this Court to do is to review its earlier orders. Not only the decision which was taken on the first petition preferred by the Petitioner but also the decision in the second petition, which was disposed of on 3rd January, 1992. Any decision now taken on merits of the petition would be nothing but would amount to a review of the earlier decisions, which is expressly prohibited u/s 362 of the Code.

27. The Supreme Court in Smt. Sooraj Devi Vs. Pyare Lal and Another, has clearly laid down that the inherent powers of the court cannot be exercised for doing that which is specifically prohibited by the Code. The legal proposition thus is clear that what cannot be done on account of the bar under some provisions of the Code, inherent powers cannot be invoked for doing the same. Inherent powers of the Court cannot be invoked for quashing of the complaint, the charge and other proceedings when similar petition filed earlier had been dismissed on merits, since it will amount to a review of the earlier decision, which is prohibited by express provision contained in the Code, namely, Section 362.

28. Considering similar submissions, as made by the learned Counsel for the Petitioner, as also the two aforementioned judgments, namely, Mohan Singh's and Sooraj Devi's case (supra) the Supreme Court in *Mosst. Simrikhia v. Smt. Dolley Mukherjee alias Smt. Chabbi Mukherjee* and Anr. AIR 1990 SC 1605 has held that the inherent powers of the court are as much controlled by principle and precedent as are its express powers by statute. If a matter is covered by an express letter of law the Court cannot give a go by to the statutory provisions and instead evolve a new provision in the garb of inherent jurisdiction. The learned Judges further observed that in Mohan Singh's case (supra) the question as to the scope and ambit of the inherent power of the High Court vis-a-vis an earlier order made by it was, in the facts and circumstances of that peculiar case not concluded by that decision. Approving the ratio in Sooraj Devi's case (supra), the High Court's order passed on an application moved u/s 482 of the Code was quashed and set aside holding that the same amounted to reviewing

the earlier order on re-consideration of the same material.

29. In view of the explicit pronouncement on the subject by the apex Court in *Mosst. Sirnrikhia's* case (supra), the two judgments relied upon by the learned Counsel for the Petitioner of Andhra Pradesh and Delhi High Court are of no consequence. In *Mohan Singh's* case there had been substantial change in the circumstances, as they were when earlier petition was filed. The ratio of that judgment also cannot be applied to the facts of this case.

30. As has been already noticed, above, the Petitioner challenged the proceedings by filing a petition in this Court on 1st September, 1986, which was dismissed on 30th December, 1988. Within twenty days, a "fresh petition was filed seeking to quash the same proceedings, which was dismissed on 3rd January, 1992. Before any further development, the third petition was instituted on 10th April, 1992. There is no manner of doubt that the Petitioner in this manner wants to have the matter reviewed. Knowingly and deliberately, the Petitioner failed to disclose the fact of the result of the earlier two proceedings and got the proceedings stalled. The delay in the proceedings and conclusion of the case before the trial Magistrate is wholly attributable to the Petitioner's conduct and he cannot be permitted to take undue advantage of the same by urging that the proceedings due to the inordinate delay deserves to be quashed. Without recording any findings as to whether such an act on the part of the Petitioner amounts to an interference with the due course of judicial proceedings; or on the part of his Counsel, namely, S/Shri D.S. Sawhney and G.S. Sawhney, who being well aware of the decisions in the earlier two petitions, failed to disclose in this petition the fact of the Petitioner having preferred the earlier two petitions, rather, on the other hand clearly stating in the petition that no such proceedings were infact taken out, whether such a conduct would fall within the definition of "misconduct" within the ambit of the Advocates Act, 1961, I have no hesitation in holding that the act of filing the instant petition is nothing but grossest abuse of the process of law. Reference may be made to Clause (1) of Chapter 1-A(b) of Vol. V of the High Court Rules and Orders which require a statement that no such petition was filed earlier. If filed then its result. Following the ratio in *Simrikhia's* case (supra) the instant petition is neither competent nor maintainable. For this reason alone, the petition is liable to be dismissed and consequently the same is dismissed.

31. The record of the case be sent down to the trial Court forthwith. The Petitioner is directed to appear before the Chief Judicial Magistrate, Mandi on 23rd January, 1993 and will continue appearing on all hearings. The trial Court is directed to strictly observe the directions which were given in the order dated 30th December, 1988 in Cr. M.P. (M) No. 429 of 1986.

32. A copy of this judgment alongwith copy of judgment in Cr. M.P. (M) No. 511 of 1992 under the seal of the court and the signature of the Registrar of the Court be forwarded to the Secretary, Bar Council, Punjab and Haryana and Secretary, Bar Council of India, New Delhi, for information and such an action as

may be deemed fit and proper.