

In Re: B. Runga Rao

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SooperKanoon Citation : sooperkanoon.com/788732

Court : Chennai

Decided On : Sep-11-1912

Reported in : (1912)23MLJ371

Appellant : In Re: B. Runga Rao

Judgement :

1. This is a petition to restore to the file Criminal Revision Petition 499 of 12 and Cr. M.P. 326 of 1912. Criminal Revision Petition 499 of 12 was a petition to this Court to revise an order of the Sessions Judge of Bellary in Criminal Appeal No. 38 of 12 in which he ordered a re-trial of the case before him. The petition came before this Court and the order passed on it was 'Dismissed for default.' The present petition is to restore it. It is clearly laid down in Referred Trial No. 40 of 05 of this Court that the High Court has no power to review its judgment in a referred trial. Their Lordships the Chief Justice and Moore J. considered the question as beyond argument. The same view has been taken by the Calcutta High Court in In the matter of Gibbons¹ and by the Bombay High Court in Queen-Empress v. Bimappa Bin Ramanna. I.L.R. (1894) B. 732 The language of Section 369 of the Criminal Procedure Code has been considered and the words have been treated as referring to the power of review given to the High Court under Section 434 on a point specially reserved by the Judge presiding at Sessions. Mr. Srinivasa Aiyangar who argued the point did not suggest that the decision of the High Court in revision stood on a different footing. This point has also been decided in Queen-Empress v. C.P. Fox I.L.R. (1885) B. 176 and Queen-Empress v. Durga Charan

I.L.R. (1885) A. 672 where it was held that the High Court has no power to review an order made in the exercise of its revisional jurisdiction. He argued, however, that where a petition was dismissed for default there has been no hearing and therefore the High Court can review the order dismissing it. He relies on a case reported in 7 M.H.C. App 29. That is a ruling to the effect that, where a Criminal Appeal has been rejected without the appellant's pleader being heard under the section corresponding to the present Section 421 of the Criminal Procedure Code, if it appears that the pleader had not a reasonable opportunity of being heard, the Court could restore the case to its file. We have no doubt that this is correct, for the language of S 421 requires a reasonable opportunity to be given and if such reasonable opportunity is not given the Court has no jurisdiction to dismiss the appeal. He also relies on some unreported cases of the High Court of Calcutta. In our opinion in cases of Criminal Revision no distinction can be made between an order passed without hearing the petitioner and one in which he is heard. It must be borne in mind that the revisional power of the High Court is exercised at its own discretion. No petitioner has a right to be heard and the High Court is not compelled to interfere with a judgment brought to its notice unless it so thinks fit. It was also argued that this power to re-hear a petition once dismissed is inherent in the High Court. We asked Mr. Srinivasa Aiyangar to produce any authority to shew that such a power to review or alter its judgment has ever been exercised by the High Court in England and he has been unable to do so. The proposition is accepted both in Halsbury's Laws of England and in Archbold's Criminal Practice that where a judgment is once complete the High Court has no power to alter it. A power to restore cases to its file might of course be conferred on Criminal Courts in India by statute, just as it has been conferred in civil matters, but in the absence of any such statutory provision and in the face of the decisions referred to we are unable to hold that this Court can review or alter a judgment or order completed and passed.