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Court : Himachal Pradesh

Decided On : Jan-18-1954

Judge : Ramabhadran, J.C.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 369, 439 and 561A

Appeal No. : Criminal Review No. 38 of 1953

Appellant : Tota Ram and ors.

Respondent : State

Advocate for Def. : A.C. Mehta, Acting Govt. Adv.

Advocate for Pet/Ap. : N.O. Mehra, Adv.

Judgement :

1. The petitioners were convicted by the Magistrate first class Jubbal of offences under Sections 426 and 447, I. P. C., and non-appealable sentences of fine were inflicted. They went up in revision to the learned Sessions Judge of Mahasu, who upheld their conviction. They then came up in revision to this Court. My learned predecessor dismissed their revision petition on 26-6-1953. After that, a petition purporting to be under Sections 369, 439 and 561-A, Criminal P. C., was put in by the petitioners and the prayer made therein, was that the order dated 26-6-1953 made by this Court be reconsidered and set aside and the petitioners acquitted. This petition was admitted by my learned predecessor, although he refused to stay

realization of fine.

2. I have heard learned counsel for the parties.

3. For reasons given below, I am of the opinion that this petition cannot succeed. Learned counsel for the petitioners cited the following rulings in support of the petition. 'Chandrika v. Rex', AIR 1949 All 176 (A). There, the facts were that an appeal was heard on date earlier than the one fixed for hearing and the counsel had no opportunity of being heard. In the circumstances of that case, it was held therein that the High Court had inherent powers to set aside the proceedings and the appeal could be reheard under Section 561-A, Criminal P. C. The facts here are different. My predecessor's order dated 26-6-1953 was passed after hearing the petitioner's counsel and the Government Advocate. Therefore, this ruling will not help the petitioners.

'Bhagwan Das v. Dhannulal Chhotelal', AIR 1951 Madh B 91 (B). There, the facts were that the District Magistrate of Shivpuri directed the police to restore possession of a 'kotha' to one Dhannalal on a petition under Section 144, Criminal P. C. Subsequently, the petition under Section 144, Criminal P. C., was dismissed. Thereupon, the opposite party, Bhagwandas, moved the District Magistrate to restore the possession of the 'kotha' to him. The District Magistrate felt that he had no jurisdiction to pass that order as the application under Section 144 had been dismissed. On a reference by the Sessions Judge, the High Court of Madhya Bharat held that under Section 561-A, it had power to restore possession of the 'kotha' to Bhagwandas. The facts of that case are not on fours with those of the present case.

Here, as I shall show presently, my learned predecessor did hear and dispose of the revision petition on its merits.

'Mohammed Wasi v. State', AIR 1951 All 441 (C). There, the facts were that two persons, Shubrati and Mohammad Wasi, were convicted under Sections 451 and 380, I. P. C., read with Section 75, I. P. C., and sentenced to undergo 5 years and 7 years' Rule I. respectively. Both of them filed appeals from the jail. Shubrati's appeal was dismissed summarily in Chambers, while that of Mohammad Wasi was

admitted. During the hearing of the latter appeal, the learned Judge, who heard it, found that there was no evidence to bring Section 75, I. P. C., into operation. Accordingly, he dismissed the appeal but reduced the sentence to 4 years' Rule I. and recommended that the record be put up so that the other learned Judge, who had rejected the appeal of Shubrati, could examine it. The latter, on examining the record, found that there was no evidence to bring the case against Shubrati under Section 75, I. P. C. Under the circumstances of the case, he felt that under Section 561A, Criminal P. C., he had jurisdiction to review his own order to secure the ends of justice. As I shall show presently, no such glaring error is to be found in the order of my learned predecessor.

'State of Uttar Pradesh v. Bati', AIR 1950 All 625 (D). There, the facts were that certain sentences of imprisonment in default of fines had been directed to run concurrently. When the appeal was heard in the High Court, the prosecution did not point out that such a direction was illegal. Consequently, this portion of the lower Court's order was affirmed. Subsequently, a portion was put in on behalf of the U. P. State. Under the circumstances of the case, it was held that the Court had power to correct such an error, even though the case had already been decided. It does not however appear that in the case before me, any mandatory provision of the law has been disregarded.

'Sri Ram v. Emperor', AIR 1948 All 106 (E). Here too, the mandatory provisions of law contained in Section 14-A, Hoarding and Profiteering Prevention Ordinance, 1943, had been overlooked in a trial. It was held that the High Court had power to correct such an error, even though a revision had already been decided. As pointed out above, no mandatory provision of the law had been overlooked by my learned predecessor.

'Emperor v. Rashbehari Singh', AIR 1934 Pat 551 (F). There, the facts were that the Additional Sessions Judge convicted an accused person and sentenced him to undergo two years' Rule I. and to whipping of twenty stripes, after undergoing the sentence of imprisonment. The Patna High Court held that the High Court is not powerless to set right an incorrect order of the Sessions Judge to which its attention was drawn, even though it had dismissed the appeal against that order. It

was pointed out that under the law, the sentence of whipping should be inflicted, as soon as practicable, after the receipt of the order of the appellate Court confirming the sentence. There is no such illegality in the order of my learned predecessor.

An earlier ruling of this Court reported in--'Mehar Chand v. State', AIR 1953 Him P 3 (G). This was a case under the Contempt of Courts Act. My learned predecessor pointed out that although the High Court has no inherent power under Section 561-A to review its judgment, the first proviso to Section 3 of the Contempt of Courts Act gives the Court power of reviewing its judgment, in case the accused offers an apology to the satisfaction of the Court. That ruling does not help the petitioners because that was a case of contempt for which there is a special Act.

4. Learned acting Government Advocate, on the other hand, cited the following authorities:--'Raju v. Emperor', AIR 1928 Lah 462 (H). There, a Division Bench of the Lahore High Court pointed out that :

'Section 561-A does not confer any new powers but merely declares that such inherent powers as the Court may possess shall not be deemed to be limited or affected by anything contained in the Code. There is no conflict between that section and Section 369.

There has never been an inherent power in the High Court to alter or review its own judgment once it has been pronounced or signed except in cases where it was passed without jurisdiction or in default of appearance without an adjudication on merits.

The words 'or otherwise to secure the ends of justice' can only mean that such other inherent power as the Court possesses is likewise preserved. The High Court is not given, nor did it ever possess, an unrestricted and undefined power to make any order which, it might please to consider, was in the interests of justice. Its inherent powers are as much controlled by principle and precedent as are its express powers by statute.'

'Lakshman Rao v. Emperor', AIR 1938 Nag 74 (I), where, following--'AIR 1928 Lah 462 (H)', it was held by the Nagpur High Court that the High Court has no inherent power to alter or review a judgment in a criminal case. 'Maniram v. Emperor', AIR 1947 Oudh 221 (J). There, following--'AIR 1928 Lah 462 (H)', and dissenting from--'Emperor v. Shiva Datta', AIR 1928 Oudh 402 (K), it was held that Section 369 prohibits the Court from altering or reviewing its judgment after the same has been signed and, therefore, the High Court cannot alter or review it under Section 561A.

5. Coming to my learned predecessor's order dated 26-6-1953, I cannot find that it overlooks any mandatory provision of the law. For reasons stated in that order, my learned predecessor agreed with the findings of the Sessions Judge and the trial Magistrate that the field from which the trees had been cut by the petitioners were in the complainant's possession. He further agreed with the findings of the Courts below that the trees were not cut under a bona fide belief that the petitioners were owners thereof. I fail to see how, under these circumstances, I can hold, either that my predecessor's order was without jurisdiction, or that any mandatory provisions of the law had been overlooked. I, therefore, reject the petition.

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