

GAHC010143982023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Review.Pet./84/2023

DEBA PRASAD DUTTA
S/O LATE DIGENDRA MOHAN DUTTA,
UKILBAZAR, TARAPUR, SILCHAR, 788003, CACHAR,

VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY SECRETARY TO THE GOVT. OF ASSAM, HOME
DEPARTMENT, DISPUR, GUWWAHATI

2:MRS. MADHUMITA SHARMA
UKILBAZAR
TARAPUR
SILCHAR
788003
CACHAR

Advocate for the Petitioner : PETITIONER IN PERSON

Advocate for the Respondent : GA, ASSAM

Linked Case : W.P.(CrI.)/5/2023

DEBA PRASAD DUTTA
S/O- LATE DIGENDRA MOHAN DUTTA
UKILBAZAR
TARAPUR
SILCHAR- 788003

CACHAR

VERSUS

MADHUMITA SHARMA
UKILBAZAR
TARAPUR
SILCHAR- 788003
CACHAR

Advocate for : MR. D P DUTTA
Advocate for : MR. S K GHOSH (r-1) appearing for MADHUMITA SHARMA

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 03.10.2023

Heard Mr. D.P. Dutta, petitioner is person. Also heard Mr. K.K. Das, learned Additional Public Prosecutor for the State/respondent No. 1 and Mr. S.K. Ghosh, learned counsel for the respondent No. 2.

2. The petitioner has preferred this petition against the order dated 08.06.2023 passed by this court in Writ Petition (Crl.)5/2023.

3. The background of the case is that the respondent as complainant lodged an FIR at Silchar Police Station, alleging that on 06.03.2019, at about 11:45 pm, the accused petitioner hired one truck which was loaded with stones by entering into Ward No. 24 of Silchar town. When the complainant/respondent being a Commissioner of the said Ward protested and asked him not to enter into the ward with the loaded vehicle as there was possibility of damaging public

property, the said accused petitioner started using filthy language towards the complainant/respondent. On receipt of the complaint, a case was registered vide Silchar P.S. Case No. 752 of 2019, under Sections 341/294/431 IPC, read with Section 3 of Prevention of Damage to Public Property Act, 1984 . After completion of investigation, prima facie a case was found against the petitioner and charge sheet was submitted under Section 294/431 IPC, read with Section 3 of Prevention of Damage to Public Property Act, 1984 (hereinafter, referred to as "the PDPP Act").

4. Accordingly, after taking cognizance by the learned Magistrate, under Sections 294/431 IPC, read with Section 3 of PDPP Act, summons were issued to the accused petitioner and he has appeared before the learned Court of JMFC, Silchar. At the time of framing charge, after hearing both sides, by order dated 04.10.2021, the accused petitioner was discharged by the learned Magistrate on the ground that that there were no sufficient materials to frame charges under Sections 294/431 IPC, read with Section 3 of the PDPP Act.

5. Against the said order dated 04.10.2021, the respondent/complainant has preferred a revision petition before the Court of Sessions. The revisional Court has allowed the criminal revision, with a direction to the petitioner to appear before the learned trial Court and it was directed to hear afresh the prosecution as well as the accused and pass a fresh order under Section 239 Cr.P.C. or Section 240 Cr.P.C. as the case may be, in accordance with law. Subsequently, on receipt of the order from the revisional Court, the case vide PRC Case No. 661/2020 was re-opened and charge was framed against the accused petitioner under Sections 431/294 IPC, read with Section 3 of PDPP Act. Against framing of charge, the petitioner has preferred the second revision before the Court of

Sessions, challenging the order of framing of charge, which was dismissed by the learned Additional Sessions Judge (FTC) Cachar, Silchar.

6. The petitioner in person submits that the second revision is maintainable and lies before the High court. In support of his submission, the petitioner has relied upon the following case laws-

(i) Prabhu Chawla vs. State of Rajasthan reported in 2016 v.16 SCC 30.

(ii) Dhariwal Tobacco Product vs. State of Maharashtra reported in 2008 0 Supreme (ori) 534.

(iii) Pawan Kumar vs. state of Haryana & Anr. reported in 1996 SCC (4) 17.

7. The petitioner has pointed out that in the said case, it was held that the second revision lies before the High Court under Article 226 and 227 of the Constitution of India and Section 482 Cr.P.C., after being aggrieved by the order of District and Session Judge.

8. In the case of Dhariwal Tobacco Product (supra), it was held that indisputably issuance of summons is not interlocutory order within the meaning of Section 397 of the code. This court, in a large number of decisions beginning from R.P. Kapur vs. State of Punjab, AIR 1960 SC 866 and Som Mittal vs. Government of Karnataka reported in (2008) 3 SCC 574 has laid down the criteria for entertaining an application under section 482 Cr.P.C. only because a revision petition is maintainable, the same by itself in our considered opinion would not constitute a bar for entertaining an application under section 482 of the code.

9. The petitioner has also contended that even when a revision application is

barred as for example the remedy by way of section 115 CPC 1908, the Hon'ble Supreme Court has held that the remedies under Article 226 and 227 of the Constitution of India would be available vide *Surya Dev Rai vs. Ram Chander Rai & Ors* reported in (2005) 6 SCC 6751.

10. It is also submitted that the power of the High court can be exercised not only in terms of section 482 of the Code but also in terms of section 483 thereof.

11. The petitioner in person also cited another case law- *Amarnath & Ors. vs. State of Haryana & Ors.* reported in AIR 1977 SC 2185 by stating that in the said case, the Hon'ble Supreme Court has held as under-

“.....We are, therefore satisfied as the order impugned was one which was a matter of moment and which did involve a decision regarding the rights of the appellants. If the appellants were not summoned, then they could not have faced the trial at all but by compelling the appellants to face a trial without proper application of mind cannot be held to bar interlocutory matter one which decided a serious question as to the rights of the appellants to be put on trial.

Para 12..... reference may be made two decision of this court in Pepsi Foods Ltd, Special Judicial Magistrate and Ashok Chaturvedi v. Shitul Chanchani where in it has been specifically held that though the Magistrate trying it, Court has jurisdiction to discharge the accused at any stage of the trial if he considers the charge to be groundless but that does not mean that the accused cannot approach the High Court under Section 482 of the Code or Article 227 of the constitution to have the proceeding

quashed against them when no offence has been made out against them and still why must they undergo the agony of criminal trial.

13..... It envisages three circumstances under which the inherent Jurisdiction may be exercised namely i) to give effect to an order under the code ii) to prevent abuse of the process of Court iii) otherwise to secure the end of justice.....

.....All courts, whether civil or Criminal possess in the absence of any express provision as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in the course of administration of justice of the principle."

12. In response, the learned Additional Public Prosecutor for the State/respondent No. 1 as well as the learned counsel for the respondent No. 2 have submitted that there is no provision in the Criminal Procedural Code to review the order of its own. As such, the petition filed by the petitioner is not maintainable in the eye of law.

13. I have considered the submissions of learned counsel for the parties. I have also perused the order dated 08.06.2023 passed by this Court.

14. On the basis of the judgment referred in the case vide (i) Deepti alias Arati Rai v. Akhil Rai & Ors. (1995) 5 SCC 751 (ii) Laxmi Bai Patel vs. Shyam Kumar Patel, 2002 0 Supreme (SC) 283 (iii) Dharampal & Ors. vs. Ramshri, 1993 (1) SCC 435, the Writ Petition(Crl.)/05/2023 was dismissed with an observation that there was no compelling circumstance or exceptional circumstance or it could not even be stated to be a rarest of rare case warranting invocation of

section 482 Cr.P.C. by this court.

15. Now, the question comes whether there is any provision in the Code of Criminal Procedure authorizing the High Court to review its judgment/order pass either in exercise of its appellate or revisional or criminal jurisdiction.

16. I have already stated that this Court passed the order in connection with Writ Petition (Crl.)/05/2023 by dismissing the prayer of the petitioner filed under Section 397/401 Cr.P.C.

17. Section 362 Cr.P.C. mandates that 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. The section is based on an acknowledged principle of law that once a matter is finally disposed of by a court, the said court in the absence of a specific statutory provision, becomes *functus officio* and this entitled to entertain a fresh prayer for the same relief unless the former order of final disposal is set aside by a court of competent jurisdiction in a manner prescribed by law. The court becomes *functus officio* the moment the official order disposing of a case is signed. Such an order cannot be altered except to the extent of correcting a clerical or arithmetical error. The basic principles of criminal law is that no review of an order is contemplated under the Code of Criminal Procedure.

18. In the case in hand, after disposal of the Writ Petition(crl.)05/2023, no lis is pending in the High Court wherein the petitioner could have filed any miscellaneous petition. The filing of a miscellaneous petition not referable to any provision of Code of Criminal Procedure or the rules of the Court, cannot be resorted to as a substitute of fresh litigation. The record of the proceedings

produced in the case shows that the Writ Petition(Crl.)/05/2023 filed by the petitioner was disposed of on 08.06.2023 after discussing all the points that as per provision of Section 397(3) Cr.P.C. the second revision does not lie. There is no provision in the Code of Criminal Procedure authorizing the High Court to review its judgment/order passed either in exercise of its appellate or revisional or original criminal jurisdiction. Such a power cannot be exercised with the aid or under the cloak of Section 482 of Cr.P.C.

19. In the case State of Orissa v. Ram Chander Agarwala reported in AIR 1979 SC 87, it was held that-

“Before concluding we will very briefly refer to cases of this Court cited by counsel on both sides relates to the power of the High Court to cancel bail. The High Court took the view that under Section 561A of the Code, it had inherent power to cancel the bail, and finding that on the material produced before the Court it would not be safe to permit the appellant to be at large cancelled the bail. This Court in the case of Sankatha Singh v. State of U.P. A.I.R. 1962 SC 1208, held that Section 369 read with Section 424 of the Code of Criminal Procedure specifically prohibits the altering or reviewing of its order by a court. The accused applied before a succeeding Sessions Judge for re-hearing of an appeal. The learned Sessions Judge was of the view that the appellate court had no power to review or restore an appeal which has been disposed of. The Supreme Court agreed with the view that the appellate court had no power to review or restore an appeal. This Court, expressing its opinion that the Sessions Court had no power to review or restore an appeal observed that a judgment, which does not comply with the requirements of Section 367 of the Code, may

be liable to be set aside by a superior court but will not give the appellate court any power to set it aside itself and re-hear the appeal which makes it clear that the appellate court is not to alter or review the judgment once signed, except for the purpose of correcting a clerical error.

In the case of Remembrancer of Legal Affairs W.B. v. Mohan Singh, A.I.R. 1975 SC 1002, it was held that rejection of a prior application for quashing is no bar for the High Court entertaining a subsequent application as quashing does not amount to review or revision. This decision instead of supporting the petitioner clearly lays down, following Chopra's case (A.I.R. 1955 SC 633) 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 against that judgment as there is no provision in the Criminal Procedure Code which would enable the High Court to review the same or to exercise revisional jurisdiction. This Court entertained the application for quashing the proceedings on the ground that a subsequent application to quash would not amount to review or revise an order made by the Court. The decision clearly lays down that a judgment of the High Court on appeal or revision cannot be reviewed or revised except in accordance with the provisions of the Criminal Procedure Code. The provisions of Section 561A of the Code cannot be invoked for exercise of a power which is specifically prohibited by the Code."

20. In the case of Hari Singh Mann vs. Harbhajan Singh Bajwa & Ors. reported in 2000 (4) Crimes (SC) 189, it was held that there is no provision in the Code of Criminal Procedure authorising the High Court to review its judgment/order passed either in exercise of its 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.

21. In view of the above discussion, this Court is of the opinion that the petition filed by the petitioner to review the order passed by this Court dated 08.06.2023 is not maintainable as there is no provision in the criminal procedure code authorizing the High Court to review its judgment/order passed either in exercise of its appellate or revisional or original criminal jurisdiction.

22. In the result, this criminal petition is dismissed and disposed of accordingly.

JUDGE

Comparing Assistant