In Re: Narayan Chandra Dey

Court: Calcutta High Court

Date of Decision: March 30, 1989

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€" Section 362, 369, 435

Citation: 93 CWN 1092

Hon'ble Judges: J.N. Hore, J; A.K. Chatterjee, J

Bench: Division Bench

Advocate: Ajit Kumar Roy and Gautam Dirghangi, for the Appellant;

Judgement

A.K. Chatterjee, J.
On 29/8/88 a Division Bench of this Court had discharged the Rule in C. P. No. 2132 of 1983, issued at "the instance

of the present applicant Narayan Chandra Dey as it found after hearing the learned advocate for the opposite party and on examination of the

record that no jurisdictional error or illegality or irregularity was committed by the court below while making the impugned order. The order

discharging the Rule is how sought to be recalled by the applicant en the ground that it was made without hearing his learned advocate on record

who was not regularly available in the High Court. After hearing the learned advocate for the applicant, we are firmly of the opinion and

accordingly find that the order dated 29/8/88 cannot be recalled being barred by the provisions of Section 362, Code of Criminal Procedure,

1973. The learned advocate for the applicant, however, has cited the decision of the Supreme Court in Makkapati Nagaswara Shastri v. S. S.

Satyanarayan, AIR 1981 SC 1156, in which the Supreme Court had set aside an order of High Court accepting a reference made by an

Additional Sessions Judge u/s 435, Code of Criminal Procedure, 1898, without hearing the respondent or his counsel. It appears that after the

reference was acccepted by the High Court, a prayer was made for review of the order but it was rejected on the ground that in a revision case,

the respondent was not entitled to be heard as of right. In such circumstances" the Supreme Court intervened and held that the view taken by the

High Court was manifeslty contrary to the audi alteram partem rule of natural justice which was applicable to the proceedings before the High

Court and the order accepting the reference was accordingly set aside. This authority is hardly of any assistance to the applicant in the instant case.

The report does not disclose that the reference accepted by the High Court on consideration of merits of the case. On the other hand, it shows that

no notice of the date of hearing was issued either to the respondent or to his counsel of which note was taken by the learned Judges of the

Supreme Court. In such circumstances the Supreme Court took the view that the procedure followed by the High Court was contrary to the rules

of natural justice and so it was held that the order made by the High Court did not deserve to be maintained. Thus it is found that while in

Makkapati"s case (supra) the respondent was not even aware of the revisional application against him, in the case before us, the applicant was

very much aware of the case, the rule wherein was issued at his instance. Further, in Makkapati"s case (supra), as already pointed out, there is

nothing to show that the High Court accepted the reference on examination of the record while in the case before us, the learned Judges

discharged the Rule after fully considering the merits of the case. Therefore, the two cases are clearly distinguishable and the aforesaid decision of

the Supreme Court cannot come to the aid of the applicant.

2. In this connection reference may be made to the decision of the Supreme Court in State of Orissa v. Ram Chandra Agarwala, AIR 1979 SC 87

which is good law to this date. In that case, it was held by Their Lordships, after considering several previous decisions on the point, that once a

judgment has been pronounced by a High Court either in exercise of its appellate or revisional jurisdiction, no review or revision can be entertained

as there is no such provision in the Code of Criminal Procedure. Their Lordships also pointed out that Section 369, Code of Criminal Procedure,

1898, which substantially corresponds to Section 362, Code of Criminal Procedure, 1973, do not restrict the prohibition to the trial court alone

but it is general in its application and prohibits all Courts from altering or reviewing its judgment after it has been signed. Therefore, it can be said

without any fear of error that this is an authority which completely bars the entertainment of the application under consideration. The learned

advocate for the applicant has also cited a Single Bench decision of the Court in Baren Das v. State of West Bengal, 1988 C. Cr. L.R. (Cal) 227.

This ruling as far as it goes is entirely against the case of the applicant as the learned Judge has found that there is no provision in the Code of

Criminal Procedure to set aside a judgment delivered on merits and in fact turned down a prayer for recalling the judgment in on appeal rendered

on merit as it was prohibited by Section 362, Cr.P.C. However, this judgment contains a reference to a decision of the Supreme Court in 1982 S.

C. C. (Cri) 143 (the report was not made available to this Court) wherein the Supreme Court interfered with a decision of the appellate court even

on merits where the appellant''s advocate refused to argue the appeal and held that the appellate court should have appointed an advocate as

amicus curiae before disposal of the appeal on merits. In Baren''s case (supra) the learned Judge distinguished it by stating that it was not a case

where the appellant''s advocate refused to argue the appeal. In the case before us also the rule was discharged not because of the revisionist''s

advocate refusing to argue the matter but because the court found it unsustainable on merits even though the learned advocate was not available. In

the circumstances the decision of the Supreme Court referred to above does not come to the aid of the present applicant.

For foregoing reasons we see no merit in the application under consideration and the same is rejected.