

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 had compounded 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 charge under section 354, Indian

Penal Code, under the provisions of the Code of Criminal Procedure, 1898 (herein called 'the old Code'). Section 369 of the old Code envisaged that save as otherwise provided by that 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. It is settled law that a judgment of the Criminal Court is final and on signing and pronouncing it the Court becomes *functus officio*. There is accordingly no power to review or alter a judgment except for the purposes of correcting clerical errors. There could be no manner of doubt that the power to compound an offence can be exercised during the pendency of the case. The Court becomes *functus officio* the moment the case is disposed of and that being so it has no jurisdiction to entertain an application for compounding an offence.

(4) The petitioner does not seek review of the order dated 12/03/1976, on any ground of clerical error but on the ground that the prosecutrix having compounded the offence, the order passed by this Court be reviewed and that he may be permitted to compound the offence. I am afraid, it is not possible to do so. The order in question has not been impugned on the ground of any infirmity in it. That being so, its review is prohibited. There being no case pending in this Court the question of permitting the petitioner to compound the offence after the Court has become *functus officio*, does not arise.

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

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

(7) I am fortified in the above view by a decision of the Allahabad High 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 proper to note the cases cited at the bar by the learned counsel for the petitioner.

(9) Reliance was placed on a Division Bench decision of the Allahabad 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 petitioner moved an application stating that the offence alleged to have been committed by him had been compromised between the parties and that permission to compound the offence be granted. The contention raised before the Bench was that the judgment pronounced in the Court did not dispose of the appeal unless it was signed and sealed under the rules of the Allahabad High Court. It was contended that in the premises the application for permission to compromise was competent. The Court on examining Chapter VII of the Rules

of that Court observed that from the reading of the Rules it was evident that the judgment dictated in the Court under the Rules was provisional and that in exceptional cases the judgment so dictated might have to be altered in which event it would be open to the Court to re-hear the parties and reconsider the case. It was observed that if the Judge found that the judgment provisionally dictated was erroneous it would be open to him to alter the judgment by giving a fresh judgment.

(10) The position in the aforesaid case was entirely different than in the instant case before me. The distinguishing feature in that case was that the oral judgment dictated in the Court had not been signed and sealed and since the Rules of the Court permitted in exceptional cases to alter a judgment on cogent grounds, the application was allowed.

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

(12) Reliance next was placed on a Full Bench decision of the Allahabad High Court in case, Raj Narain and others, v. The State, : AIR 1959 All 315, wherein the Court considering the ambit and scope of section 561-A of the old Code by majority decision observed that the said section did not confer any inherent power on the Court. It only saves such inherent power which the High Court possessed from before. It was further observed that the said power could only be exercised for doing justice in a cause before it and for seeing that the act of the Court did not cause any injury to any party. Further, that decided matters in the exercise of that power might be heard in extra ordinary circumstances justifying it but that such a power must be used sparingly. Accordingly, it was held that the High Court has power, amongst other matters, to alter or review its own judgment provided it was necessary to do so to give effect to any order under the Code or to prevent the abuse of the process of the Court or to secure the ends of justice. The power, it was held, however, has to be exercised sparingly and with caution only where such an

exercise was justified by the tests specifically laid down 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 for doing justice in cases before the Court and for seeing that the act of the Court does not cause injury to any party. That power, according to the Full Bench, could be exercised in re-hearing a case in the extra ordinary circumstances justifying it where such exercise was justified by the tests specifically laid down in section 561-A of the old Code.

(14) As already noted by me above, resort to the provisions of the above-said section in the instant case cannot be made as the sanction to compound the offence is not needed to give effect to any order passed by this Court under the provisions of the old or new Code nor it is required to be exercised to prevent the abuse of the process of this Court. Besides, the petitioner having been found guilty and dealt with according to law, it is not possible to urge that order for compounding the offence was needed to secure the ends of justice, justice having already been done in accordance with law.

(15) Shri Bhandari next placed reliance upon case, Ganesharam v. State of Rajasthan, . to contend that the parties having compromised the offence the petitioner should not be compelled to seek his remedy before the Supreme Court as filing of the appeal to the said Court was not only to be a cumbersome affair but would entail heavy expenses which the petitioner, in view of his weak financial status, could ill-afford. The petitioner in that case was 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 of its inherent jurisdiction the High Court may extend the benefit of section 6(1) of the Probation of Offenders' Act as the petitioner was below 21 years of age when the judgment of the trial Court was pronounced. The application was opposed by the State alleging that inherent jurisdiction could not be allowed to be invoked by the petitioner as he had the remedy by way of an appeal to the Supreme Court. In rejecting the contention, the Court observed that filing of an appeal to the Supreme Court is not as easy as it was urged by the Government Advocate and that the fact of the petitioner being below 21 years of age having not

been brought to the notice of the Court and that the Court was not absolved from discharging its duty to apply the mandatory provisions of section 6 of the Probation of Offenders' Act held that the order of sentencing such an accused was ex facie illegal and that the Court should not deny to rectify such an error. In the circumstances, to secure the ends of justice the Court allowed the petitioner to invoke its inherent jurisdiction and allowed the application.

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

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

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

tirs Court to grant permission to the petitioner to compound the offence. I am afraid, such a purpose cannot be allowed to be achieved and should not be allowed to be achieved by exercising inherent powers of the High Court which are to be exercised only in passing necessary orders for the purposes, (i) giving effect to any order made under the Criminal Procedure Code, (ii) for preventing abuse of process of any Court and (iii) or otherwise to secure the ends of justice. No case having been made out the application seeking review of the order dated 12/03/1976, fails and is hereby rejected.

(19) This brings me to the Criminal Misc. (S.C.A.) 57 of 1976 moved by the petitioner seeking a certificate that the case is a fit one for 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 of evidence involving no question of law required to be settled by the Supreme Court. The application accordingly is dismissed.

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