

Kenchha Vs. State of Karnataka

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Court : Karnataka

Decided On : Jun-21-1985

Reported in : ILR1985KAR2819

Judge : Venkatesh, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 362

Appeal No. : Crl. Appeal No. 399 of 1982

Appellant : Kencha

Respondent : State of Karnataka

Disposition : Application dismissed

Judgement :

ORDER

Venkatesh, J.

1. I. A. II is an application filed by the appellant in this case to recall the Judgment dated 22-2-1985 pronounced by the Court dismissing the appeal for reasons stated therein. The Judgment is signed. In I. A. II which is under Section 482 Cr. P.C. the request is, as already stated, to recall that Judgment and to hear him.

2. In support of the application the appellant had filed an affidavit stating that he had engaged a counsel at the first instance, but had withdrawn the brief from him in order to engage some other Advocate; that in the mean while he had been laid up with serious illness and that in the meanwhile the appeal had been disposed of after hearing the Public Prosecutor, but not hearing him or his counsel and therefore the Judgment be recalled and he be heard afresh.

3. Section 362 Cr. P.C. says that except as otherwise provided in the 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 the case shall alter or review the said Judgment or order except to correct a clerical or arithmetical error. The present Section 362 corresponds to old Section 369 except for a slight change and one such change brought about in the new Section is that apart from a Judgment, a final order disposing of a case is also brought within the scope of Section 362. In that way the scope of the Section is widened. Examining the scope of the old Section 369, the Supreme Court observes in *State of Orissa -v.- Ramchander Agarwala*, 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....'. The request in I. A. II is to recall the order already pronounced.

4. Placing reliance on *Raj Kapoor & Others -v.- State (Delhi Administration)* the Learned Counsel or the applicant in I. A. II submitted that exercising its inherent powers under Section 482 Cr. P.C. the Court may, in the circumstances of the case and in view of the fact that his client had not been heard, may recall that order. The ratio in *Raj Kapoor's* case will not govern this case. What the Supreme Court observes in that case is that the High Court can in an appropriate case revise an order of a Court subordinate to it. AIR 1979 SC 842. : 1980 CriLJ202 exercising its inherent powers under Section 482, even if its revisional power under Section 397 overlaps. It is one thing to say that exercising its inherent powers this Court can interfere with a finding, an order or a sentence of the Court subordinate to it. But it is entirely a different matter to urge that that power is available to this Court to review or recall its own Judgment or final order without

there being a specific provision in the Code itself for doing so. The inherent powers of the Court cannot be used to circumvent a specific mandate of the Code itself. The present Section 482 corresponds to old Section 561A and dealing with the question of the Court's inherent powers the Supreme Court in Ramchander Agarwal's case itself says that 'the provisions of Section 561A cannot be invoked for exercise of a power which is specifically prohibited by the Code.'

5. For reasons stated above, there is no merit in this I.A. Therefore, the same is hereby dismissed.

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