

GAHC010270422022



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

Case No. : Crl.Pet./1350/2022

CHAMPAK DUTTA
S/O MANIK CHANDRA DUTTA,
R/O KATHALGURI TEA ESTATE,
P.S.- MARIANI, IN THE DIST. OF JORHAT, ASSAM.

VERSUS

THE STATE OF ASSAM AND ANR.
REP. BY P.P., ASSAM.

2:SWETA DUTTA
D/O SANGITA DUTTA

R/O JAIL ROAD

P.O. AND P.S.- JORHAT
IN THE DIST. OF JORHAT
ASSAM

Advocate for the Petitioner : MS. G BORAH

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 24.01.2023

Heard Ms. G. Borah, learned counsel for the petitioner as well as Mr. B.B. Gogoi, learned APP for the State respondent no.1.

2. This criminal petition has been filed under section 482 Cr.P.C. In this petition, the petitioner has assailed the following, viz., (i) order dated 16.11.2022, passed by the learned coordinate Bench of this Court in Crl. Pet. No. 754/2021; (ii) order dated 28.10.2021, passed by the learned Sessions Judge, Jorhat in Criminal Revision No. 4/2019; and (iii) order dated 15.11.2018 passed by the learned Judicial Magistrate, First Class, Jorhat in Misc. Case No. 10/2018. By the impugned order dated 15.11.2018, the learned Judicial Magistrate First Class, Jorhat had ordered the petitioner to pay maintenance of Rs.5,000/- per month to the respondent no.2, who is the unmarried adult daughter of the petitioner.

3. In view of the nature of order proposed to be passed, only a brief background facts of the case has been mentioned herein below, which is as follows:-

- a. The learned trial Court, in an application filed under section 125 Cr.P.C., had granted maintenance to the adult daughter of the petitioner (i.e. to respondent no.2).
- b. The said order was challenged by the petitioner by filing revision under section 397 Cr.P.C., which was registered as Crl. Rev. No. 4/2019. The learned Sessions Judge, Jorhat upon hearing the parties, had dismissed the revision by order dated 28.10.2021.
- c. It may be pertinent to mention herein that in impugned order dated

28.10.2021, the learned Sessions Judge, Jorhat had made reference to the order dated 25.04.2012, passed by this Court in CRP No. 310/2011, wherein the petitioner and the mother of the respondent no. 2 were parties. This Court by order dated 25.04.2012, had directed the petitioner to abide by the settlement report dated 10.04.2012, by which the petitioner had taken the responsibility of his daughter, i.e. respondent no. 2 in respect of her education, maintenance, and medical treatment till her marriage.

- d. Against the order dated 28.10.2021, the petitioner had preferred a quashing application under section 482 Cr.P.C., which was registered as Crl. Pet. No. 754/2021. The learned coordinate Bench of this Court, by the impugned order dated 16.11.2022 had dismissed the quashing application.
- e. Now by filing another quashing petition under section 482 Cr.P.C., the order dated 16.11.2022 passed by the learned coordinate Bench of this Court in Crl. Pet. No. 754/2021 has been assailed by the petitioner.

4. Before issuing notice on the respondents, this Court by order dated 02.01.2023, had expressed its inclination to examine the maintainability of this criminal petition.

5. In support of her argument on maintainability of this criminal petition, the learned counsel for the petitioner has cited the following cases, viz., (1) *Abhilasha v. Parkash & Ors.*, Crl. Appeal No.615/2020 decided by the Supreme Court of India on 29.07.2022, (2) *State of Punjab v. Davinder Pal Singh Bhullar & Ors.*, (2011) 14 SCC 770, (3) *New India Assurance Co. Ltd. v.*

Krishna Kumar Pandey, Crl. Appeal No. 1852/2019, decided by the Supreme Court of India on 06.12.2019, (4) Anil Khadkiwala v. State (Govt. of NCT of Delhi) & Anr. (2019) 17 SCC 294, and (5) Superintendent and Remembrancer of Legal Affairs, W.B. v. Mohan Singh & Ors., AIR 1975 SC 1002. It was submitted that the impugned order was without jurisdiction. Therefore, this Court had inherent jurisdiction under section 482 Cr.P.C. to pass appropriate order to correct the inherent defects and mistakes in the said order.

6. The learned counsel for the petitioner, by referring to the case of *Abhilasha (supra)*, has submitted that in order to maintain her claim for maintenance under Section 20(3) of the Hindu Adoption and Maintenance Act, 1956, the respondent no. 2 ought to have been directed by this Court to institute a separate suit/ proceeding. Hence, it was submitted that in an application under section 125 Cr.P.C., the learned Courts below as well as this Court had no jurisdiction to grant relief to the respondent no. 2 under section 20(3) of the Hindu Adoption and Maintenance Act, 1956.

7. The learned Addl. P.P. has made his submissions to oppose the maintainability of this criminal petition.

8. It is seen that this Court while deciding Crl. Pet. No. 754/2021, had examined the legality of the order dated 28.10.2021, passed by the learned Sessions Judge, Jorhat. Moreover, this Court had taken into consideration the case of *Abhilasha (supra)*, cited by the learned counsel for the petitioner and upon considering the same, the learned coordinate Bench of this Court had arrived at a conclusion that in terms of the ratio laid down in the case of *Dr.*

Jagjit Jugtawat v. Manjulata & Ors., (2002) 5 SCC 422, that the order passed by the learned Sessions Judge, Jorhat was based on proper appreciation of oral and documentary evidence and need not be interfered.

9. In the considered opinion of the Court, in view of the bar created under sub-section (3) of section 397 of the Cr.P.C., as the petitioner could not have filed a further revision, had approached this Court by filing a criminal petition under section 482 Cr.P.C., and therefore, any order that has been passed in Crl. Pet. No. 754/2021, cannot be said to have been passed by this Court without having jurisdiction. The learned counsel for the petitioner has failed to show that even by assuming but not admitting that the order dated 16.11.2022, passed by the coordinate Bench of this Court in Crl. Pet. No. 754/2021 was erroneous, yet, this coordinate Bench would have no jurisdiction to invoke powers under section 482 Cr.P.C., to examine the legality or otherwise of the order passed by the coordinate Bench in exercise of jurisdiction under Section 482 Cr.P.C., so as to render the provision of section 362 Cr.P.C. as otiose.

10. In the case of *Davinder Pal Singh Bhullar (supra)*, on which the learned counsel for the petitioner has relied on, it would be relevant to quote paragraphs 44 to 46, which is as follows:

“III. Bar to review/ alter judgment

44. *There is no power of review with the Criminal Court after judgment has been rendered. The High Court can alter or review its judgment before it is signed. When an order is passed, it cannot be reviewed. Section 362 Cr.P.C. 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 is disentitled to entertain a fresh prayer for any 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 order for disposing of a case is signed. Such an order cannot be altered except to the extent*

of correcting a clerical or arithmetical error. There is also no provision for modification of the judgment. [See: *Hari Singh Mann v. Harbhajan Singh Bajwa*, (2001) 1 SCC 169; and *Chhanni v. State of U.P.*, (2006) 5 SCC 396].

45. Moreover, the prohibition contained in Section 362 Cr.P.C. is absolute; after the judgment is signed, even the High Court in exercise of its inherent power under Section 482 Cr.P.C. has no authority or jurisdiction to alter/review the same. [See: *Moti Lal v. State of M.P.*, (2012) 11 SCC 427; AIR 1994 SC 1544; *Hari Singh Mann (supra)*; and *State of Kerala v. M.M. Manikantan Nair*, (2001) 4 SCC 752].

46. If a judgment has been pronounced without jurisdiction or in violation of principles of natural justice or where the order has been pronounced without giving an opportunity of being heard to a party affected by it or where an order was obtained by abuse of the process of court which would really amount to its being without jurisdiction, inherent powers can be exercised to recall such order for the reason that in such an eventuality the order becomes a nullity and the provisions of Section 362 Cr.P.C. would not operate. In such eventuality, the judgment is manifestly contrary to the *audi alteram partem* rule of natural justice. The power of recall is different from the power of altering/reviewing the judgment. However, the party seeking recall/alteration has to establish that it was not at fault. [Vide: *Chitawan v. Mahboob Ilahi*, 1970 Cr.L.J. 378 (All); *Deepak Thanwardas Balwani v. State of Maharashtra*, 1985 Cr.L.J. 23 (Bom); *Habu v. State of Rajasthan*, AIR 1987 Raj. 83 (FB); *Swarth Mahto v. Dharmdeo Narain Singh*, (1972) 2 SCC 273; *Makkapati Nagaswara Sastri v. S.S. Satyanarayan*, (1981) 1 SCC 62; *Asit Kumar Kar v. State of West Bengal*, (2009) 2 SCC 703; and *Vishnu Agarwal v. State of U.P.*, (2011) 14 SCC 813]."

11. From the hereinbefore extracted paragraph 44 and 45, it is apparent that the settled law is to the effect that once an order is passed by a Court exercising criminal jurisdiction, by applying the provision of section 362 Cr.P.C., the Court becomes *functus officio*. The Supreme Court of India has reiterated that prohibition contained in section 362 Cr.P.C. is absolute. Nonetheless, in paragraph 46 of the said order, the Supreme Court of India has observed that an order may be recalled if (i) a judgment is pronounced without jurisdiction, or (ii) has been passed in violation of principles of natural justice, or (iii) where the order has been pronounced without giving an opportunity of being heard to a party effected by it, or (iv) where the order was obtained by the abuse of the process of Court. The presence of none of the said circumstances exists in the present case in hand.

12. The petitioner, having approached this Court previously under section 482 Cr.P.C. cannot be permitted to turn back and claim that the order passed by the Court was without jurisdiction.

13. It may be mentioned that paragraph 46 of the case of *Davinder Pal Singh Bhullar (supra)* was reproduced in the case of *Krishna Kumar Pandey (supra)*. Therefore, the Court had asked the learned counsel for the petitioner not to cite judgments which only have repetitive value. The case of *Krishna Kumar Pandey (supra)* was decided by quoting paragraph 46 of the case of *Davinder Pal Singh Bhullar (supra)*. Thus, the learned counsel for the petitioner was put to notice that if same paragraphs are repetitively cited, she may invite cost because the ratio laid down in the case of *Davinder Pal Singh Bhullar (supra)* was not at all in quarrel. However, despite being put to notice, the learned counsel for the petitioner insisted that she would cite both the cases. Hence, the Court is inclined to record its dissatisfaction on the practice of citing cases which only have a repetitive value because the later decision was based on the cases already cited. Accordingly, the Court is inclined to impose a cost of Rs.5,000/- on the learned counsel for the petitioner.

14. In the case of *Mohan Singh (supra)*, the Supreme Court of India had observed that the facts and circumstances obtaining at the time of the subsequent application of respondent nos. 1 and 2 were clearly different from what they were at the time of earlier application of the first respondent. It is seen that on the basis of the aforesaid observation, the second application for quashing by the concerned High Court was found not to be vitiated with

jurisdictional infirmity. No such circumstances exist in the present case in hand as there is no change in circumstances that would warrant entertaining of an application under section 482 Cr.P.C. by which judgment of the learned Single Judge of this Court has been challenged before the coordinate Bench.

15. Similarly, in the case of *Anil Khadkiwala (supra)*, the subsequent quashing application was filed under changed circumstances and it was clarified that the bar under Section 362 would apply only if application is made to review/ recall/modify the earlier order. In fact this cited case is squarely against the petitioner. Para 10 thereof, which is against the petitioner is quoted below:-

“10. Atul Shukla v. State of M.P., (2019) 17 SCC 299 is clearly distinguishable on its facts as the relief sought was for review/recall/modify the earlier order of dismissal in the interest of justice. Consequently, the earlier order of dismissal was recalled. It was in that circumstance, it was held that in view of Section 362, Cr.P.C. the earlier order passed dismissing the quashing application could not have been recalled. The case is completely distinguishable on its own facts.

16. In the case of *Abhilasha (supra)*, the Supreme Court of India had accepted the submissions made by the learned counsel for the appellant that as a proposition of law, an unmarried Hindu daughter can claim maintenance from her father till she is married relying on Section 20(3) of the Hindu Adoption and Maintenance Act, 1956 provided she pleads and proves that she is unable to maintain herself, for enforcement of which right her application/ suit has to be under Section 20 of the Act. There is no quarrel with this petition. The distinguishable feature in this case is already narrated in paragraph 3(c) above. For ready reference, it is reiterated at the cost of repetition that in impugned order dated 28.10.2021, the learned Sessions Judge, Jorhat had made reference to the order dated 25.04.2012, passed by this Court in CRP No.

310/2011, wherein the petitioner and the mother of the respondent no. 2 were parties. This Court by order dated 25.04.2012, had directed the petitioner to abide by the settlement report dated 10.04.2012, by which the petitioner had taken the responsibility of his daughter, i.e. respondent no. 2 in respect of her education, maintenance, and medical treatment till her marriage. The petitioner has not been able to demonstrate and establish that the said settlement report dated 10.04.2012 has not attained finality. Therefore, it is apparent that by filing this present application under section 482 Cr.P.C., the petitioner is making collateral and/or veiled challenge to the settlement dated 10.04.2012, which has attained finality.

17. Accordingly, in light of the discussions above, the Court is of the considered opinion that this present application is frivolous, absolutely misconceived and a total abuse of the process of Court and process of law. The Court is inclined to hold that the present challenge is not maintainable on facts as well as in law. Therefore, the Court is inclined to dismiss this criminal petition at the "motion" stage without issuance of notice on the respondents.

18. Before parting with the records, the Court is inclined to direct that the cost of Rs.5,000/- (Rupees Five thousand only), that has been imposed on the learned counsel for the petitioner should be deposited before the Assam State Legal Services Authority within a period of 1(one) month. Hence, the Registry shall send a copy of this order to the Assam State Legal Services Authority.

19. The Registry shall also transmit a copy of this order to the Court

of Sessions Judge, Jorhat to make it a part of the record of Criminal Revision No. 4/2019; as well as to the Court of the learned Judicial Magistrate, First Class, Jorhat to be made a part of the record of Misc. Case No. 10/2018.

JUDGE

Comparing Assistant