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Court : Himachal Pradesh

Decided On : Aug-05-1976

Reported in : 1977CriLJ532

Judge : C.R. Thakur, J.

Appellant : Kewal Ram

Respondent : State and ors.

Judgement :

C.R. Thakur, J.

1. This application under Section 482 of the Code of Criminal Procedure, 1973 (shortly referred to as the Code) has been filed by Kewal Ram for setting aside the order, dated October 23, 1975, and to re-hear the case.

2. Kewal Ram had initiated proceedings against Megh Ram and five other residents of village Sheel in Solan Tehsil under the provisions of Section 107 of the Code on the allegations that Megh Ram and others were trying to dig a water channel through his land and the petitioner dissuaded them from doing so, whereupon Megh Ram and others threatened him with dire consequences and, he, therefore, prayed that the respondents who are quarrelsome and of notorious character be bound down to keep peace and be of good behaviour. The Sub-divisional Magistrate dismissed this application made by Kewal Ram on the

ground that he did not think if any apprehension of breach of peace existed in between the parties and moreover a period of about one year had elapsed and no fresh incident during that period between the parties was reported. Against this order, Kewal Ram filed a revision petition on 7-7-1973 before the Sessions Judge, Solan, for setting aside the order and to send back the case for further enquiry. The Sessions Judge reported the matter to this Court for quashing the order and to remand back the case for further enquiry and proceeding.

3. The case came up before this Court for hearing on October 23, 1975, when it appears none was present and the Court on a perusal of the record decided the case and disagreeing with the report dismissed the petition and upheld the order of the Sub-divisional Magistrate, Solan.

4. This petition has been filed to set aside this order and to order the rehearing of the Criminal Revision (R)65/ 1973. The grounds mentioned in the petition for re-hearing are that this revision petition was shown in the cause list bearing the date, October, 21, 1975. However, there was a mistake in the cause list, inasmuch as it was shown as Criminal Revision and not as Criminal Revision (R). It was again shown in the cause list bearing the date 22-10-1975. On that date, the petitioner's counsel, Shri Kedarishwar, made a request in the Court that he was representing the petitioner and as the brief of the case had not been received by him, the case may be passed over. His request was accepted. The counsel filed his Vakalatnama in the Court on behalf of Kewal Ram on that very day. The case was again shown in the cause list bearing the date 23-10-1975, but the name of the counsel, namely, Shri Kedarishwar, was not shown against the name of the petitioner in the cause list and the case was again shown as Criminal Revision and not as Criminal Revision (R). As the counsel's name did not appear in the cause list and also because of the request made by him to pass over the case the counsel did not appear in the case and he learnt on 24th October, 1975, that the revision petition had been disposed of in the absence of the petitioner and his counsel. He made this enquiry on 24th October, 1975 when the case did not appear in the cause list on that date. According to him, even on 23rd October, 1975, the case had been shown in the cause list as Criminal Revision and not as Criminal Revision (R) and, therefore, it was submitted that on account of office

mistake no one appeared for the petitioner and the Criminal Revision (R) was dismissed without any opportunity having been given to the petitioner or his counsel to be heard.

5. Shri H.K. Paul appearing on behalf of the Advocate General, submitted that there is no power in this High Court for a review of its. earlier order, dated October 23, 1975 and the same having been finally disposed of could not now be interfered with and he referred me to Section 369 of the old Code, according to which, 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, shall alter or review the same, except to correct a clerical error. There is no doubt that Section 369 contemplates that if once a judgment is signed it cannot be altered or reviewed except to correct a clerical error. However, it is further apparent that this provision is made subject to the other provisions of the Code. This section applies to judgments pronounced by the trial courts including the High Court in exercise of its original criminal jurisdiction and to judgments of appellate courts other than the High Court. Therefore, what follows is that this section does not bar the High Court to exercise its powers under Section 439 of the old Code.

6. The learned Counsel for the petitioner submits on the strength of Chhotey v. Ram Prasad AIR 1970 All 380 : 1970 Cri LJ 948, Talab Haji Hussain v. Madhukar Purshottam AIR 1958 SC 376 : 1958 Cri LJ 701 and Lal Singh v. State AIR 1970 Punj & Har 32 : 1970 Cri LJ 267 that the High Court in its inherent powers is fully empowered to revoke, review, or recall and alter its own earlier decision in a criminal revision and to rehear the same. The rule of finality embodied in Sections 369 and 430 of the Criminal P.C. does not, in terms, apply to revisional jurisdiction of the High Court.

7. On the contrary, the learned Counsel for the respondent in opposing the application for setting aside the order and rehearing the revision petition relies on Pampapathy v. State of Mysore AIR 1967 SC 286 : 1967 Cri LJ 287, Kumar Singh v. Emperor AIR 1946 PC 169 : 47 Cri LJ 933, public Prosecutor, Andhra Pradesh v. Devireddi Nagi Reddi AIR 1962 Andh Pra 479 : 1962 (2) Cri LJ 727 (FB), In re Venkateswara Rao AIR 1951 Mad 611 : 52 Cri LJ 252 and Sankatha Singh v.

State of Uttar Pradesh AIR 1962 SC 1208 : 1962 (2) Cri LJ 288.

8. From the case, Lal Singh 1970 Crt LJ 267 (Punj & Har) (supra), in para 7 where reference is made to the case, U.J.S. Chopra v. State of Bombay AIR 1955 SC 633 : 1955 Cri LJ 1410, while considering the scope of Section 369, it was held that, 'there is indication in the Code itself that the purpose of Section 369 is not to prescribe a general rule of finality of all judgments of all Criminal Courts but is only to prescribe finality for the judgment of the trial Court so far as the trial Court is concerned'. And further, it is laid down therein-

'Again, the rule of finality embodied In Section 369 cannot, in terms, apply to the orders made by the High Court in exercise of its revisional jurisdiction, for Section 442 of the Code which requires the result of the revision proceedings to be certified to the Court by which the finding, sentence or order revised was recorded or passed refers to it as its 'decision or order' and not 'judgment'.' Thereafter, after quoting the authority the Punjab and Haryana High Court observed that in any case Section 369, Criminal Procedure Code, is subject to the other provisions of the Code and that there is no reason why Section 439 of the Code and Section 561-A embodying the Inherent powers of the High Court should not be regarded as such provisions. Hence, Section 439, Criminal Procedure Code, is not in term controlled by Section 369 and In fact the revisional jurisdiction under Section 439 must be read as controlling Section 369 of the Code. Further, for this view, support was drawn from the language of Section 424 of the. Code of Criminal Procedure which refers to the appellate judgments of the Subordinate Courts. Further, it had been observed that the provision clearly indicates that Section 369, Criminal Procedure Code, which is placed in Chap. 26 of the Code had reference only to the judgment 'of a Criminal Court of original jurisdiction'. Again the appellate judgments of the High Court are expressly excluded from the ambit of the provisions of Chapter 25 of the Criminal Procedure Code. Further, that the provisions of Section 430 leave one in no manner of doubt that the revisional jurisdiction embodied in Chapter 32 of the Coda is in no way fettered by the rule in Section 430. Further, that Section 430 does not in terms give finality to the judgments of a High Court passed in the exercise of its revisional jurisdiction, In these circumstances, there does not appear to be any bar whatsoever, expressi or

implied, which would rule out the applicability of the inherent powers of the High Court under Section 561-A of the Code qua an order purporting to be passed under Section 439 of the Code.

9. The further authority, Talab Haji Hussain 1958 Cri LJ 701 (SC) (supra) is an authority for the proposition that the High Court has inherent powers to cancel the bail granted to a person accused of a bailable offence and in a proper case, such power can be exercised in the interests of justice.

10. The further authority is Chhotey 1970 Cri LJ 948 (All) (supra) in which the scope of Section 561-A of the old Code which corresponds to Section 482 of the new Code, end Section 439 was considered and It was held that if the petition is decided in the absence of the counsel whose name was not indicated in the cause list, then, in those circumstances, the same Judge who decided that petition has ample power under Section 561-A to order a rehearing.

11. On the contrary, the authority Pampapathy v. State of Mysore 1967 Cri LJ 287 (SC) (supra) says that High Court has Inherent power to cancel order of suspension of sentence and grant of bail to appellant under Section 426 and to direct him to be rearrested and committed to jail custody. This authority, in fact, supports the petitioner and not the respondent.

12. The authority, Public Prosecutor, Andhra Pradesh (1962 (2) Cri LJ 727 (Andh Pra)) (FB) (supra) does not support the respondent's contention in its entirety because it says that there is no such inherent power in the High Court under Section 561-A to alter or review its own judgment once it has been pronounced, except in cases where it was passed without jurisdiction or in default of appearance, i.e., without affording en opportunity to the accused to appear. Therefore, what follows is that although this power under Section 561-A cannot be exercised to alter or review its own judgment once it has been pronounced, but if the judgment passed is without jurisdiction or it has been passed in default of appearance, i.e., without affording an opportunity to the accused to appear, then in that event the High Court has got inherent powers to review or alter the same.

13. As for Kumar Singh Chhajor case (1946) 47 Cri LJ 933 (PC) (supra), the same is a case distinguishable inasmuch as that was tried by a Special Magistrate acting under Ordinance 2 of 1942 and Clause 26 of the said Ordinance had expressly taken away all powers of revision by the High Court and consequently the High Court did not possess inherent jurisdiction to interfere with the order of a Special Magistrate acting under that Ordinance. Moreover, a Special Magistrate is not a Court inferior to the High Court and indeed not a Court at all and therefore the High Court had no power of revision under Sections 435 and 439 of the Criminal Procedure Code nor could it exercise inherent jurisdiction under the provisions of Section 561-A of the Code.

14. Similarly, the authority Sankatha Singh 1962 (2) Cri LJ 288 (SC) (supra) is also distinguishable inasmuch as it was an order sought to be reviewed by the appellate court, i.e., Sessions Judge, who had earlier dismissed the appeal in the absence of the appellants and their counsel. The Sessions Judge had set aside that order and had fixed the case of rehearing. In the meanwhile the Sessions Judge had been transferred and in his place another Sessions Judge took over and before whom the appeal was put up for re-hearing, he was of the opinion that the appellate court had no power to review or restore an appeal which had been disposed of and that therefore the order of his predecessor was ultra vires and passed without jurisdiction. Against this order, the appellants went in revision to the High Court, which also upheld the order passed by the successor of the earlier Sessions Judge. An appeal was then taken to the Supreme Court and which also dismissed the appeal, upholding the order of the High Court. It was held that Section 369, read with Section 424 of the Code, makes it clear that the appellate court is not to alter or review the judgment once signed, except for the purpose of correcting a clerical error. Further, it was held that assuming that the Sessions Judge can exercise inherent powers, he cannot pass the order of the re-hearing of the appeal in the exercise of such powers when Section 369 read with Section 424 of the Code, specifically prohibits the altering or reviewing of its order by a Court. Inherent powers cannot be exercised to do what the Code specifically prohibits the Court from doing. This authority also has got no application to the facts of the present case, inasmuch as it was a revision petition which was not controlled by Sections 369 and 424 of the Code.

15. Then there is another case In re Venkateswara Rao (1951) 52 Cri LJ 252 (Mad) (supra). It was a habeas corpus petition and, therefore, the ratio of this authority has got no application to the exercise of the inherent powers in respect of a revision petition.

16. In support of the merits of the case it may be stated that the list of the causes for those days had been seen and the submission of the learned Counsel for the petitioner as made in the petition appears to be totally correct that the case had not been correctly indicated nor the name of the counsel was mentioned against the case in the cause lists for the dates on which the case had been appearing on the board. In these circumstances, this petition succeeds and the order is set aside and the case is recalled and shall be re-heard.