

(1990) 04 P&H CK 0004

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No. 2436-M of 1989

M.R. Sachdeva

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision: April 30, 1990

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 362, 369, 482, 561A
- Post Office Act, 1898 - Section 52

Citation: (1991) 2 ILR (P&H) 335 : (1990) 3 RCR(Criminal) 143

Hon'ble Judges: A.P. Chowdhri, J

Bench: Single Bench

Advocate: Navkiran Singh, for the Appellant; S.S. Goripuria and D.D. Gupta, for the Respondent

Final Decision: Allowed

Judgement

A.P. Chowdhri, J.

This is a petition u/s 482 of the Code of Criminal Procedure (hereinafter referred to as "the Code") for expunging certain adverse remarks from the judgment dated 30th September, 1988, in Criminal Misc. No. 6057-M of 1988.

2. Brief facts of the case are that on a petition (Crl. Misc. No. 6057-M of 1988) filed by one Inder Dev Gaur, FIR No. 228, dated 2nd August, 1987, u/s 52 of the Indian Post Office Act, 1898, lodged at the instance of Petitioner Mr. M.R. Sachdeva, who was Senior Postmaster, was quashed. In the last paragraph of the order quashing the FIR it was observed as under:

After careful consideration and for the reasons mentioned above, I find that the present F.I.R. has been initiated for ulterior reasons and it amounts to an abuse of the process of the Court.

The Petitioner seeks expunction of the words "ulterior reasons" lest these words should affect his service career and it is in these circumstances that he has filed the present petition.

3. On being asked to do, the Petitioner submitted better particulars along with supporting documents in an attempt to explain each and every circumstance relied upon in the principal order referred to above. His effort is to show that the opposite party Inder Dev Gaur had failed to bring the totality of the facts or had twisted some of the facts. The Petitioner had no chance to explain those circumstances as he was not made a party in the original proceedings u/s 482 of the Code for quashing the F.I.R. tiled by Inder Dev Gaur. The Petitioner had, therefore, been condemned unheard which was against principle of natural justice and which was a sufficient ground in itself to expunge the aforesaid remarks. A detailed reply has been filed by Inder Dev Gaur controverting the facts and reiterating that the previous F.I.R. had been lodged by the Petitioner against him with ulterior motives.

4. A preliminary objection has been taken by the learned Counsel for Inder Dev Gaur, Respondent No. 2. The objection is that u/s 362 of the Code once the judgment or final order disposing of a case has been signed, the same cannot be altered or reviewed except to correct a clerical or arithmetical error. Reference was made to Ajit Singh and Anr. v. State of Punjab 1982 C.L.R. 363 (FB). The learned Judges of the Full Bench heavily relied on [State of Orissa Vs. Ram Chander Agarwala and Others](#). In the last mentioned authority it was held that the word "no court" used in Section 362 of the Code includes all Courts and applies in respect of all judgments. It was further held that inherent powers of the Court u/s 561-A (under the old Code) cannot be invoked for enabling the Court to review its own order which is specifically prohibited by Section 369 (Old Code) analogous to Section 362 of the present Code. Learned Counsel for the Respondent specially emphasised that, in the context of inherent powers of the High Court, it was specifically laid down in the aforesaid authority that inherent power cannot relate to any of the matters specifically dealt with by the Code, vide paragraph 16 in Ram Chander Agarwala's case (supra). The contention, therefore, is that if any words were deleted from the aforesaid judgment, it would amount to reviewing the judgment which is not permissible.

5. The contention of learned Counsel for the Petitioner on the other hand, is that the High Court has not only the power u/s 482 of the Code to expunge the offending remarks but a duty to prevent the abuse of process of the Court. Learned Counsel referred to Vinod Kumar Jain and Ors. v. J. P. Sharma and Ors. 1986 (2) C.L.R. 110, in which this question directly arose. Malik Sharief-Ud-Din. J. who had earlier passed certain remarks expunction of which was sought in a later petition held that the High Court possesses inherent jurisdiction to delete and expunge the offending remarks in the circumstances justifying the said course.

6. The matter needs no lengthy discussion as the point is squarely covered by the decision in the [The State of Uttar Pradesh Vs. Mohammad Naim](#), . Head noted (d) summarises the law in these words:

The High Court can in the exercise of its inherent jurisdiction expunge remarks made by it or by a lower court if it be necessary to do so to prevent abuse of the process of the court or otherwise to secure the ends of justice; the jurisdiction is however of an exceptional nature and has to be exercised in exceptional cases only.

The preliminary objection, is, therefore, over-ruled.

7. On the merits of the case, the Courts have applied a three fold test. These are: (a) whether the parties are before the Court; (b) whether the evidence on record justifies that remark; and (c) whether the remarks are necessary for the decision of the case, (vide [The State of Uttar Pradesh Vs. Mohammad Naim](#),). Applying the above tests to the present case, I find that admittedly M. K. Sachdeva was not a party in the said previous proceedings, the evidence did not justify the remarks in view of the detailed explanation given by the Petitioner and the said remark was not necessary for the decision of the case.

8. After careful consideration and for the reasons mentioned above, the petition is allowed and it is directed that the words "ulterior reasons" shall be deleted from the order, dated 30th September, 1988 in Crl. Misc. No. 6057-M of 1988.