SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Senior Sub Judge Vs. Ram Avtar Kansal, Executive Engineer, H.P. Housing Board and anr.

Senior Sub Judge Vs. Ram Avtar Kansal, Executive Engineer, H.P. Housing Board and anr.

SooperKanoon Citation : sooperkanoon.com/890146

Court : Himachal Pradesh

Decided On : Apr-20-1989

Reported in : 1991CriLJ2432

Judge : V.K. Mehrotra and; V.P. Bhatnagar, JJ.

Acts : Contempt of Courts Act, 1971 - Sections 2, 12(1), 19 and 23; ; Contempt of Courts Act 1952 - Section 4; ;Contempt of Court (Punjab & Haryana) Rules, 1971; ;Code of Criminal Procedure (CrPC) , 1974 - Sections 482; ; Code of Criminal Procedure (CrPC) , 1898 - Sections 5(2), 369, 424 and 561A; ;Code of Criminal Procedure (CrPC) , 1973 - Sections 345, 346, 348 and 362

Appeal No. : Cr. M. P. Nos. 5 and 35 of 1989 in Cr. Contempt Petition No. 3 of 1986

Appellant : Senior Sub Judge

Respondent : Ram Avtar Kansal, Executive Engineer, H.P. Housing Board and anr.

Advocate for Def. : M.L. Chauhan, Asstt. Adv. General for the State

Advocate for Pet/Ap. : Ram Avtar Kansal, Adv.

Disposition : Petition dismissed

Judgement :

V.K. Mehrotra, J.

1. By our judgment and order of November 28, 1988, in Criminal Contempt Petition No. 3 of 1986 (Senior Sub Judge, Dharamshala v. Ram Avtar Kansal) we had held respondent Kansal to be guilty of having committed criminal contempt within the meaning of Section 2(c) of the Contempt of Courts Act, 1971. We had sentenced him to undergo simple imprisonment for a term of one month. We also said in our order that in case respondent Kansal furnished a personal bond in the sum of Rs. 1000/- to the Registrar of this Court within twenty four hours, the sentence awarded by us shall remain suspended for a period of six weeks to enable Sh. Kansal, if he so liked, to obtain appropriate orders, from the Supreme Court by filing an appeal.

2. On December 28, 1988, Ram Avtar Kansal presented an application under Section 482, Cr.P.C. in this Court. In it, he said that he was pleading his innocence in view of the circumstances mentioned in the application and prayed that 'the judgment order be reviewed and the punishment be revoked in the interest of justice'. Also, that the review be listed for hearing after Winter vacations. On February 23, 1989, he filed another application under Section 482, Cr.P.C. In the opening part of this application he said that he had filed the first application on December 28, 1988, and that the next application was in continuation thereof. In the last paragraph of this application he said that in the circumstances mentioned by him he was not guilty of any contempt. Also, that the punishment imposed upon him be withdrawn. In the sentence with which he concluded the application he said that 'my unconditional and unqualified apology filed on 7-1-1987 is already on the record which be accepted and punishment withdrawn.'

3. The two applications filed by Shri Kansal on December 28, 1988, and February 23,1989, were fixed for hearing on March 16, 1989. Ram Avtar Kansal was present in person and was heard by us. The only submission which was repeatedly made by Ram Avtar Kansal before us on that date was that, while deciding the contempt matter by our order dated November 28, 1988, we had

omitted to take into consideration certain material on record, particularly, the second supplementary affidavit filed by him. We did not permit Ram Avtar Kansal to address us on the merits of two applications. The query which we repeatedly made to Ram Avtar Kansal was whether it was competent for this Court to review its decision. Ram Avtar Kansal only pointed out to the provisions of Section 482, Cr.P.C. and said that he had no authority to supplement the plea that this Court is competent to review its decision. We reserved our order on the question of maintainability of these applications.

4. The basic question which is to be considered by us is whether the judgment and order of November 28, 1988, can be reviewed by us, and if so, to what extent?

5. Contempt proceedings are quasi criminal proceedings. Consequently, the procedure adopted by the courts is akin to the one provided in the Code of Criminal Procedure. Of course, rules have been framed by some of the High Courts and, to that extent, the procedure provided therein is followed. The Punjab and Haryana High Court has framed 'the Contempt of Court (Punjab & Haryana) Rules, 1971,' in exercise of the powers under Section 23 of the Contempt of Courts Act, 1971. These Rules are to be found at Appendix 10 page 807 in Aiyar's Law of Contempt of Court, 6th Edition, (Law Book Company).

6. The Contempt of Courts Act, 1971 (for brief, 'the Act') provides for appeals under Section 19. It does not provide specifically for any power of review. However, Section 12(1) says that:

'Save as otherwise expressly provided in this Act, or in any other law a contempt of court may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both :

Provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the Court.'

7. A similar provision existed in Section 4 of the Contempt of Courts Act 1952. That Section, in its material part, said that:

'Save as otherwise expressly provided by any law for the time being in force, a contempt of Court may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both:

Provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the Court.

Provided further that.....'

8. Seeking said aid from the first proviso to Section 4 of the 1952 Act a learned single Judge (R.K. Chaudhary J.C.) held in Mehar Chand v. The State (AIR 1953 HP 3) : 1953 Cri LJ 92; at Page 92 that:

'.....In other words, the proviso gives the Court a power of reviewing its judgment awarding punishment to an accused under the Contempt of Courts Act in a case where the accused offers an apology to the satisfaction of the Court. The above provisions do not appear to have been the subject-matter of decision in any reported ruling; in any case, none was cited before me by the learned counsel. The language of the proviso is howerver plain, and the conclusion I have arrived at seems to follow clearly from it.'

9. Section 348 of the Code of Criminal Procedure 1973, lays down that:

'348. Discharge of offender on submission of apology. - When any Court has under Section 345 adjudged an offender to punishment, or has under Section 346 forwarded him to a Magistrate for trial, for refusing or omitting to do anything which he was lawfully required to do or for any intentional insult or interruption, the Court may, in its discretion, discharge the offender or remit the punishment on his submission to the order or requisition of such Court, or on apology being made to its satisfaction.'

Section 362 of the Code says that:

'Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case,

shall alter or review the same except to correct a clerical or arithmetical error.'

Section 482 provides that:

'Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.'

10. Emperor v. Benjamin Guy Horniman AIR 1945 All 1 : (49 Cri LJ 272 (DB)) is an authority for the proposition that contempt of the High Court is an offence which can be inquired into according to the provisions of Criminal P.C. as set out in Section 5(2) of the Code of 1898.

11. A reading of Section 362 of the Code shows that after the Court has signed its judgment or final order disposing of a case it shall not alter or review the same except to correct a clerical error or arithmetical error. This is, however, subject to the condition that review or alteration of the judgment may be provided for by some provision of the Code or any other law for the time being in force.

12. Whether the inherent powers of the Court under Section 482, Cr.P.C. can be treated to be a provision enabling the Court to alter or review its judgment is no longer res inted the attention of Courts in this country from time to time. The settled legal position is that the inherent powers cannot be utilized for that purpose.

13. In Kunji Lal v. Emperor AIR 1935 All 60: (35 Cri LJ 272) it was observed by Bennet, .1. (dealing with the provisions of the Code of Criminal Procedure, 1898) that Section 561-A (akin to Section 482, Cr.P.C.) did not enbale the Court to review a judgment which it had pronounced finally. Further, that if a review were intended by the Procedure Code there would have been a definite provision therefor in it. The decision was rendered by the learned Judge after noticing a large number of the earlier decisions of the Allahabad High Court and of some other courts.

14. Later, in Mahendra Pal Singh v. State of Uttar Pradesh, AIR 1959 All 313: 1959 Cri LJ 541 a learned single Judge of the same High Court, relying upon the observations of the Supreme Court, in U.J.S. Chopra v. State of Bombay, AIR 1955 SC 633 : 1955 Cri LJ 1410 said that 'finality attaches to orders passed by the High Court in appeals and it is not open to the same High Court to alter Or review the same .....'

15. The Supreme Court has also considered the problem in some of its decisions. For example, in Sankatha Singh v. State of Uttar Pradesh, AIR 1962 SC 1208 : (1962 (2) Cri LJ 288) after referring to Section 369 of the Code of 1898 (equivalent to Section 362 of the Code of 1973), it observed that the Sessions Judge could not pass an order of rehearing of an appeal in exercise of the inherent powers of the Court, under the Code, inasmuch as, Section 369 read with Section 424, 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.

16. In State of Orissa v. Ram Chander Agarwala etc. AIR 1979 SC 87 : 1979 Cri LJ 33 the Supreme Court was dealing with a case under the Code of 1898. It, however, referred to Section 362 of the new Code. The view taken by the Supreme Court was that at page 40; 1979 Cri LJ :

'Once a judgment has been pronounced by a High Court either in exercise of its appellate or its revisional jurisdiction, no review ,pr revision can be entertained against that judgment as there is no provision in the Code which would enable the High Court to do so.'

In this judgment the Supreme Court referred to a number of its earlier judgments on the subject. It also said that Section 369 (equivalent to Section 362 of the new Code) was general in its application and prohibited the Court from altering or reviewing its judgment when once it had signed it and further that Section 561-A (equivalent to Section 482 of the new Code) could not be invoked for exercise of a power which was specifically prohibited by the Code.

17. Tn Sooraj Devi v. Pyare Lal, AIR 1981 SC 736 : 1981 Cri LJ 296 the Supreme Court reiterated that inherent powers of the Court could not be invoked to review the earlier judgment. In paragraph 5 of the Report it observed that at Page 298; 1981 Cri LJ:

'It is true that the prohibition in Section 362 against the Court altering or reviewing its judgment is subject to what is 'otherwise provided by this Code or by any other law for the time being in force. 'Those words, however, refer to those provisions only where the Court has been expressly authorised by the Code or other law to alter or review its judgment. The inherent power of the Court is not contemplated by the savings provision contained in Section 362 and, therefore, the attempt to invoke that power can be of no avail.'

18. The observations of Chowdhry J.C. in Mehar Chand AIR 1953 HP 3 : 1953 Cri LJ 92 when read carefully, only amount to saying that the proviso to Section 4 (for the 1952 Act) '..... gives the Court a power of reviewing its judgment awarding punishment to an accused under the Contempt or Courts Act in a case where the accused offers an apology to the satisfaction of the Court.....' In the operative portion of his judgment the learned Judicial Commissioner said that'..... 1 hold that this is a fit case for reviewing the order dated 20-8-1951 and remitting the punishment awarded by that order. Accordingly, the apology is accepted, the sentence of fine awarded by the said order is set aside and the petitioner is discharged .....'

18. The decision in Mehar Chand cannot be treated to be an authority for the proposition that the finding recorded by the High Court that a person is guilty of having committed contempt of court can be reviewed by it. We feel that the decision only restates the existence of power in the High Court to remit the sentence awarded by it to a contemner, on being satisfied with the apology submitted by him later, and thus confines the power of review to the remission of sentence alone. To this extent it reiterates the legal position as contemplated by the proviso to Section 4.

19. Similar power is possessed by the Court under Section 348 of the Code in a case where the offender has been dealt with under Section 345.

20. We are clearly of opinion that the order holding a person guilty of having committed Contempt of Court cannot be reviewed by the Court. It is amenable to correction only in an appeal under Section 19 of the Act. The power of this Court is only confined to remission of the sentence awarded by it, upon being satisfied with an apology made by the offender in terms of the proviso to Section 12(1) of the Act.

21. Respondent Kansal has not tendered a fresh apology before us. He has only made a reference to an earlier apology filed on January 7, 1987. That apology had not been accepted by a Bench consisting of Chief Justice, P.D. Desai and Justice R.S. Thakur. We have already dealt with that apology in our judgment and order of November 28, 1988. No further consideration of that apology is required.

22. In consequence, both the petitions under Section 482, Cr.P.C. filed by Ram Avtar Kansal on December 28, 1988, and Feb. 23, 1989, are dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com