

**Mansaram Vs. the State**

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**Court :** Rajasthan

**Decided On :** Apr-23-1970

**Reported in :** 1970WLN224

**Judge :** B.P. Beri, J.

**Appeal No. :** S.B. Criminal Misc. Application No. 360 of 1970

**Appellant :** Mansaram

**Respondent :** The State

**Disposition :** Application dismissed

**Judgement :**

**B.P. Beri, J.**

1. This is an application under Section 561 -A of the Code of Criminal Procedure made both by the injured as well as the convicted accused praying that Criminal Appeal No. 76 of 1967 be reopened and they may be permitted to compound the offence under Section 324 I. P.C. and the applicant be acquitted.

2. On account of a Panchayat election Mansaram and Mansingh became inimical to one another, Mansingh's son Tribuwan singh, the applicant before us, went to Mansaram, called him from his house and fired Section 12 bore pistol hitting his right knee thereby causing multiple lacerated gun shot wounds with inverted

margins in an area of 5' x 5' The case was tried by the Sessions Judge, Ganganagar and he convicted Tribhuwan Singh under Section 324 I.P.C. and awarded him 2 years' rigorous imprisonment. An appeal was preferred to this Court and by my judgment dated the 24th February 1970, I rejected the appeal and maintained the conviction and the sentence. Mansaram and Tribhuwan Singh have jointly applied under Section 561-A praying that the case be reopened as Tribhuwan Singh's counsel had not informed him of the date of hearing of appeal and therefore he had not informed his counsel of the compromise reached earlier between the parties. It was after the disposal of the appeal that he came to know that his conviction and sentence were maintained and he has moved this application.

3. Learned counsel for the petitioner Mr. Mukat Beharilal Bhargava relied on Chitawan and Ors. v. Mahboob Ilahi 1970 Cr.L.J. 378 and argued that the inherent power under Section 561-A to alter or review its previous judgment by a High Court is not affected or limited by any provision contained in the Code including Section 369. He submitted that on this basis and in the circumstances mentioned I should exercise my power under Section 561-A and and reopen the case and allow the compromise and acquit the applicant.

4. Mr. A.K. Mathur, learned Deputy Government Advocate opposes. He submits that this Court is 'functus officio' after having disposed of the appeal in view of a decision in Ramai and Ors. v. State : AIR1953 All525 .

5. Mr. R.P. Kapur v. State of Punjab : 1960 CriLJ1239 the principle enunciated by their lordships of the Supreme Court is:

The said section saves 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 other wise to secure the ends of justice. There is no doubt that this inherent power cannot be exercised in regard to matters specifically covered by the other provisions of the Code.

The powers under Section 345 in granting permission for the compounding of offences is a specific power under the Code of Criminal Procedure applicable to a

pending proceeding. In my opinion, this power cannot be exercised under Section 561-A Cr. P. C. after an appeal has been heard and decided. Section 345(2) speaks of the permission of the Court 'before which any prosecution is pending'. Under Section 315(5) such leave is to be accorded by the Court 'before which appeal is to be heard'. Once the appeal has been disposed the power which this Court had does not survive. I am in respectful agreement with the view expressed in Ramai's case : AIR1953 All525 . The case of Chitawan 1970 Cr.L.J. 378 is clearly distinguishable. It is extremely unlikely that if a compromise had been reached prior to the hearing of appeal by this Court on 24.2.1970 Tribhuwan Singh would not have informed his learned counsel about it in the appeal which was instituted in 1967.

6. I see no force in this application and I dismiss it.

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