

Dr. Padam Kumar Jain Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Mar-11-1998

Reported in : 1998CriLJ4645; 1999(1)WLC218; 1998(1)WLN265

Judge : Shiv Kumar Sharma, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 125, 362, 397 and 482

Appeal No. : Cri. Misc. Petn. No. 947 of 1996

Appellant : Dr. Padam Kumar Jain

Respondent : State of Rajasthan

Advocate for Def. : S.K. Vyas, P.P. and; H.M. Saraswat, Adv.

Advocate for Pet/Ap. : K.L. Thakur, Adv.

Disposition : Petition allowed

Judgement :

ORDER

Shiv Kumar Sharma, J.

1. The grievance expressed by the petitioner Dr. Padam Kumar Jain, a Judicial. Officer of Rajasthan Higher Judicial Service, over the caustic and severe censure

made against him by a single Judge (Hon'ble Y.R. Meena J.) of this Court in an order dated August 29, 1996 in S.B. Criminal Misc. Petition No. 125/1996 (defect). The petitioner moved this Court by way of a petition Under Section 482, Cr.P.C. to have those disparaging remarks expunged but instead of getting them erased the learned Judge on June 9, 1997 disposed of the petition thus -

I deem it proper that remarks passed in my order in case S.B.Cr. Misc. Petition No. 125/96 and the remarks communicated to petitioner by the District Judge, Tonk should not come in the way of the service career of petitioner. It is therefore, ordered that the observations made by me in order dated 29-8-96 and also the remarks communicated by the District Judge, Tonk vide letter dated 14-3-97 shall not affect the service career of the petitioner.

2. The petitioner on July 14, 1997, submitted another application Under Section 482, Cr.P.C. seeking modification of order dated June 9, 1997. It was prayed by the petitioner that observations in para 7 of the judgment dated August 29, 1996 be expunged. The application was placed before Hon'ble Y.R. Meena J. but it could not be heard. Since Hon'ble Y.R. Meena J. has been transferred to the High Court of Judicature for Calcutta, the application has come up before me for adjudication.

3. It is universal principle of law that, when a matter has been finally disposed of by a Court, the Court is, in the absence of a direct statutory provision, functus officio and cannot entertain a fresh prayer for the same relief unless and until the previous order of final disposal has been set aside. Section 362, Cr.P.C. provides thus :

Save as otherwise provided by the 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 authentic error.

Section 362, Cr.P.C. applies to all Courts including High Court. But Full Bench of this Court in *Habu v. State of Rajasthan* AIR 1987 Rajasthan 83 (at page 106) propounded that power of the recall is different than the power of altering or reviewing the judgment and powers Under Section 482, Cr.P.C. can be and should

be exercised by the High Court for recalling the judgment in case the hearing is not given to the accused and the case falls within one of the three conditions laid down under Section 482, Cr. P.C.

4. Thus the High Court under Section 482, Cr. P.C. has power to expunge those remarks which were made by it against a judicial officer at his back, without affording him an opportunity of hearing.

5. In order to appreciate the grievance of the petitioner it is necessary to note a few introductory facts.

6. While the petitioner was posted as Special Judge, SC & ST (Prevention of Atrocities) cases Jhalawar, a revision under Section 397, Cr.P.C. was filed before him by one Manjoor Ahmed, assailing the order dated August 31, 1994 of the learned Additional Chief Judicial Magistrate, Bhawani Mandi in the matter of proceedings Under Section 125, Cr.P.C. The petitioner vide order dated March 1, 1996 declined to interfere with the said order of the learned Additional Chief Judicial Magistrate on the ground that it was an interlocutory order. Calling in question the order of the petitioner Manjoor Ahmed moved a petition bearing S.B. Criminal Misc. Petition No. 125/96 (defect) under Section 482, Cr.P.C. before this Court.

7. This Court (Hon'ble Y.R. Meena, J.) allowed the petition vide judgment dated August 29, 1996. While setting aside the order of the petitioner dated March 1, 1996, this Court made following observations in para 7 of the judgment-

7. It is surprised that the presiding officer of Court in revision has Doctorate in law and he does not know the meaning of interlocutory order. In the case in hand the trial court has decided the issue regarding divorce between petitioner and Raeesa Bano and maintenance allowance under Section 125, Cr.P.C. No further decision of trial Court is required, so far the maintenance under Section 125, Cr.P.C. is concerned. This shows the poor knowledge of Mr. Padam Kumar Jain, Presiding Officer of Court of Special Judge, SC/ST (P.A. Cases) Jhalawar. He needs improvement. Mr. Padam Kumar Jain should not be posted on non-judicial post at least for next five years.

(Emphasis supplied)

8. At this juncture it will be useful to refer the view expressed by their Lordships of the Supreme Court in respect of 'judicial restraint' in *Brij Kishore Thakur v. Union of India*, 1997 Cr LR (SC) 386 : AIR 1997 SC 1157. In the prefatory words of the said decision their Lordships propounded thus :

Judicial restraint is a virtue. A virtue which shall be concomitant of every judicial disposition. It is an attribute of a Judge which he is obliged to keep refurbished time to time, particularly while dealing with matters before him whether in exercise of appellate or revisional or other supervisory jurisdiction. Higher Courts must remind themselves constantly that higher tiers are provided in the judicial hierarchy to set right errors which could possibly have crept in the findings or orders of Court at the lower tiers. Such powers are certainly not for belching diatribe at judicial personages in lower cadre. It is well to remember the words of a jurist that 'a judge who has not committed any error is yet to be born.

9. A subordinate judicial officer may commit mistake or an error beyond the limits of tolerance but in my humble view this cannot be a ground to inflict condemnation upon his functioning.

10. Thus, in the interest of justice and fairness, attracting the provisions contained in Section 482, Cr.P.C, I hold that scathing remarks made by this Court against undefended petitioner in para 7 of the judgment dated August 29, 1996, deserve to be expunged.

11. Resultantly, the application succeeds and is hereby allowed. The remarks made by this Court in para 7 of the judgment dated August 29, 1996 in S.B. Criminal Misc. Petition No. 125/96 (defect) which have been incorporated and underlined hereinabove in para 7 of this order stand expunged. Let a copy of this order be forwarded to the Registrar General, High Court of Judicature for Rajasthan, Jodhpur.