

Mvs Ram Vs. the State of A.P., Rep by Its Public Pro

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Court : Andhra Pradesh

Decided On : Feb-24-2014

Judge : V.Suri Appa Rao

Appellant : Mvs Ram

Respondent : The State of A.P., Rep by Its Public Pro

Judgement :

THE HON'BLE Sr.JUSTICE V.SURI APPA RAO CRL.MP NO.12112 OF 2013 AND BATCH242-2014 MVS RAMUpetitioner a.1 The State of A.P., rep by its Public Prosecutor and others...Respondents Counsel for the Petitioner: Sr.Gode Satish Counsel for Respondents: Sr.D.V.Seetharamamurthy, Senior Counsel and Public Prosecutor.

: : ?.Cases referred: 1 2008(8) SCC4342 2008(4) SCC823 (2012)10 SCC3034 (2012).SCC3985 (2011) 14 SCC7706 (2008) 8 SCC6737 (2001) 1 SCC1698 2011 (14) SCC813THE HON'BLE Sr.JUSTICE V.

SURI APPA RAO Crl MP No.12112 of 2013 in Crl P No.11331 of 2013 Crl MP No.11094 of 2013 in Crl P No.11333 of 2013 Crl MP No.11936 of 2013 in Crl P No.11334 of 2013 Crl MP SR No.42506 of 2013 in Crl P No.11335 of 2013 Crl MP No.11857 of 2013 in Crl P No.11336 of 2013 Common Order: These applications are filed under the provisions of Section 482 Cr.P.C.requesting the Court to post the matter under the caption ".for being mentioned".

in view of the orders passed by this Court dated 7.10.2013 in the above criminal petitions and to restore the above cases to its file.

This Court by its orders dated 7.10.2013 disposed of the above criminal petitions filed by the fiRs.respondent-accused directing the investing agency to complete the investigation without arresting the accused, petitioner in the above criminal petitions (A.1) (for short ".the accused".) and to file final report before the concerned Court with a direction to the accused to cooperate with the investigating agency and appear before the investigating officer as and when required.

For the purpose of convenience the brief facts, in CrI.

MP No.12112 of 2013 are adverted to.

On the basis of the complaint lodged by the petitioner herein-Ch.N.V.S.Reddy, Station House Officer, Banjaha Hills P.S., Hyderabad registered a case in Crime No.263/2013 against the accused for the offence punishable under Section 420, 406 read with 34 IPC.

The accused filed Criminal Petition No.11331 of 2013 under Section 482 of Cr.P.C.seeking to quash the proceedings against him.

This Court by its order dated 7.10.2013 disposed of the Criminal Petition directing the investigating authority to complete the investigation without arresting the accused, petitioner therein, A.1 and to file its final report before the concerned court and that the accused was further directed to cooperate with the investigating authority as when required.

Aggrieved by the aforesaid orders passed by this Court, the de facto complainant has filed the above petitions on the premise that this Court passed orders without notice to him.

Learned counsel for the de facto complainant, 2nd respondent in the above criminal petition No.11331 of 2013, (herein after referred to as ".defacto complainant".) submitted that the accused has obtained orders in the above criminal petitions by playing fraud and without giving any notice to the de facto

complainant.

He further submitted that the order dated 7.10.2013 passed by this Court, indicates that the accused represented that prior to lodging of the complaint and regarding the same transaction, various cases have been instituted by the same complainant at different places.

But the allegations/complaints made by the de facto complainant against the accused are on different offences and the same are distinct.

Thus, by suppressing the facts the orders dated 7.10.2013 were obtained by the accused as if all the complaints are with regard to the same transaction.

Therefore, the same are liable to be recalled on the ground that no notice was effected on the defacto complainant- 2nd respondent before passing the said orders. It is also stated that out of five complaints the allegation made in the four complaints are different and distinct and another complaint is given by the Manager of the Canara Bank.

Learned counsel also submits that in all the cases lodged against the accused huge amount are involved and that the de facto complainant was not given an opportunity to oppose the applications filed by the accused.

It is also contended by the learned counsel that the proceedings were initiated against the accused on the basis of the complaint given by the de facto complainant and one Bank Manager, and in those circumstances, the petitioner herein ought to have been heard before passing any orders and that the accused have suppressed the material facts and also suppressed the fact of non-service of notice on the de facto complainant.

The accused is absconding from the date of registration of FIR and not cooperating with the investigating authority in spite of orders of this Court.

Therefore, it is submitted, the orders are liable to be recalled and the matter be restored to its original file for hearing.

In support of his contentions, the learned counsel relied on the decisions reported in MOSIRUDDIN MUNSHI v MOHD.

SIRAJ AND OTHERS and R. RAJESHWARI v H.N. JAGADISH.

In MOSIRUDDIN MUNSHI 's case (1 supra) it was held that: "...We have heard the learned counsel for the parties and gone through the record.

The broad facts stated above have not been denied.

It, therefore, stands uncontroverted that the proceedings against the respondent-accused had been quashed without notice to the appellant, who was the original complainant.

We are, therefore, of the opinion that the order of the learned Single Judge impugned before us must be set aside and we order accordingly.

We also remit the case to the High Court for a fresh decision in accordance with law.

The appeal is accordingly allowed."

In R. RAJESHWARI's case (2 supra) it was held that: "

The High Court, while disposing of the criminal revision filed by the respondents herein, passed a judgment merely modifying the order passed by the learned trial court, while directing the accused to pay a further sum of Rs.30,000/-.

Apart from the sum of Rs.75,000/- deposited by him, he was directed to pay a fine of Rs.5,000/- to the State.

The order of conviction was not set aside.

A judgment of conviction and sentence, therefore, was passed against the respondent.

Such a judgment of conviction and sentence could not have been modified by the High Court in view of the express bar contained in Section 362 of the Criminal

Procedure Code which reads thus : ".Section 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."

In view of the aforementioned specific bar created in regard to exercise of the jurisdiction of the High Court to review its own order, we are of the opinion that ordinarily exercise of jurisdiction under Section 482 of the Code of Criminal Procedure would be unwarranted."..Per contra, Sr.D.V.Seetharama Murthy, learned Senior Counsel appearing for the accused submits that once this Court delivers the judgment it becomes functus officio and it cannot reconsider its own judgment in view of the provisions of Section 362 of Cr.P.C.which puts complete embargo on the criminal Court to reconsider any case after delivery of the judgment.

He further submitted that application filed by the accused under the provisions of Section 482 Cr.P.C.to quash the proceedings by the investing agency were not considered by this Court and this Court while declining to go into the disputed questions of fact only directed the investing authority to complete the investigation without arrest of the accused, petitioner therein.

Therefore, learned senior counsel submits, there are no grounds to reconsider or modify the orders passed by this Court.

In support of his contentions, the learned counsel relied on the judgments in GIAN SINGH v STATE OF PUNJAB AND ANOTHER³, SUNIL KUMAR v STATE OF HARYANA⁴, STATE OF PUNJAB v DAVINDER PAL SINGH BHULLAR AND OTHERS⁵, STATE REPRESENTED BY DSP, SB CID, CHENNAI v K.V.RAJENDRAN AND OTHERS..

In GIAN SINGH's case (4 supra) it was held by the Supreme Court that: ".Section 482 Cr.P.C, as its very language suggests, saves the inherent power of the High Court which it has by virtue of it being a superior court to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

It begins with the words, 'nothing in this Code' which means that the provision is an overriding provision.

These words leave no manner of doubt that none of the provisions of Cr PC limits or restricts the inherent power.

The guideline for exercise of such power is provided in Section 482 Cr.P.C itself i.e.to prevent abuse of the process of any court or otherwise to secure the ends of justice.

As has been repeatedly stated that Section 482 confers no new powers on the High Court; it merely safeguards existing inherent powers possessed by the High Court necessary to prevent abuse of the process of any court or to secure the ends of justice.

It is equally well settled that the power is not to be resorted to if there is specific provision in Cr.P.C.for the redress of the grievance of an aggrieved party.

It should be exercised very sparingly and it should not be exercised as against the express bar of law engrafted in any other provision of Cr PC.

In different situations, the inherent power may be exercised in different ways to achieve its ultimate objective.

Formation of opinion by the High Court before it exercises inherent power under Section 482 Cr PC on either of the twin objectives, (i) to prevent abuse of the process of any court, or (ii) to secure the ends of justice, is a sine qua non.

In K.V.RAJENDRAN's case (6 supra).the Supreme Court held that: ".The High Court, in the exercise of power under Section 482 Cr PC fell in error in reopening an issue which was refused earlier in the finally decided and disposed of Section 482 Cr PC petition.

Section 362 Cr PC cannot apply in the facts and circumstances of the present case.

There was no clerical or arithmetical error in the order.

Section 362 Cr PC expressly provides that no court which has signed its judgment and final order disposing of a case, shall alter or review the same except to correct clerical or arithmetical error save as otherwise provided by the court."

The learned Public Prosecutor also submits that once an order is passed by this Court it become functus officio and this Court has no jurisdiction to recall it once the matter is disposed of on merits.

In support of his contention he placed reliance on the decision reported in HARI SINGH MANN v HARBHAJAN SINGH BAJWA AND OTHERS, wherein the Supreme Court held that: "

There is no provision in the Code of Criminal Procedure authorising the High Court to review its judgment passed either in exercise of its appellate or revisional or original criminal jurisdiction.

Such a power cannot be exercised with the aid or under the cloak of Section 482 of the Code.

Section 362 Cr PC has extended the bar of review not only to the judgment but also to the final orders other than the judgment.

Section 362 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 an arithmetical error.

".

However, the learned Public Prosecutor fairly admitted that in the instant cases, the de facto complainant was not served with any notice and the orders dated 07.10.2013 were passed without notice to the de facto complainant.

In VISHNU AGARWAL V STATE OF U.P.⁸, case was shown in computer list and not in the main list of the accused.

Counsel for the revisionist therein did not appear as he had not noted the case.

The appellant in that case pleaded that once a matter is finally disposed of by a Court the said court in 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.

Considering those circumstances, the Supreme Court held that Section 362 cannot be considered in a rigid and over technical manner, to defeat the ends of justice; Applications filed by the respondents therein for recall of the order and not for review.

In a recall petition the court does not go into the merits but simply recalls an order which was passed without giving an opportunity of hearing.

The de facto complainant lodged 4 complaints against the accused and others and another complaint was lodged by the Manager of Canara Bank.

In the applications filed by the accused to quash the proceedings under Section 482 Cr.P.C.the de facto complainant was shown as respondent and no notice was served to the de facto complainant and he was not given an opportunity of hearing at the time of passing of the above said ordeRs.In those circumstances, the learned counsel for the accused and the learned Public Prosecutor ought to have brought to the notice of this Court that the de facto complainant was not served with the notice at the time of passing of orders dated 7.10.2013 itself.

It is contended by the counsel for the de facto complainant that, in fact, offence alleged against the accused and others are distinct and different and contrary to

the same it was stated that prior to lodging of complaint and regarding the same transaction various cases have been instituted by the same complainant at different places, and on the basis of the said representations, this Court passed the orders directing the investigating authority to proceed with the investigation without arresting the accused, thereby the de facto complainant was not given opportunity to put forth his case as no notice was served and thereby prejudiced is caused to him.

Admittedly, the de facto complainant in the instant case was not served with any notice before passing of orders by this Court.

He therefore, filed the petitions under the caption of 'for being mentioned' and to restore the criminal petitions to its file for its disposal after hearing him.

In the circumstances, at this stage I am not inclined to go into the merits of the cases.

At the time of hearing this Court directed the learned Public Prosecutor to file an affidavit of the investigating authority to ascertain as to whether the accused, who was granted relief by this Court vide orders dated 7.10.2013 is cooperating with the investigating authority as was directed by this Court.

The investigating authority has filed an affidavit stating that after obtaining the orders from this Court the accused did not turn up to the police station, though this Court directed the accused to cooperate with the investigating authority.

Having regard to the above facts and circumstances of the case and the fact that the petitioner/de facto complainant was not given opportunity to put forth his case, I am of the considered view that provisions of Section 362 Cr.P.C do not constitute total embargo on this Court to reconsider the application filed by the accused, by affording opportunity to the de facto complainant.

Therefore, this Court can exercise its powers of judicial review under Article 227 of the Constitution of India and the provisions of Section 482 Cr.P.C.in criminal matters to prevent the abuse of process of law by any party.

Following the judgment in VISHNU AGARWAL'S case(supra).I am of the view that the orders dated 07.10.2013 passed without giving an opportunity of hearing to the de facto complainant can be recalled.

In the circumstances, the orders dated 07.10.2013 are recalled and Criminal Petitions be restored to its file for hearing after giving opportunity to both parties and the Public Prosecutor.

The petitions are accordingly ordered.

Office is directed to post the matters along with CRL P Nos.11845 of 2013, Crl P No.11846 of 2013 and Crl.P.No.13089 of 2013 before the concerned Court for hearing after obtaining necessary orders from the Hon'ble the Chief Justice.

JUSTICE V.

SURI APPA RAO Dt: 24-2-2014

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