

Madiah Vs. State of Mysore

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Court : Karnataka

Decided On : Sep-25-1962

Reported in : AIR1963Mys191; 1963CriLJ23; (1963)1MysLJ318

Judge : T.K. Tukol, J.

Acts : Mysore High Court Act, 1961 - Sections 9 and 10; [Code of Criminal Procedure \(CrPC\), 1898](#) - Sections 369 and 561A

Appeal No. : Criminal Petn. No. 356 of 1962 (in Cr. R.P. 337 of 1962 for restoration)

Appellant : Madiah

Respondent : State of Mysore

Advocate for Pet/Ap. : G.B. Srinivasa Rau, Adv.

Judgement :

ORDER

T.K. Tukol, J.

1. This is a petition for setting aside the order of dismissal of Criminal Revision Petition No. 337 of 1962, passed by this Court on 4-9-62. When that petition had been fixed for hearing on the aforesaid date, the Advocate for the petitioner was absent and he had not complied With the objections raised by the office with

regard to the deficit court-fee. The application was accordingly rejected on the ground that the Advocate was absent and that there was no compliance with the objections.

2. In the present petition, the learned Government Pleader has raised an objection that this Court has no power to review the former order of dismissal and that under the rules framed by this High Court, the matter should go before a Division Bench. In support of this contention, he has placed reliance on the provisions of Sections 9 and 10 of the Mysore High Court Act, 1961 (Mysore Act No. 5 of 1962), and contended that in view of the fact that Clause (v) of Section 10 expressly reserves 'all other matters not expressly provided for in this Act, or any other law for the time being in force' to a Bench of two Judges, this Court constituted of a single Judge, would not have the power to set aside the order of dismissal. In my opinion, the plain meaning of the clause referred to is that if there is any other law for the time being in force which empowers a single Judge to pass an order, then clause (v) of Section 10 would not be an impediment. It must be conceded that Section 9 which deals with the powers of a single Judge does not make any express provision on this subject. Rule 5 of the Rules framed by the High Court in 1959 and saved by the subsequent amendments lays down that every petition or application for review or reconsideration or correction of judgment, decree, order or sentence, shall be posted before the original Bench which pronounced, made or passed such judgment decree or sentence. It, therefore, follows from this rule, that a single Judge who passed the order of dismissal is competent to re-consider that order or review that order and pass a suitable order in the matter. The words 'any other law for the time being in force' occurring in Clause (v) of Section 10, would necessarily cover the statutory rules framed by the High Court which have the same force as the provisions of an enactment. Judged in this light, I have no doubt in holding that this Court is competent to review or re-consider the order of dismissal passed by it.

3. The High Court Rule is silent about the scope of this power of review or reconsideration. In this connection reference may be made to Sections 369 and 561-A of the Code of Criminal Procedure which throw light on the point at issue. Section 369 reads thus:

'Save as otherwise provided by this Code or by any other law for the time being in force or, in the case of a High Court by the Letters Patent or other instrument constituting such High Court,' no Court, when it has signed its judgment, shall alter or review the same, except to correct a clerical error.'

This Section lays down that subject to the other provisions contained in the Code, every judgment or order passed on merits by the High Court is final and shall not be altered or reviewed except for the purpose of correcting clerical errors. The High Court Act and the Rules framed thereunder do not enlarge the power of reviews. So far as Section 561-A is concerned, it lays down:

'Nothing in this Code shall be deemed to limit or affect the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice'.

This Section came up for consideration before the Supreme Court in *T.H. Hussain v. M. P. Mondkar*, : 1958 CriLJ701 where the legality of an order cancelling bail by a Bench of the High Court in exercise of the power under this Section was challenged. Their Lordships held under Section 561-A, the High Court had inherent power to cancel the bail granted to a person accused of a bailable offence, in the interests of justice to arrest the threat to the continuance of a fair trial. They observed:

'The inherent power conferred on High Courts under Section 561-A 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.'

His Lordship Gajendragadkar, J. who delivered the judgment of the Court laid down:

'This inherent power cannot naturally be invoked in respect of any matter covered by the specific provisions of the Code. It cannot also be invoked if its exercise would be inconsistent with any of the specific provisions of the Code. It is only if the matter in question is not covered by any specific provisions of the Code that

Section 561-A can come into operation, subject further to the requirement that the exercise of such power must serve either of the three purposes mentioned in the said section'. The three purposes enumerated in the section are:

(1) Where the High Court is satisfied that an order is necessary to give effect to any order passed under the Code;

(2) or to prevent abuse of the process of any Court;

(3) or to secure the ends of justice.'

A Full Bench of the Allahabad High Court in *Raj Narain v. State*, : AIR1959 All315 (FB) had to consider 'whether the High Court has power to revoke, review, recall or alter its earlier decision in a Criminal Revision and rehear the same? If so, in what circumstances?' The answer of the Full Bench to the question was that the High Court has power to revoke review, recall or alter its own earlier decision in a Criminal Revision and re-hear the same only under one or the other of the three conditions mentioned in Section 561-A of the Code. The two decisions of the Lahore High Court cited for the petitioner reiterate the same legal position. In *Raju v. Emperor*, AIR 1928 Lah 462, their Lordships discussed both Sections 368 and 561-A and observed that there has never been an inherent power in the High Court to alter or review its own judgment, once it has been pronounced or signed, except in cases where it was passed without jurisdiction or in default of appearance. This view was affirmed by the High Court in *Edward Few v. Emperor*, AIR 1939 Lah 244. The Supreme Court in *R. P. Kapur v. State of Punjab*, : 1960 CriLJ1239 concluded that the inherent power of High Court under Section 561-A, Cri. P. C., cannot be exercised in regard to matters specifically covered by the other provisions of the Code.

4. The legal position that emerges from the aforesaid discussion is that subject to the provisions contained in the Code of Criminal Procedure and the Act constituting the High Court, a judgment delivered or an order passed on merits is final after it is duly signed by the Court. The inherent power of a High Court cannot be exercised in matters specifically covered by the provisions of the Code. Where the Code is silent about the power of the High Court in respect of any matter

arising before it, it can pass suitable orders in exercise of its inherent powers to give effect to any order passed under the Code, or to prevent the abuse of the process of any Court or to secure the ends of justice. This power can also be exercised to re-consider orders of dismissal of an appeal or application passed without jurisdiction or in default of appearance, where re-consideration is necessary to secure the ends of justice.

5. In the instant case, the order was passed for default of appearance of the Advocate and for his failure to pay the deficit Court-fee. The ends of justice will be met if the matter is heard on merits.

6. For these reasons, I allow the petition, set aside the order of dismissal passed by this Court on 4-9-1962 and restore the Criminal Revision Petition No. 337 of 1962 to file.

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