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Mithan Lal Vs. State

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Court : Delhi

Decided On : Sep-21-1976

Reported in : 1977CriLJ150; ILR1977Delhi72; 1976RLR652

Judge : Prithvi Raj, J.

Acts : Code of Criminal Procedure (CrPC) , 1973 - Sections 482

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 1111 of 1976

Appellant : Mithan Lal

Respondent : State

Advocate for Pet/Ap. : D.P. Bhandari and; H.R. Bhardwaj, Advs

Judgement :

Prithvi Raj, J.

(1) By this application (Cr. M. 1111 of 197

(2) The review is sought on the ground that Shrimati Laxmi Devi,prosecutrix, after the dismissal of the petitioner's revision petition hadcompounded the offence under section 354 with the petitioner.

(3) It may be noted here that the petitioner was tried by Shri S. M.Aggarwal, Judicial Magistrate 1st Class, New Delhi, on a chargeunder section 354, Indian

Penal Code, under the provisions of theCode of Criminal Procedure, 1898 (herein called 'the old Code').Section 369 of the old Code envisaged that save as otherwise providedby that Code or by any other law for the time being in force or inthe case of a High Court, by the Letters Patent or other instrumentconstituting such High Court, no Court, when it has signed its judgment, shall alter. or review the same, except to correct a clericalerror. It is settled law that a judgment of the Criminal Court isfinal and on signing and pronouncing it the Court becomes junclusofficio. There is accordingly no power to review or alter a judgmentexcept for the purposes of correcting clerical errors. There couldbe no manner of doubt that the power to compound an offence canbe exercised during the pendency of the case. The Court becomesfunctus officio the moment the case is disposed of and that beingso it has no jurisdiction to entertain an application for compoundingan offence.

(4) The petitioner does not seek review of the order dated 1 2/03/1976, on any ground of clerical error but on the groundthat the prosecutrix having compounded the offence, the order passedby this Court be reviewed and that he may be permitted to compoundthe offence. I am afraid, it is not possible to do so. The orderin question has not been impugned on the ground of any infirmityin it. That being so, its review is prohibited. There being no casepending in this Court the question of permitting the petitioner to compound the offence after the Court has become functus officio, doesnot arise.

(5) On behalf of the petitioner Shri D. P. Bhandari, learned counsel,vehemently contended that this Court in the exercise of its inherentpowers can grant this application so as to secure the ends of justice,now that the prosecutrix has compounded the offence alleged to havebeen committed by the petitioner. I see no merit in this contention.Section 482 of the Code of Criminal Procedure, 1973 (herein calledthe 'new Code') envisages that nothing in that Code shall be deemedto limit or affect the inherent powers of the High Court to make suchorders as might be necessary to give effect to any order under theCode, or to prevent abuse of the process of any Court or otherwiseto secure the ends of justice.

(6) A plain reading of the aforesaid section reveals that the inherentpowers of the High Court can be exercised for the following purposes ;(i) to make such orders as may be necessary to give effect to anyorder under the Code; (ii) to prevent abuse of the process of anyCourt and (iii) or otherwise to secure the ends of justice. No caseis made out in this petition for the exercise of the inherent powersof this Court. In seeking sanction to compound the offence it cannotbe urged that the same is needed, to give effect to any earlier orderpassed by this Court nor it is needed to prevent the abuse of theprocess of this Court. The case had been already decided and the petitioner on having been found guilty, had been convicted in accordancewith law. The petitioner has failed to show that in passing a lawfulorder any abuse of the process of the Court was occasioned whichrequired to be rectified by permitting him to compound the offenceor in convicting him on appreciation of evidence any injustice wascaused to him which required to be remedied by permitting him tocompound the offence so as to secure the ends of justice. Besides,the order sought to be now secured would not be necessary to giveeffect to any order passed under either the old or the new Code earlierby this Court.

(7) I am fortified in the above view by a decision of the AllahabadHigh Court in Rarnai and others v. State through Pram Hans Singh, : AIR1953 All525 .

(8) Before parting with this aspect of the matter it would be properto note the cases cited at the bar by the learned counsel for the petitioner.

(9) Reliance was placed on a Division Bench decision of theAllahabad High Court in Faulad and another v. State, : AIR1961 All326 . In that case after hearing arguments oral judgment was dictated but before it was signed and sealed the petitionermoved an application stating that the offence alleged to have beencommitted by him had been compromised between the parties andthat permission to compound the offence be granted. The contentionraised before the Bench was that the judgment pronounced in theCourt did not dispose of the appeal unless it was signed and sealedunder the rules of the Allahabad High Court. It was contendedthat in the premises the application for permission to compromise wascompetent. The Court on examining Chapter Vii of the Rules

ofthat Court observed that from the reading of the Rules it was evidentthat the judgment dictated in the Court under the Rules was provisional and that in exceptional cases the judgment so dictated mighthave to be altered in which event it would be open to the Court tore-hear the parties and reconsider the case. It was observed thatif the Judge found that the judgment provisionally dictated waserroneous it would be open to him to alter the judgment by giving afresh judgment.

(10) The position in the aforesaid case was entirely different thanin the instant case before me. The distinguishing feature in thatcase was that the oral judgment dictated in the Court had not beensigned and sealed and since the Rules of the Court permitted in excep-tional cases to alter a judgment on cogent grounds, the application wasallowed.

(11) Shri Bhandari, however, strongly contended that in the abovecited case the Court had observed that the application for permissionto compromise the offence may be treated as an application under section 561-A, of the old Code. The said observations, however, areof no assistance to the petitioner in that the case was still pendingbefore that Court.

(12) Reliance next was placed on a Full Bench decision of theAllahabad High Court in case, Raj Narain and others, v. The State, : AIR1959 All315 , wherein the Court considering theambit and scope of section 561-A of the old Code by majority decision observed that the said section did not confer any inherent poweron the Court. It only saves such inherent power which the HighCourt possessed from before. It was further observed that the saidpower could only be exercised for doing justice in a cause beforeit and for seeing that the act of the Court did not cause any injuryto any party. Further, that decided matters in the exercise of thatpower might be heard in extra ordinary circumstances justifying it butthat such a power must be used sparingly. Accordingly, it was heldthat the High Court has power, amongst other matters, to alter orreview its own judgment provided it was necessary to do so to giveeffect to any order under the Code or to prevent the abuse of theprocess of the Court or to secure the ends of justice. The power,it was held, however, has to be exercised sparingly and with cautiononly where such an

exercise was justified by the tests specifically laiddown in the section.

(13) THE. above-cited authority is of no assistance to the petitioner.As observed in that case inherent power has to be exercised fordoing justice in cases before the Court and for seeing that the act ofthe Court does not cause injury to any party. That power, accordingto the Full Bench, could be exercised in re-hearing a case in theextra ordinary circumstances justifying it where such exercise wasjustified by the tests specifically laid down in section 561-A of theold Code.

(14) As already noted by me above, resort to the provisions ofthe above-said section in the instant case cannot be made as thesanction to compound the offence is not needed to give effect toany order passed by this Court under the provisions of the old ornew Code nor it is required to be exercised to prevent the abuseof the process of this Court. Besides, the petitioner having beenfound guilty and dealt with according to law, it is not possible tourge that order for compounding the offence was needed to securethe ends of justice, justice having already been done in accordancewith law.

(15) Shri Bhandari next placed reliance upon case, Ganesharam v.State of Rajasthan, . to contend that theparties having compromised the offence the petitioner should not becompelled to seek his remedy before the Supreme Court as filing ofthe appeal to the said Court was not only to be a cumbersome affairbut would entail heavy expenses which the petitioner, in view of hisweak financial status, could ill-afford. The petitioner in that casewas acquitted by the trial Court of a charge under section 335, Indian Penal Code .In appeal against acquittal he was convicted by the High Court. Subsequently, an application was moved praying that in the exercise ofits inherent jurisdiction the High Court may extend the benefit of section 6(1) of the Probation of Offenders' Act as the petitioner wasbelow 21 years of age when the judgment of the- trial Court waspronounced. The application was opposed by the State alleging thatinherent jurisdiction could not be allowed to be inyoked by the petitioner as he had the remedy by way of an appeal to the SupremeCourt. In rejecting the contention, the Court observed that filing ofan appeal to the Supreme Court is not as easy as it was urged bythe Government Advocate and that the fact of the petitioner beingbelow 21 years of age having not

been brought to the notice of theCourt and that the Court was not absolved from discharging its dutyto apply the mandatory provisions of section 6 of the Probation ofOffenders' Act held that the order of sentencing such an accused wasex fade illegal and that the Court should not deny to rec'.tlfy suchan error. In the circumstances, to secure the ends of justice theCourt allowed the petitioner to invoke its inherent jurisdiction andallowed the application.

(16) The application in the above-cited case was allowed becauseof the fact that the petitioner was below 21 years of age and thesaid fact was not brought to the notice of the Court at the timeof hearing as a result whereof the mandatory provisions of section 6 of the Probation of Offenders' Act were not complied with. It wasin that context that the Court observed that 'filing of an appeal tothe Supreme Court is not as easy as it was urged' and allowed theapplication of the petitioner. It is futile for the learned counsel forthe petitioner to contend that the petitioner be given permission tocompound the offence after this Court has become functus-officiomerely because filing of an appeal to the Supreme Court is not easyfor the petitioner because of his weak financial position.

(17) Lastly, reliance was placed on Lal Singh and others v. Stateand others, . In that case aDivision Bench of the Court observed that the power to grant a rehearing in an appropriate case falls within the inherent powers ofthe High Court and that it could not be said that the inherent powerto review a judgment made in the exercise of its revisional jurisdiction relates either to a matter covered by a specific provision of theCode or that its exercise would in any way be inconsistent with anyexpress provisions of the Code.

(18) There could be no dispute to the principle cnunciated inthe above-cited case but it has to be noted that the inherent powercan be exercised by the High Court in granting a re-hearing in appropriate cases only. The petitioner, however, in the present case, doesnot claim a re-hearing on merit. Besides, he also does not contendthat there is any infirmity in the judgment passed by this Court whichrequires re-hearing of the matter, He seeks re-hearing only to havethe said order set aside so that Criminal Revision, No. 178 of 1973,be restored to its original position bringing the same within the ambitof 'a case pending' to enable

tirs Court to grant permission to the petitioner to compound the offcise. I am afraid, such a pu'rposecannot be allowed to be achieved and should not be allowed to heachieved by exercising inherent powers of the High Court wiveh arcto be exercised only in passing necessary orders for the purpcses,(i) giving effect to any order made under the CrirrinalProcedure Code, (ii) for prevcenting abuse of process of any Courtand (iii) or otherwise to secure the ends of justice. No case havingbeen made out the application seeking review of the order dated 1 2/03/1976, fails and is hereby rejected.

(19) This brings me to the Criminal Misc. (S.C.A.) 57 of 1976moved by the petitioner seeking a certificate that the case is a fit onefor appeal to the Supreme Court as envisaged by Article 134(l)(c) of the Constitution of India. The judgment dated 12/03/1976,against which the certificate is sought is based on appreciation ofevidence involving no question of law required to be settled by theSupreme Court. The application accordingly is dismissed.

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