

Bibekananda Das Vs. State

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Court : Orissa

Decided On : Sep-27-1996

Reported in : 1996(II)OLR587

Judge : R.K. Dash, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 362 and 369;
Probation of Offenders Act

Appeal No. : Criminal Misc. Case No. 824 of 1995

Appellant : Bibekananda Das

Respondent : State

Advocate for Def. : Additional Standing Counsel

Advocate for Pet/Ap. : M. Kanungo, S. Kanungo, L. Kanungo and S. Das

Judgement :

R.K. Dash, J.

1. The core question for consideration in this petition filed under Section 482, Cr PC is whether this Court has power to review its own judgment. To appreciate the law involved it is necessary to make a brief reference to the facts giving rise to the present case.

2. The petitioner along with others stood convicted for the offence under Rule 21 of the Orissa Timber and Other Forest Produce Transit Rules, 1980 and sentenced to suffer rigorous imprisonment for three months by the Judicial Magistrate. First Class, Karanjia. Being aggrieved, they carried appeal to the learned Sessions Judge, Mayurbhanj, Baripada which ultimately ended in dismissal. Thereafter they approached this Court in Criminal Revision No. 170 of 1992 which came to be heard by S.K. Mohanty, J. who upon hearing the parties and on perusal of the evidence available on record, concurred with the ultimate conclusion and findings recorded by both the Courts below and dismissed the revision. By filing the present petition under Section 482, Cr PC the petitioner has urged that it was obligatory of the Court to apply Section 4 of the Probation of Offenders Act to the facts and circumstances of the case and give benefit thereof and release him on probation and that having not been done, for the interest of justice the Court in exercise of its inherent power should review that part of the judgment confirming the sentence and release him under Section 4 of the aforesaid Act.

3. Opposing the said prayer it was urged on behalf of the State that once the Court delivered judgment it becomes functus officio and therefore, cannot review its judgment in view of the bar created by Section 362 of the Code of Criminal Procedure, 1973 (for short, 'the Code').

4. In view of the submissions made at the Bar, at the outset it is desirable to refer to Section 362 of the Code which reads as under :

'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.'

The aforesaid provision corresponds to Section 369 of the Code of Criminal Procedure, 1898 (for short, 'old Code') which provided as follows :

'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.'

A bare reading of the said provision off the old Code clearly indicates that once a Court has signed the judgment, it cannot alter or review the same except to correct a clerical error. In so far as the High Court is concerned, it, however, provides that such prohibition will be subject to the Letters Patent or other instrument constituting such High Court. The section is, therefore, intended to apply to all Courts, the provision being 'no Court when it has signed its judgment shall alter or review the same'. The operation of the said prohibition is saved if there is specific provision in the old Code itself or in any other law. By the amended provision of the Code, the law has been simplified inasmuch as the prohibition contained in Section 362 of the Code which has been made applicable to all Courts, says that no Court save as otherwise provided by the Code or by any other law for the time being in force, shall alter or review the judgment or final order after it has signed the same, except to correct a clerical or arithmetical error. An analytical study of the statutory provision of both the Codes (old Code of 1898 and new Code of 1973) leaves no room for doubt that a Court after having signed a judgment or final order is denuded of power to alter or review the same, except to correct a clerical or arithmetical error.

5. The scope of power of the Court to review its judgment or order came to be considered by the apex Court way back in 1955 in the case of *U. J. S. Chopra v. State of Bombay* : AIR 1955 SC 633. The question that arose for consideration in the said case was whether a Revision preferred by the State of Bombay to the High Court praying to enhance the sentence passed in the case is maintainable after the appeal preferred by the accused to the High Court was summarily dismissed. Two separate judgments were delivered by the three-Judge Bench. Justice Bhagwati along with Imam, J. spoke for the Court while S.R. Das, J. delivered a separate judgment. It was held by S.R. Das, J. that as soon as the State applied for enhancement of sentence and notice was issued the appellant became entitled under Section 439 (sic) of the Code to again challenge his conviction. This sub-section in his opinion gives a new and valuable weapon of defence to the accused person to be placed in a fresh jeopardy by reason of enhancement application having been filed against him and notice to show-cause

having been issued to him. The majority judgment, however, did not share with the view expressed by Das. J. In a later decision similar question also came up for consideration by the Supreme Court in the case of Superintendent and Remembrancer of Legal Affairs, W. B. v. Mohan Singh and Ors. : AIR 1975 SC 1002, where it was held that once the judgment has been pronounced by the High Court either in exercise of its appellate or revisional jurisdiction no review or revision can be entertained. In state of Orissa v. Ram Chandra Agarwala etc. : AIR 1979 SC 87, the principles laid down in AIR 1955 SC 633 (supra) and AIR 1975 SC 1002 (supra) were followed. In the said case, the accused persons on being convicted preferred appeal to the Sessions Judge who, while dismissing the appeal, made a reference to this Court since the sentence awarded by the trial Court was not in accordance with law. The accused persons also preferred revision against the order of the Sessions Judge. Both reference and the revision were heard and while dismissing the revision the Court accepted the reference and enhanced the sentence by awarding six months' rigorous imprisonment. Subsequent to the passing of the order the accused persons filed a petition for review of the same. The Court upon hearing allowed the prayer and recalled its previous judgment imposing substantive sentence. Feeling aggrieved the State approached the Supreme Court. Their Lordships having made indepth study on the question posed, concluded that judgment passed by the High Court in appeal or revision cannot be reviewed or reversed by it except in accordance with the provisions of the Code.

6. This takes me to find whether question of applicability of the provisions of the Probation of Offenders Act which was not raised in this Court while passing the judgment to be gone into now in exercise of inherent power under Section 482 of the Code and if so, where there the same amounts to review of its own judgment. At the outset it would be appropriate to find as to what should contain the judgment delivered by the original Court as well as the appellate and revisional Courts. Reference in this context may be made to Sections 353, 354, 387, 388 and 405 of the Code. Section 253 speaks of the judgment passed in every trial by a Criminal Court of original jurisdiction. So far as Section 354 is concerned it says that the judgment referred to in Section 353 shall be written in the language of the Court containing the point or points for determination, the decision thereon and the

reasons for the decision, and further, it shall specify the offence of which the accused is convicted and the punishment to which he is sentenced and if it is a judgment of acquittal, the same shall contain the offence of which the accused is acquitted. Sections 387 and 388 relate to judgment of subordinate appellate Court and of the High Court respectively. In so far as subordinate appellate Courts are concerned, rules contained in Chapter-XXVII as to the judgments of the Criminal Court of original jurisdiction shall apply. In the case of High Court, Sections 388 and 405 of the Code provide that the Court shall certify its judgment or order to the Court by which the finding, sentence or order was initially recorded or passed. So a conjoint reading of the aforesaid provisions leaves no room for doubt that the judgment pronounced by a Court includes the sentence. In the present case the Court while agreeing with the ultimate finding of both the Courts below held that considering the size of the forest-produce seized, it would be meet and proper if each of the petitioners is sentenced to undergo rigorous imprisonment for a period of one month. So far as the Court has considered as to what should be the question of punishment in the facts and circumstances and accordingly modified the lower Court's judgment, further consideration to suspend the same with the aid of Section 4 of the Probation of Offenders Act would, in my considered opinion, amount to review of the judgment which in view of the authoritative pronouncements of the apex Court in the decisions referred to above, is impermissible.

7. In view of my discussions made above there being no merit in the case, is dismissed.