

In Re, Anthony Doss and ors.

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Court : Chennai

Decided On : Jan-18-1963

Reported in : 1963CriLJ224; (1963)IMLJ393

Judge : Sadasivam, J.

Appellant : In Re, Anthony Doss and ors.

Judgement :

ORDER

Sadasivam, J.

1. This is a petition to restore Crl. R. C. No. 151 of 1961 which I dismissed on 23-11-1962 on merits, after perusing the records and after hearing the arguments of the Public Prosecutor. The Criminal revision petition was adjourned several times at the request of the advocate for the petitioners. When the petition came up for hearing on 22-11-1962, I adjourned it to the next day as the petitioners and their advocate were absent. But even on the next day the petitioners and their advocate were absent, and I dismissed the case on merits. It is mentioned In this petition that the advocate for the petitioners took several adjournments in this old case on account of Ill health and that he finally entrusted the papers to another advocate, Sri N. S. Sarma, who, however, could not conduct the case as he was taken into custody under the Defence of India 'Act on 21st November 1962. Assuming the facts stated in the petition are true, the question for consideration in this petition is

whether I have jurisdiction to restore the criminal revision petition dismissed on merits.

2. The learned advocate for the petitioners relied on the decision in *Bhagvandas v. State*, AIR 1954 MB 10, in support of his contention that Section 561-A, Cri. P. C. is not governed by Section 369, Cri. P. C. and that the High Court can review its own judgment in order to secure the ends of justice. The above decision refers to and follows the decisions in *Mathradas v. Emperor*, AIR 1927 Lah 139 and *Emperor V. Shivdatta*, . But the decision in AIR 1927 Lah 139 has been overruled by a Bench decision of the same High Court in *Raju v. Crown*, ILR 10 Lah 1 ; AIR 1928 Lah 462. It should be noted that the decision in merely relied on the decision in AIR 1927 Lah 139. Both these decisions were dissented from in *Banwari Lai v. Emperor* : AIR1935 All466 . It was held in that decision that where a jail application for revision had already been dismissed, on the merits, the High Court had no jurisdiction to entertain a fresh application for revision filed through counsel. It is clear from that decision that the High Court possessed no inherent power to review its judgment before the amendments of 1923 and consequently it cannot be said that Section 561-A, Cri. P. C. either modifies the provisions of Section 369, Cri. P. C. or clothes the Court with any terns power. It is clear from a recent Full Bench decision, *Public Prosecutor v. Devireddi Nagi Reddi*, 1962 Mad LJ Cri 688 : AIR 1962 AP 479, that it is well settled that Section 561-A, Cri P. C. does not confer any new powers on the High Court and that it only preserves such inherent powers of the High Court already possessed and that the High Court has in the exercise of its inherent powers no right to set aside its own judgment on the ground that it is erroneous in law or in fact. The same view has been expressed in the Full Bench decision in *State v. Kunjan Pillai*, AIR 1952 Trav Co 210. It is unnecessary to refer to the decisions of other High Courts enunciating the sama principle. So far as this High Court is concerned, it has, been held in *Re Arumuga Padayachi*, AIR 1926 Mad 420, that a judgment, even of a High Court, when it is signed becomes final and it is not thereafter open to review.

3. The learned advocate for the petitioners relied on the decision in *Sriram v. Emperor* : AIR1948 All106 , in support of his contention that though a second revision would not lie and a party has no right to have the matter re-heard or re-

argued, the Court has power to correct an obvious error, as the one in that case, where a mandatory provision of law had been overlooked. But in fairness he conceded that no mandatory provision of law was overlooked when this criminal revision case was dismissed. His only contention on the merits was that he had no opportunity to put forward certain aspects of the case which would have resulted in a decision in his favour. in : AIR1948 All106 , the offence should have been tried in a summary way under an Ordinance in which case the sentence of imprisonment could not have exceeded three months and on this ground the High Court reviewed its order and reduced the sentence of Imprisonment in spite of its having dismissed an earlier revision petition. Having regard to the principles enunciated in the Full Bench decision in 1962 Mad LJ Cri 588 : AIR 1962 A P 479, which I have referred to above, it is not possible to accept the above decision. I have already pointed out that the High Court had never any inherent power to alter or review its own judgment in a criminal case once it has been pronounced and signed.

4. There are no doubt well recognised exceptions to the above principle such as cases where the earlier decision was passed without jurisdiction or in default of appearance without an adjudication on the merits, Thus as pointed out in In re Somu Naidu, ILR 47 Mad 428 ; AIR 1924 Mad 640, though the Judgment of the High Court in a criminal matter is final as soon as it is signed and thereafter the Court is functus officio and has no power to revise or alter its decision, an order, to the prejudice of an accused without affording him an opportunity of being heard, as for instance, where by mistake the case was posted on a day anterior to that fixed in the notice to the accused and the sentence was enhanced in his absence, it is null and void ab initio as being one passed without jurisdiction. But in the present case the criminal revision petition which was an old one was on the fair list for a number of days and in fact the Advocate for the petitioners took several adjournments.

5. For the foregoing reasons, I am unable to accede to the request of the learned advocate for the petitioners to restore and rehear the criminal revision case, which has been disposed of on merits. The criminal miscellaneous petition is otherwise dismissed.

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