

Babulal Agarwalla Vs. the State

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Court : Kolkata

Decided On : Jan-07-1987

Reported in : 1987CriLJ1287

Judge : M.R. Mallick, J.

Appellant : Babulal Agarwalla

Respondent : The State

Judgement :

ORDER

M.R. Mallick, J.

1. This revision petition is directed against the order dated April 2,1986 passed by the Second Special Judge, Calcutta by which the learned Special Judge set aside the previous order dated 29th November, 1985 stopping further investigation under Section 167(5) of the Code of Criminal Procedure and discharging thereby the accused persons in G.R. Case No. 535 of 1985. Facts are briefly as follows:

On March 2,1985 the petitioner No. 1 had been arrested for having committed an offence punishable under Section 7(l)(a)(ii) of the Essential Commodities Act for alleged violation of paragraph 3 of the West Bengal Declaration of Stock & Prices of Essential Commodities Order 1977 and also the provisions of the West Bengal Imported Vegetable Oil (Prohibition of Unauthorised Sales) Order, 1984. On

September 2, 1985 the Investigating Officer filed an application under Section 167(5) of the Criminal Procedure Code praying for extending the time for investigation beyond the statutory period of six months from the date of the arrest of the petitioner. The learned Judge fixed November 29, 1985 for hearing of the said application.

2-3. By the order dated November 29, 1985, the learned Judge rejected the prayer of the Investigating Police Officer for extending the time to complete the investigation and dropped the case and discharged the accused petitioners from bail bonds. On December 10, 1985, K. Patra, Sub Inspector being the Investigating Officer filed an application for recalling the order dated November 29, 1985 discharging the petitioners from the said case and the learned Judge dismissed such application. On January 7, 1986 the State of West Bengal, through the Public Prosecutor filed an application before the learned Judge praying for recalling and setting aside the order of discharge passed by the learned Judge on November 29, 1985. The learned Judge by the April 2, 1986 order, set aside the earlier order discharging the accused and the Investigating Officer was permitted to investigate the case within a month. Being aggrieved the present revision has been filed.

4. It is contended by Mr. Roy learned Advocate for the petitioners that the learned Special Judge has no power to set aside his order dated 29th November, 1985 because the order which was passed was final order and if the State had any grievance against such order, the State could have preferred an application in revision in the appropriate court against such order but the Special Judge had no power to review his order and when by the order dated April 2, 1986 the order dated 29th November, 1985 was reviewed and/or set aside and the discharge order was vacated and the Investigating Officer was directed to complete investigation within a month the impugned order being illegal is liable to be set aside.

5. I have perused the certified copy of the impugned order dated 24, (?) 1986 - I have also perused the decisions which were cited before the learned Special Judge. The decision reported in : 1981 CriLJ296 , Smt. Sooraj Devi v. Pyare Lai

referred to by the learned Judge clearly indicates quite otherwise. In that decision, it was held that when the High Court directed the restoration of possession to the respondents, any subsequent order for clarification of that order by declaration that it was not binding on the applicant and did not affect his/her position cannot be passed under Section 362 of the Criminal Procedure Code because such an order for clarification of the earlier order does not come within the purview of the clerical or arithmetical error and such an order is clearly barred under Section 362 of the Code. Moreover, Mr. Roy, learned Advocate, has referred to two Supreme Court decisions namely, Bindheshari Prasad Singh v. Kali Singh : 1978 CriLJ187 and A.S. Gouraya v. S.N. Thakur : 1986 CriLJ1074 . In the decision reported in : 1978 CriLJ187 it has been held that there is no provision in the Criminal Procedure Code empowering the learned Judge to recall or review the judicial order passed by him. In : 1986 CriLJ1074 , it has been held that even when a complaint case is dismissed for default and the accused is acquitted, the Judge has no inherent power to review his order of dismissal and restore the case.

6. I find from the order of the learned Special Judge that he took the view that the order dated 29th Nov. 19M5 was not a final order. I am of the view that the learned Special Judge was completely in error in thinking the said order not to be a final order. By that order, he did not allow the prayer of the Investigating Officer to extend time to investigate the case beyond the period of six months and dropped the case and discharged the accused. So far as the present petitioners are concerned, the impugned order was nothing but a final one. In the decision reported in 1986 Cri LJ 1074 : AIR 1986 SC 1440, Supreme Court has also clearly laid down that so far as the accused is concerned, the dismissal of a complaint for non-appearance of a complainant or discharge or acquittal on the same ground is a final order. In this particular case, when the learned Special Judge did not allow the prayer of the Investigating Officer to investigate the case beyond the period of six months und discharged the accused after dropping the case, the order passed by him could not but be a final order. Such an order cannot be subsequently recalled by the learned Judge, because the learned Judge has got no power to review a final order in view of the bar imposed under Section 362 of the Code of Criminal Procedure, 1973.

7. In these circumstances, the impugned order cannot be sustained and must be set aside. In the result, the revision petition be allowed and the order dated 2-4-1986 be set aside.

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