

Sadhu Singh Vs. State

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Court : Allahabad

Decided On : Apr-24-1961

Reported in : AIR1962All193

Judge : D.P. Uniyal and ;T. Ramabhadran, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 369, 430 and 561A; Supreme Court Rules - Order 21, Rules 3, 4 and 9; [Constitution of India](#) - Articles 136 and 137; Code of Civil Procedure (CPC) - Sections 151 - Order 47, Rule 1

Appeal No. : Criminal Misc. Case Nos. 334 and 573 of 1961

Appellant : Sadhu Singh

Respondent : State

Advocate for Def. : B.D. Gupta, Govt. Adv., and ;B.N. Katju, Asstt. Govt. Adv.

Advocate for Pet/Ap. : T. Rathore, ;G.N. Verma, ;Devendra Bahri and ;S.R. Dwivedi, Advs.

Disposition : Applications dismissed

Judgement :

Uniyal, J.

1. The applicants were tried for the offence of murder by the Sessions Judge, Naini Tal, and were convicted under Section 302 I. P. C. by an order dated 10-4-60. Sadhu Singh was sentenced to death while the remaining applicants were sentenced to imprisonment for life. Their appeal was dismissed by the High Court on 12-7-60 which confirmed the death sentence passed on Sadhu Singh, The applicants then applied for leave to appeal to the Supreme Court but the same was dismissed by the High Court on 11-8-60. Thereafter they moved the Supreme Court by means of a petition for special leave to appeal but it was also rejected by an order dated 13-10-60.

2. The applicants have now applied to this Court under Section 561-A Cr. P. C. for review of the appellate order of the High Court dated 12-7-60 on the allegation that the site plan prepared by the investigating officer and relied upon at the trial was a forged document and that perjured evidence had been produced by the prosecution in support of its case. This Court is, therefore, asked to summon fresh evidence and to re-examine the case in, the light of new facts brought to its notice.

3. A preliminary objection has been raised by the learned Assistant Government Advocate that the applications for review filed by the applicants are not maintainable. It is contended that the dismissal by the Supreme Court of their objection for special leave to appeal amounts to a final order and the High Court is functus officio and has no jurisdiction to question or disturb the said order in any way.

4. In reply the learned counsel for the applicants contended that the order of the Supreme Court refusing to grant special leave to appeal was not a final order as the judgment of the High Court could not be said to have merged in the order passed by the Supreme Court. He argued that the High Court's power of review under Section 561-A Cr. P. C, was not affected by the order of the Supreme Court dismissing petition for special leave to appeal.

5. The first point that falls to be dealt with is whether the rejection by the Supreme Court of the applicants' petition for special leave to appeal amounts to a final order and, as such, operates as a bar to the maintainability of the review applications filed by the convicted persons,

6. Under Article 130 of the Constitution the Supreme Court has a discretion to grant special leave to appeal from any judgment, sentence or order passed by the High Court. In exercise of its rule-making power under Article 145 the Supreme Court has framed rules which are called the Supreme Court Rules, 1950. Rule 3 of Order XXI of the Supreme Court Rules says that a petition for special leave to appeal in criminal proceedings shall state succinctly and clearly all such facts as may be necessary to state in order to enable the court to determine whether special leave to appeal ought to be granted. Rule 4 provides that the petition shall be accompanied by a certified copy of the judgment or order sought to be appealed from and the affidavit prescribed therefore. Rule 9 states that on the granting of the petition the petition for special leave to appeal shall be treated as a petition of appeal and shall be registered and numbered as such.

7. The Supreme Court Rules indicate that the granting of a petition for special leave to appeal would amount to the admission of the appeal itself. It would follow that the dismissal of such a petition, would likewise be regarded as the dismissal of the appeal. In other words, the order of dismissal would have the effect of affirming the judgment or order passed by the High Court. It is thus evident that so long as that order (of dismissal) stands the High Court would be functus officio and it could not review or alter its judgment in purported exercise Of its inherent power.

8. The matter may be looked at from another point of view. Supposing that the High Court possessed an inherent power of review, then it may either revoke its judgment Or confirm it. In either event, the aggrieved party would have, we imagine, a right to move the Supreme Court again by means of a petition for special leave to appeal from this order of the High Court, The question then arises whether the order of the Supreme Court dismissing the petition of the convicted persons for special leave to appeal would stand in the way of a fresh petition for special leave to appeal to the Supreme Court.

We think that if it is held that the order made by the Supreme Court under Article 136 is a final order, then a second petition for special leave to appeal in the same case would not lie to the Supreme Court. This would be so because there is no provision in the Constitution empowering the Supreme Court to permit the parties

to a case to file a second petition for special leave to appeal in the same matter. The logical conclusion that flows from the above discussion is that once the Supreme Court has dismissed a petition for special leave to appeal in a criminal case the High Court ceases to have jurisdiction over that matter and has no power to entertain a review application which would have the effect of disturbing the order made by the Supreme Court.

9. This becomes apparent from the fact that under Article 137, the Supreme Court has been invested with an express power to review any judgment pronounced 'or made by it, while no such power has been conferred on the High Court under Section 561-A, Cri. P. C. The power of review which is possessed by the Supreme Court is wide and unfettered. Order XLV, Rule 5, of the Supreme Court Rules provides that 'nothing in these Rules shall be deemed to limit or otherwise affect the inherent powers of the court to make such orders as may be necessary for the ends of justice, or to prevent abuse of the process of the court.' There is thus a remedy available to the applicants to approach the Supreme Court under Article 137 of the Constitution to review its order dismissing their petition for special leave to appeal so as to have the matter re-opened in the ends of justice.

10. We are clearly of the opinion that in the circumstances of the case the High Court has no jurisdiction to entertain these applications.

11. Learned counsel for the applicants vehemently contended that the High Court possessed inherent jurisdiction to review its judgment and to re-open the case by directing fresh evidence to be adduced. Since the matter was argued at great length we consider it necessary to make a few observations on -this question.

12. Section 561-A, Cri. P. C. does not confer any new power in the High Court. It merely preserves the inherent powers possessed by it and does not enlarge them. It was held by the Privy Council in *Emperor v. Nazir Ahmad* that:

'this section gives no new power; it only provided that those which the court already inherently possesses shall be preserved and is inserted, as their Lordships think, lest it should be considered that the only powers possessed by the court are those expressly conferred by the Criminal Procedure Code and that no inherent

power had survived the passing of that Act.'

13. To the same effect are the observations of the Supreme Court in *Talab Haji Hussain v. Madhukar Purshottam* : 1958 CriLJ701 . It was observed at page 378 that:

'It is only if the matter in question is not covered by any specific provision 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.' '

14. It would thus appear that the inherent power of the High Court under Section 561-A cannot be invoked where another remedy is available, and further that the powers so exercised cannot be made to over-ride express provisions of law.

15. Section 561-A does not invest the High Court with the power to review its judgment which has been arrived at after hearing the parties and in accordance with law. Section 561-A, Cri. P. C. saves the inherent powers of the High Court in criminal matters just in the same way as Section 151, C. P. C. saves the inherent powers of the High Court in civil matters.

16. A comparison between the provisions of Section 561-A Cri. P. C. and those of Section 151, C. P. C. will bring out the scope and content or the inherent powers possessed by the High Court in respect of its criminal and civil jurisdiction respectively. Section 561-A, Cri. P. C. runs thus :

'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.'

Section 151, C. P. C. is in these terms :

'Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.'

17. The two sections are almost in identical terms and have the same purpose in view. The Legislature incorporated Section 561-A in the Cri. P. C. in 1923. It was aware that a similar provision existed in the C. P. C. in regard to the inherent powers of the High Court in Civil matters and must, therefore, be deemed to have clearly understood, the scope and ambit of the inherent powers which could be exercised by the High Court under Section 561-A, Cri. P. C. The Legislature has expressly provided for review of judgment in the C. P. C. but no such provision finds place in the Cri. P. C. This clearly goes to show that the inherent powers which were preserved to the High Court under Section 561-A, Cri. P. C. did not include power to review its judgment on grounds analogous to Order XLVII, Rule 1, C. P. C. We have, therefore, no doubt in our minds that the High Court does not possess an inherent power to review its judgment on the ground of discovery of new matter or evidence.

18. It was next contended that Section 369, Cri. P. C. did not in terms apply to the appellate judgments of the High Court and, therefore, the High Court could in appropriate cases alter or review its judgment. It is true that Section 369 has no application to the judgment or order rendered by the High Court as an appellate court. The finality of judgments or orders passed in appeal by the High Court is the subject of Section 430, Cri. P. C., which provides that judgments and orders passed by an appellate court upon appeal shall be final, except in the cases provided for in Section 417 and Ch. XXXII, that is to say, except in the case of an appeal by the State Government against an order of acquittal, or in the case in which the court exercises its powers of reference or revision.

19. We are here concerned with the review of an appellate order of the High Court and, therefore, Section 430, Cri. P. C. will apply in full force. It has already been pointed out that there is no provision in the Cri. P. C. empowering the High Court to review its appellate judgment or order. Section 561-A cannot, therefore, override an express provision of the Code by inventing a new category of inherent jurisdiction. In our view Section 561-A cannot be invoked so as to make justice illusory, for if the High Court were allowed to upset its final judgment or order that would spell the end of justice. It would mean that no finality was to be attached to an appellate order of the High Court, with the result that it would be open to a party

to assail it as and when it suited him. It would be shocking if no sanctity were to be attached to the appellate judgments of the High Court which have been reached after full consideration of the merits of the case. It is a proposition to which no court of law can subscribe.

20. Strong reliance was placed by the learned counsel on the Full Bench case of *Raj Narain v. State* : AIR1959 All315 . Certain observations made by Dayal, J. in that case were cited before us and it was contended that the High Court had power in appropriate cases to review its appellate judgment. We may point out at the very outset that the observations made in *Raj Narain's* case : AIR1959 All315 have no bearing in the present case because there the question before their Lordships was whether the High Court had power to review its earlier decision in a criminal revision and to re-hear the same. It is sufficient to point out that under Section 430, Cri. P. C. an exception has been made with respect to orders made in references and revisions by the High Court, and it is stated therein that no finality is to be attached to such orders. It was on this footing that the Full Bench in *Raj Narain's* case came to the conclusion that in exercise of its revisional jurisdiction it had the power to review its earlier order under Section 561-A, Cri. P. C. The observations in that case have, therefore, to be read in the context of the facts of that case.

21. It was clearly pointed out by Dayal, J. that Section 561-A did not confer an inherent power in the High Court to review orders made in appeals. Dayal, J., while reviewing cases dealing with inherent jurisdiction of the High Court under Section 561-A, observed at page 322:

'In these cases the order of the High Court sought to be reviewed had been passed on merits and they were sought to be reviewed on the ground that the conclusion arrived at by the court earlier was wrong. Such a re-hearing of the appeal or revision is hardly a matter for the exercise of inherent jurisdiction of the court in the interests of justice. It is well-nigh impossible to satisfy an unsuccessful party that an order of the court is a correct one. The interests of justice, therefore, require that such applications for review be not entertained.'

22. It was held that where a matter has been fully heard and the decision has been arrived at on merits, no application for review shall be entertained even in the case of a revision or reference.

22a. The question as to the power of the High Court to review its appellate judgment under Section 561-A, Cri. P. C. came for consideration before the Supreme Court in U. J. S. Chopra v. State of Bombay : 1955 CriLJ1410 . At p. 648 of the judgment it was stated that:

"Even while exercising its revisional powers under Section 439 the High Court exercises any of the powers conferred on a court of appeal by Sections 423 426 427 and 428 and it is in effect an exercise of the appellate jurisdiction, though exercised in the manner indicated therein. This principle of finality of criminal judgments, therefore, would equally apply when the High Court is exercising its revisional jurisdiction. Once such a judgment has been pronounced by the High Court, either in exercise of its appellate or its revisional jurisdiction, no review or revision can be entertained against that judgment, and there is no provision in the Cri. P. C. which would enable even the High Court to review the same or to exercise revisional jurisdiction over the same.'

23. Again, referring to the question of the finality of the appellate judgment of the High Court, their Lordships stated at page 654 thus :

"Once, therefore, the judgment of the High Court replaces that of the lower court there is no question which can ever arise of the exercise by the High Court of its revisional powers under Section 439(1) of the Cri. P. C. and the proper procedure, therefore, if the High Court thought it fit either suo motu Or on the application of the interested party, to issue notice of enhancement of sentence, is to issue the said notice before the hearing of the appeal is concluded and the judgment of the High Court in appeal is pronounced,'

24. The above observations leave no room for doubt that once the High Court has pronounced its judgment according to law, the judgment of the trial court merges in that of the High Court and it becomes final and irrevocable. The High Court would not then be entitled to review its judgment in purported exercise of its

inherent jurisdiction,

25. It was argued that the observations made by the Supreme Court in Chopra's case : 1955 CriLJ1410 were obiter dicta and are not binding on us. We think there is no force in this contention. In the first place, we do not regard the observations to be obiter dicta because we think that for the decision of the question which arose for consideration by their Lordships it was necessary for them to decide whether an order made by the High Court in exercise of its appellate jurisdiction was a proper order. It was urged before the Supreme Court that the High Court had inherent jurisdiction under Sec, 561-A, Cri. P. C. to re-hear the matter on merits. In this context it was necessary to decide whether the High Court could reopen the case after it had disposed of the appeal and pronounced its judgment. In any case the observations of (heir Lordships of the Supreme Court would amount to a declaration of law by the Supreme Court within the meaning oft Article 141 of the Constitution and as such it would be binding on all courts in India.

26. The Andhra Pradesh High Court in Venkatarayudu v. State, AIR 1957 Andh Pra 943 has held that the principle of finality attaching to the appellate judgments of the High Court constitutes a bar to the purported exercise by the High Court of its inherent power to review its judgment. We are in respectful agreement with that view.

27. The learned counsel has not been able to cite a single case before us in which the High Court has exercised its inherent power to review its appellate judgment by admitting fresh evidence and allowing the accused to introduce fresh material in the case. One may no doubt conceive of cases where the High Court may exercise its inherent jurisdiction to make consequential amendments in its order, for example to correct a clerical mistake in its judgment; to re-hear an appeal where it has been disposed of without affording an opportunity to the appellant or his counsel to be heard; where there has been no hearing in accordance with law or where upon the face of it the judgment docs not clearly express the intention of the court. Instances like these stand on an entirely different footing because in such cases the court is not exercising its power of review. There the inherent power of the court is being exercised to further the ends of justice and the court is

not called upon to reassess the evidence or to introduce fresh material on the record for the purpose of deciding the matter.

28. We, therefore, hold that these applications are not maintainable and they are accordingly dismissed.

29. The order passed by this Court staying execution of the sentence of death of Sadhu Singh applicant is vacated.

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