

Md. Abdul Hai Vs. State of Assam

Md. Abdul Hai Vs. State of Assam

SooperKanoon Citation : sooperkanoon.com/131999

Court : Guwahati

Decided On : Jul-05-1985

Judge : K. Lahiri, A.C.J. and K.N. Saikia, J.

Appellant : Md. Abdul Hai

Respondent : State of Assam

Judgement :

K. Lahiri, A.C.J.

1. This is an application purported to be under Article 226/227 of the Constitution for issue of a Writ of Mandamus and/or certiorari and/or any other order or direction of like nature for quashing the judgment and order dt. 12-3-85 passed by the Hon'ble Mr. Justice T. C. Das in Criminal Revision No. 187 of 1984 as void.'

2. Shortly put, the facts leading up to the present application are that the petitioner was tried and convicted by the Judicial Magistrate, North Lakhimpur, under Sections 354 and 456, I.P.C. in G. R. Case No. 1069/82. The petitioner preferred an appeal against the conviction and sentence to the Court of Sessions Judge, Lakhimpur. But the appeal was dismissed with modification of the sentence from R. I, for one year to R. I. to six months under Section 456 of the I.P.C. Thereafter, the petitioner preferred Criminal Revision No. 187 of 1984 in this Court, which was posted for hearing on 12-3-85. Admittedly, none appeared for the parties. Learned single Judge heard and disposed of the Criminal Revision on merits.

3. The petitioner questions the validity of the said judgment and order in this writ application. Mr. J. Singh, learned Counsel for the petitioner submits that the impugned ex parte order was rendered in breach of Articles 21 and 39A of the Constitution. Learned Counsel further submits that the impugned order was rendered in breach of the principles of natural justice. However, learned Counsel concedes that the impugned judgment and order has been rendered after considering the merits of the case.

4. The first question that comes up before us is whether the impugned order is reviewable by learned single Judge. Mr. J. Singh, learned Counsel fairly concedes that the order is not reviewable by learned single Judge. Is there any provision for appeal or revision or review to this High Court against the order of learned single Judge rendered in Criminal Revision? There is no provision for any appeal, revision or review before the larger Bench against the order passed by the learned single Judge. This is an admitted position which is not disputed by Mr. J. Singh, learned Counsel for the petitioner. Under these circumstances, we are constrained to hold that there is no provision for review, revision or appeal against such ex parte orders.

5. What is the nature of the right of a party to a Criminal Revision? Has he any right to be heard personally or by Advocate? We extract the provisions of Section 403, Cr. P.C., 1973:

403. Option of Court to hear parties --Save as otherwise expressly provided by this Code, no party has any right to be heard either personally or by the pleader before any Court exercising its powers of revision : but the Court may, if it thinks fit, when exercising such powers, hear any party either personally or by pleader.

It is optional for the Court to hear the parties personally or by Advocates. Indeed, the Court may allow, if it thinks fit while exercising such power to hear any party either personally or by lawyer. The right of hearing has been expressly taken away and an option has been given to the Court to hear any party either personally or by Advocates. However, we do not express any opinion as to when and where a party should get the right of hearing : But in a Criminal Appeal the appellant has a statutory right of hearing which has been expressly taken away in respect of the parties to a Criminal Revision.

6. In the instant case, there is no dispute that the Criminal Revision has been disposed by a final order. Their Lordships of the Supreme Court had occasion to discuss such a matter in *State of Orissa v. Ram Chander* : 1979CriLJ33 , where it has been held 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 is no provision in the Code which would enable the High Court to review the same. Their Lordships further held that the provisions of Section 561-A cannot be invoked for exercise of a power which is specifically prohibited by the Code. In an earlier decision of the Supreme Court, which is an unreported judgment, (*Aswini Kumar Haldar v. State of Assam Criminal Appeal No. 53 of 1960*, decided on 31-10-1962, their Lordships held that judgment and order once rendered in a criminal case and signed by the Court cannot be reviewed or otherwise altered or amended except to correct a clerical error.

7. We cull from the decisions just alluded that the law prohibits review of a judgment, or a final order of the High Court once it is signed except correcting a clerical or arithhematical error. As such, we find that the provisions of the Cr. P.C. expressly prohibit the High Court to alter, review or revise a judgment or order once it is delivered and signed. Their Lordships have laid down that we cannot take to such recourse. The imperative declaration in Article 141 of the Constitution of India is that the law declared by the Supreme Court 'shall be binding on all courts within the territory of India'. When there was a device, their Lordships painfully observed, in *Fuzlunbi v. Khadir Ali* : 1980CriLJ1249 :

We need hardly say that these devices are not permissible by the High Court when the decision of the Supreme Court are cited before them not merely because of the jurisprudence of precedent but because of the imperatives of Article 141.

(Emphasis added)

Their Lordships further observed :.. no Judge in India, except a larger Bench of the Supreme Court without departure from judicial discipline can whittle down, wish away or be unbound by the ratio thereof.

8. We cannot review, revise or alter a judgment or a final order once it is delivered and signed, is the law laid down by the Supreme Court. Should we entertain the petition by a back-door or by an ingenuous method to whittle down the law laid down by the Supreme Court? We are bound by the law laid down by the Supreme Court. We are of the firm opinion that we cannot entertain this application in exercise of our powers under Article 226/227 of the Constitution, as it could amount to breach of Article 141 of the Constitution.

9. The above being the position in law, we hold that we have no jurisdiction to entertain this application under Article 226/227 of the Constitution and, accordingly, it is dismissed in limine.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com