(1994) 07 GAU CK 0009

Gauhati High Court

Case No: Criminal Revision No. 365 of 1994

Sher Mohammood	APPELLANT
Vs	
Mst. Maimon Khatun	RESPONDENT

Date of Decision: July 19, 1994

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 145, 145(7), 362, 403, 482

Citation: (1994) 2 GLR 451

Hon'ble Judges: M. Sharma, J

Bench: Single Bench

Advocate: P.C. Barua and P.K. Goswami, for the Appellant; None appeared, for the Respondent

Judgement

M. Sharma, J.
This revision petition has been preferred praying for recalling of the judgment and order dated 7.9.93 passed in Criminal Revision No. 224/87.

2. The matter was pending before this Court since 1987 and this Court by order dated 7.9.93 disposed of the matter under its revisional jurisdiction, u/s 403 Code of Criminal Procedure option has been provided to the revisional court, Section 403 Code of Criminal Procedure reads as follows:

403. Option of court to hear parties. - Save as otherwise expressly provided by this Code, no party has any right to be heard either personally or by pleader before any court exercising its powers of revision but the Court may, if thinks fit, when exercising such powers, hear any party; either personally or by pleader.

3. Recall of the judgment dated 7.9.03 on the ground of not giving opportunity to the counsel of the Petitioners as a matter of right is not sustainable, as the revisional jurisdiction conferred on court, is discretionary, This Court after going through the papers decided the matter and the order of the Executive Magistrate

dated 27.1.86 has been restored by setting aside the judgment and order dated 4.4.87 passed by the Sessions Judge in Criminal Motion No. 12(1)/86.

4. Further submission of the counsel for the present Petitioner is that the revision petition is liable to be dismissed as abated for non - substitution of the legal representatives of the revision Petitioner who died in 1991. This fact was not brought before the revisional court. The revision petition was filed on 22.6.87 and notice of motion was issued on 23.6.87 and Rule was issued on 24.7.87. There was no order of this Court for stay of the impugned order, When the matter came for hearing on 12.7.93 none appeared for the parties. On the ground of personal difficulty of the counsel for opposite party (present Petitioner) hearing was adjourned for two weeks and when the matter came for hearing on 7.9.93 it was decided u/s 403 Code of Criminal Procedure by this Court.

5. Section 145(7) Code of Criminal Procedure provides that if during pendency of the proceeding any party to the proceeding dies the Magistrate may cause the legal representative of the deceased party to be made a party to the proceeding and shall thereupon continue the proceeding.

6. The point to be considered in this case is whether the non substitution of the legal representatives in the revision petition vitiates the finding of the revision court.

7. The revisional jurisdiction of the High Court very wide to test the correctness, legality or even the propriety of the findings or order of the subordinate court or for satisfying itself as to the regularity of the proceeding of the court below. Apparently revisional jurisdiction of the High Court does not relate to ascertain the right, title and interest of the parties but it is invoked to test the jurisdiction material irregularity and illegality of an order of the subordinate court. Therefore, unlike an appeal under the Code, revision court can decide the matter referred for revision without substitution as the final relief has to be given by the court other than the revision court.

8. In that view of the mailer, the right title and interest of a party cannot be vitiated if the revision court found the decision of the court in form on the point of jurisdiction, illegality or irregularity. The right, title of the parties u/s 145 Code of Criminal Procedure is always decided by a civil court only, even if possession is delivered in favour of any of the parties.

9. The prayer of the Petitioner to recall the judgment is nothing but a prayer to review the same. Section 362 Code of Criminal Procedure provides that no court when it signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error. Inherent powers of the court cannot be exercised to do what the Code specifically prohibits. In Moti Lal Vs. State of Madhya Pradesh, the Apex Court held that Section 362 Code of Criminal Procedure in clear terms lays down that court cannot alter judgment after the same has been signed except to correct clerical or arithmetical errors, That being the

position the High Court has no jurisdiction u/s 482 Code of Criminal Procedure to alter the earlier judgment.

10. In that view of the matter the aggrieved party can approach the appropriate forum to agitate their right, title and interest. I find no substance in this revision petition and accordingly it is rejected.