(2014) 04 SIK CK 0004

Sikkim High Court

Case No: Crl. Misc. Application No. 40 of 2013 (Arising Out of crl. R.P. No. 70 of 2012)

Shri Ram Bahadur Das	APPELLANT
Vs	
The State of Sikkim	RESPONDENT

Date of Decision: April 3, 2014

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 362, 482
- Penal Code, 1860 (IPC) - Section 420
- Probation of Offenders Act, 1958 - Section 4, 6

Hon'ble Judges: Sonam Phintso Wangdi, J

Bench: Single Bench

Advocate: Udai P. Sharma, Accused Advocate, Mr. Meg Nath Dhungel, Advocate Mr. Ram Bahadur Das and Party-in-Person, Advocate for the Appellant; Karma Thinlay Namgyal, Addl. Public Prosecutor, Mr. S.K. Chettri and Ms. Pollin Rai, Assistant Public Prosecutors, Advocate for the Respondent

Final Decision: Dismissed

Judgement

S.P. Wangdi, J.

This application has been filed on behalf of the petitioner, seeking to recall the order of this Court dated 07.06.2013, by which the conviction and sentence passed by the learned Judicial Magistrate, East and North Sikkim at Gangtok, in Vigilance Case No. 01 of 2004 by judgment and order dated 18.11.2005, and confirmed by Sessions Judge, Special Division-I by its judgment dated 28.09.2012 in Criminal Appeal No. 3 of 2012, had been altered by reducing the sentence to the extent of the period of custody he had already undergone. It is submitted by Mr. Udai P. Sharma, learned Counsel for the petitioner, that the order dated 07.06.2013 which the petitioner seeks to recall, had resulted due to the ignorance and mental pressure which the petitioner was undergoing. It was on account of this condition of mind due to which he was unable to intervene at the time when his Counsel abandoned his arguments on the merits of the case, confining it only to the quantum of sentence. It is also

submitted that the petitioner had not sought any relief under Sections 4 and 6 of the Probation of Offenders Act, 1958 nor did he intend to abandon his case on its merits and restrict it only in respect of the quantum of punishment imposed by the learned trial Court. Mr. Sharma would urge that considering the facts and circumstances of the case, and in the interest of justice, this Court has ample powers to recall its order dated 07.06.2013 and in the facts and circumstances, it ought to exercise its discretion to recall the order and hear the Revision Petition on merits.

2. In support of his submissions, Mr. Sharma relied upon several decisions of the Hon''ble Supreme Court and contended that the present application being one u/s 482 CrPC, the power vested in this Court thereunder was wide enough to cover the circumstances as the present one.

3. Mr. Karma Thinlay Namgyal, learned Additional Public Prosecutor, on the other hand, submits that the application filed on behalf of the petitioner would not be maintainable in view of the express bar provided u/s 362 CrPC, 1973 upon the Courts in altering or reviewing its judgment or final order once it is signed. He would submit that in the present application the petitioner seeks to recall an order which was passed at the behest of the petitioner being fully conscious of the consequences. It is further submitted that the records of Criminal Revision Petition No. 7 of 2012, reveal that the case was first listed on 06.06.2013, on which day the learned Senior Counsel for the Appellant had submitted that he would be confining his arguments only on the question of sentence in respect of his offence u/s 420 of the IPC in the light of the decision in Bhausaheb Kalu Patil Vs. The State of Maharashtra, and, also would endeavour to bring the petitioner''s case under Sections 4 and 6 of the Probation of Offenders Act, 1958. After the matter was heard at some length, the case was adjourned for the next day, with the direction upon the Learned Counsel for the State to convey to the Court the stand of the State. Accordingly, the case was listed on 07.06.2013 and the impugned order was passed after hearing the learned Counsels at length. That these facts clearly reveal that the petitioner was fully aware of the concession made by his Counsel. Amongst the two decisions referred to by the learned Additional Public Prosecutor is State rep. by D.S.P., S.B.C.I.D., Chennai Vs. K.V. Rajendran and Others, and emphasis was laid upon the following portions of the judgment to convey the essence of his submissions:-

14. In our view, the learned Judge of the Madras High Court had fallen in error in passing the impugned order. The following questions need to be considered by us:

(I) Whether the High Court had become functus officio with the disposal of the criminal petition by the judgment and order dated 1-3-2001?

(II) Whether the High Court, in exercise of its inherent power u/s 482 of the Code can modify its earlier judgment and order?

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16. In Hari Singh Mann v. Harbhajan Singh Bajwa this Court held: (SCC p. 170c-e)

There is no provision in the Code of Criminal Procedure authorising the High Court to review its judgment passed either in exercise of it appellate or revisional or original criminal jurisdiction. Such a power cannot be exercised with the aid or under the cloak of Section 482 of the Code. Section 362 CrPC has extended the bar of review not only to judgment but also to the final orders other than the judgment. Section 362 is based on an acknowledged principal of law that once a matter is finally disposed of by a court, the said court in the absence of statutory provision becomes functus officio and is disentitled to entertain a fresh prayer for the same relief unless the former order is set aside by a court of competent jurisdiction in a manner prescribed by law. The court become functus officio the moment the official order disposing of a case is signed. Such an order cannot be altered except in the extent of correcting a clerical or an arithmetical error.

17. Yet, in Simrikhia v. Dolley Mukherjee this Court held: (SCC p. 439, para 3)

3...The inherent power u/s 482 is intended to prevent the abuse of the process of the court and to secure ends of justice. Such power cannot be exercised to do something, which is expressly barred under the Code. If any consideration of the facts by way of review is not permissible under the Code and is expressly barred, it is not for the court to exercise its inherent power to reconsider the matter and record a conflicting decision. If there had been change in the circumstances of the case, it would be in order for the High Court to exercise its inherent powers in the prevailing circumstances and pass appropriate orders to secure the ends of justice or to prevent the abuse of the process of the court. Where there is no such changed circumstances and the decision has to be arrived at on the facts that existed as on the date of the earlier order, the exercise of the power to reconsider the same materials to arrive at different conclusion is in effect a review, which is expressly barred u/s 362.

18. Keeping the principles, as laid down by the aforesaid decision of this Court in mind, let us now look to Section 362 of the code; which expressly provides that no court which has signed its judgment and final order disposing of a case, shall alter or review the same except to correct clerical or arithmetical error save as otherwise provided by the court. At this stage, the exercise of power u/s 482 of the Code may be looked into.

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20. In Sooraj Devi v. Pyare Lal this Court held: (SCC p. 502, para 5)

5...that the inherent power of the court cannot be exercised for doing that which is specifically prohibited by the Code.

...

Since the other decision cited by him deals with the same principle, we need not delay ourselves further on it.

4. Upon hearing the Learned Counsels for the parties, pleadings and prayers contained in the application, the petitioner by filing the application under consideration undoubtedly seeks for a review of this Court''s order dated 07.06.2013.

5. Mr. Sharma no doubt submitted that the petitioner was neither seeking to alter the impugned order nor was he praying for its review but was only praying for its recall to enable the petitioner to press the Revision Petition to be heard on merits. But on a perusal of the averments contained in the application and the prayers contained therein, there can be no doubt that the petitioner in fact seeks to review of the order of this Court dated 07.06.2013. Mr. U.P. Sharma, strenuously contended that this Court could exercise its discretionary power prescribed u/s 482 CrPC and recall its order dated 07.06.2013 in the interest of justice. He sought to rely on State of Maharashtra Vs. Ramdas Shrinivas Nayak and Another, in support of his contention.

6. I have examined the provisions of the relevant law in order to ascertain as to whether it was permissible for this Court to review its judgment or final order, but no such provision could be traced out. To the contrary, Section 362 of the Code of Criminal Procedure, 1973 appears to expressly prohibit this. We may reproduce Section 362 for convenience:-

362. Court not to alter judgment-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.

On a careful reading of the above provision, the words "...no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same ..." unambiguously bars a Court from altering or reviewing a judgment or final order after it has signed its judgment or final order disposing off a case. When the very provision of the law is clear and categorical, it would not be necessary for us to look for its interpretation elsewhere. The decision in Ramdas Shrinivas Nayas (supra) in fact emphasises this view as would be evident from the following portion of the judgment:-

4. When we drew the attention of this learned Attorney General to the concession made before the High Court, Shri A.K. Sen, who appeared for the State of Maharashtra before the High Court and led the arguments for the respondents there and who appeared for Shri Antulay before us intervened and protested that he never made any such concession and invited us to peruse the written submissions made by him in the High Court. We are afraid that we cannot launch into an enquiry as to what transpired in the High Court. It is simply not done. Public policy bars us.

Judicial decorum restrains us. Matters of judicial record are unquestionable. They are not open to doubt. Judges cannot be dragged into the arena. "Judgments cannot be treated as mere counters in the game of litigation." We are bound to accept the statement of the judges recorded in the judgment, as to what transpired in court. We cannot allow the statement of the judges to be contradicted by statements at the Bar or by affidavit and other evidence. If the judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well-settled that statements by affidavit or other facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the judges, to call the attention of the very judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error. That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. Of course a party may resile and an appellate court may permit him in rare and appropriate cases to resile from a concession on the ground that the concession was made on a wrong appreciation of the law and had led to gross injustice; but, he may not call in question the very fact of making the concession as recorded in the judgment.

...

...

8. So the judges'' record is conclusive. Neither lawyer nor litigant may claim to contradict it, except before the judge himself, but nowhere else.

(underlining supplied)

7. As has been submitted by the learned Additional Public Prosecutor, this is not a case where a decision was rendered on the very day the matter was taken up. The records reveal that it was first taken up on 06.06.2013, on which day Mr. N. Rai, the learned Senior Advocate, representing the petitioner then, had made a submission at the very threshold that he was confining himself only to the question of sentence and that he would also endeavour to bring the petitioner''s case within the purview of Sections 4 and 6 of the Probation of Offenders Act, 1958. However, the matter was adjourned for the next day to enable the learned Additional Public Prosecutor to consider the question and to respond. Accordingly, the case was taken up on 07.06.2013 and disposed off after a detailed hearing in terms of the impugned order. The pleadings in the application to the effect that the petitioner due to mental pressure could not intervene while his Counsel was making his submissions seeking to limit his arguments only on the quantum of sentence and that he had not sought for relief for bringing his case under Sections 4 and 6 of the Probation of Offenders Act, 1958, factually appear to be incorrect.

8. The other aspect, in my view, that would also go against the petitioner is the fact that the order was passed on 07.06.2013, but the present petition was brought only in November, 2013, i.e. on 14.11.2013 to be precise, on which day the case was taken up. There is no explanation for such delay forthcoming from the petitioner.

9. For the aforesaid reasons, the application is not maintainable.

10. In the result, the application stands dismissed.

11. No order as to costs. A copy of this Order be sent forthwith to the Learned Judicial Magistrate, East and North Sikkim at Gangtok.