

**Neutral Citation No. - 2023:AHC-LKO:84018**

**Court No. - 11**

**Case :- APPLICATION U/S 482 No. - 442 of 2006**

**Applicant :-** Niranjan Lal Sharma And 5 Ors.

**Opposite Party :-** State Of U.P.And 2 Ors.

**Counsel for Applicant :-** Mukul Rakesh, Beena Kishor, Manoj Kumar, Sridhar Awasthi, Sudeep Seth, Uma Shankar Sahai

**Counsel for Opposite Party :-** Govt. Advocate, Arun Sinha, S.K. Verma, Shrawan Kumar, Siddhartha Sinha

**Hon'ble Saurabh Lavania, J.**

1. Heard Sri Sudeep Seth, learned Senior Advocate, Sri Siddhartha Sinha, Advocate as also by Sri Uma Shankar Sahai, Advocate, who appeared for the applicants, Sri Shrawan Kumar, learned counsel for the opposite parties and Ms. Nusrat Jahan, learned counsel for the State.

2. By means of present application, the applicants have challenged the order dated 25.01.2006 passed by the Special Judge, SC/ST Act/Additional Sessions Judge, Court No.2, Balrampur, in Criminal Revision No. 109 of 2004 (Mathura Prasad Kesarwani and Others vs. Satish Chandra Sharma And Others), whereby, the revisional court interfered in the order dated 05.08.2004 passed by the Chief Judicial Magistrate, Balrampur, in Case No. 3573 of 1999 (243 of 1993) and remanded the matter back to the trial court with direction to decide the application preferred by the applicants for discharge in terms of the order of this Court passed in Criminal Misc. Case No. 541 of 1993 (Niranjan Lal Sharma and Others vs. The State through Upper Munsif Magistrate, Gonda And Others).

3. Brief facts of the case are to the effect that taking note of the observations made in the judgment and order dated 30.05.1992 passed in Civil Appeal No. 51 of 1980 (Chhedi Lal & Others vs. Srinivas Sharma and Others), a complaint case was filed, which was registered as Case No. 243 of 1993 (Mathura Prasad Kesarwani & Others vs. Satish Chandra Sharma & Others) and the trial court after considering the facts and circumstances of the case as also taking note of the statements of the witnesses recorded before it passed the summoning order dated 26.05.1993 and being aggrieved, a Criminal Misc. Case No. 541 of 1993 (Niranjan Lal Sharma and Others vs. The State through Upper Munsif Magistrate, Gonda And Others), was preferred before this Court and the same was disposed of vide order dated 06.08.2002 in following terms:-

*"I heard learned counsel for the parties and I have gone through the order of summoning and I find no illegality or impropriety in it.*

*The plea of innocence, which is taken here before this Court in the petition under Section 482 Cr.P.C., may be raised by the petitioners before the learned trial court at the initial stage of the case and the learned trial court after hearing, the parties and their learned counsel shall dispose of that plea of innocence by a speaking and reasoned order at the earlier stage of the case and before the charge if any, is framed. Till those pleas are disposed of, the petitioners may appear through counsel before it.*

*With these observations, the petition under Section 482 Cr.P.C. stands disposed of finally."*

4. The above quoted order dated 06.08.2002 indicates that this Court permitted the applicants to prefer an application taking plea of innocence before the trial Court and in terms of order of this Court dated 06.08.2002 the trial Court was under obligation to decide the same by reasoned and speaking order

at the earlier stage of the case and before the charge, if any, is framed. This order further indicates that till disposal of the said application, the applicants were permitted to appear through counsel.

5. In terms of aforesaid order of this Court dated 06.08.2002, an application was preferred before the trial court for discharge by the applicants. Thereafter, the trial court, after considering the fact that against the judgment dated 30.05.1992 (the basis of complaint case) passed in Civil Appeal No. 51 of 1980 (Chhedilal and Others vs. Srinivas Sharma and Others), the aggrieved person have filed Second Appeal No. 313 of 1992 and the same is pending, passed the order dated 05.08.2004 and by this order dated 05.08.2004 the trial court recalled the order dated 26.05.1993, whereby the summons were issued to the applicants and dismissed the complaint under Section 203 Cr.P.C. The operative portion of the order dated 05.08.2004 reads as under:-

"उपरोक्त विवेचना के पश्चात् मेरे विचार से अभियुक्तगण के विरुद्ध दाखिल परिवाद सं०-243/93 अभी अपरिपक्व है चूंकि माननीय तृतीय अपर जनपद न्यायाधीश गोण्डा के निर्णय के विरुद्ध माननीय उच्च न्यायालय में परिवादी द्वारा अपील संस्थित किया जा चुका है और अब तक जितने भी मुकदमें पक्षों के मध्य चले हैं उन मुकदमों से उपरोक्त विवेचना के अनुसार अभियुक्तगण के विरुद्ध प्रथम दृष्टया अपराध गठित नहीं होता है इसलिए मेरे विद्वान पूर्वाधिकारी द्वारा दिनांक 26.05.93 का जो आदेश पारित किया गया है वह एक पक्षीय था, उस समय अभियुक्तगण उपस्थित नहीं थे। उपरोक्त परिस्थितियों में उभय पक्ष को सुनने के पश्चात् मैं इस विचार का हूं कि प्रथम दृष्टया अभियुक्तगण के विरुद्ध कोई अपराध गठित नहीं होता है और मेरे विद्वान पूर्वाधिकारी द्वारा पारित आदेश दिनांकित 26.05.93 अन्तर्गत धारा-204 द०प्र०सं० रिकाल/निरस्त किये जाने योग्य है।

आदेश

*परिवाद सं०-243/93 में पारित आदेशिका निर्गत करने का आदेश दिनांक 26.05.93 रिकाल/निरस्त किया जाता है। परिवाद अन्तर्गत धारा-203 द०प्र०सं० खारिज किया जाता है।"*

6. It would be apt to clarify here that initially the number of complaint case was 243 of 1993 and subsequently, it was numbered as Case No. 3573 of 1999.

7. The complainant thereafter being aggrieved preferred the revision on 13.08.2004 as indicated by the learned Senior Advocate-Sri Seth, which was registered as Criminal Misc. Case No. 109 of 2004.

8. The revisional Court, after considering the entire facts of the case passed the impugned order dated 25.01.2006. This order is order of remand.

9. Vide order dated 25.01.2006, the revisional court remanded the matter back for deciding the same afresh after setting aside the order dated 05.08.2004 passed by the trial court, whereby the trial court recalled its earlier order dated 26.05.1993 and dismissed the complaint case under Section 203 Cr.P.C.

10. For the aforesaid, the revisional court in its order dated 25.01.2006 observed that accused can be discharged in exercise of power under Section 245 Cr.P.C. and the trial court without considering the said application seeking discharge recalled the earlier order dated 26.05.1993 and dismissed the complaint under Section 203 Cr.P.C. The relevant portion of the order dated 25.01.2006 reads as under:-

*"परिवादी की ओर से प्रस्तुत निगरानी आंशिक रूप से स्वीकार की जाती है। विद्वान अधीनस्थ न्यायालय द्वारा पारित आदेश दिनांकित 05-08-*

*2004 अपास्त किया जाता है तथा यह मामला विद्वान अधीनस्थ न्यायालय को इस निर्देश के साथ वापस लौटाया जाता है कि वह याचिका संख्या 541/1993 में माननीय उच्च न्यायालय द्वारा दिये गये निर्देशों एवं विधिक प्रक्रिया के अनुसार इस मामले का पुनः निस्तारण करें। यह मामला काफी लम्बे समय से विचाराधीन रहा है। अतः विद्वान मजिस्ट्रेट से यह अपेक्षा की जाती है कि वह इस पुराने मामले का यथा-शीघ्र निस्तारण किया जाना सुनिश्चित करें। अभिलेख अधीनस्थ न्यायालय को वापस लौटाया जावे, जहां उभय पक्ष दिनांक 25-02-2006 को उपस्थित हों।"*

11. In the aforesaid background, the present application under Section 482 Cr.P.C. challenging the order dated 25.01.2006 passed by the revisional court, has been filed.

12. It is to be noted that the observations of the revisional court that the application for discharge preferred by the applicants under Section 245 Cr.P.C. was not disposed of by the trial court are undisputed.

13. Assailing the order dated 25.01.2006 passed by the revisional court, in nutshell, it has been stated that the law at relevant time was to the effect that Magistrate has power to recall the summons under Section 204 Cr.P.C. and dropped the proceedings as observed by the Hon'ble Apex Court in the judgment passed in the case of **K.M. Mathew vs. State of Kerala And Another (1992) 1 SCC 217**. As such, the revisional court based upon the subsequent pronouncement of the Hon'ble Apex Court in the case of **Adalat Prasad vs. Roopal Jindal & Others; (2004) 7 SSC 338**, erred in interfering in the order passed by the trial court which was based upon the judgment of the Hon'ble Apex Court passed in the case of **K.M. Mathew (Supra)**.

14. At this stage, it would be apt to indicate that all the judgments apply retrospectively except otherwise provided. It is well established principle of law that the principle of

prospective operation of over ruling of judgment, does not apply except where it is specifically mentioned. The law declared by the Hon'ble Supreme Court is normally assumed to be the law from inception. Prospective operation is only exception to this general rule. It is trite law that where the question of law has been settled by the Courts, then it has to held that the said question of law was in existence right from the first day.

15. The Hon'ble Supreme Court in the case of **Sarwan Kumar vs. Madan Lal Aggarwal**; reported in **(2003) 4 SCC 147**, observed as under:-

*"15. For the first time this Court in Golak Nath v. State of Punjab accepted the doctrine of "prospective overruling". It was held: (AIR p. 1669, para 51)*

*"51. As this Court for the first time has been called upon to apply the doctrine evolved in a different country under different circumstances, we would like to move warily in the beginning. We would lay down the following propositions: (1) The doctrine of prospective overruling can be invoked only in matters arising under our Constitution; (2) it can be applied only by the highest court of the country i.e. the Supreme Court as it has the constitutional jurisdiction to declare law binding on all the courts in India; (3) the scope of the retroactive operation of the law declared by the Supreme Court superseding its 'earlier decisions' is left to its discretion to be moulded in accordance with the justice of the cause or matter before it."*

*The doctrine of "prospective overruling" was initially made applicable to the matters arising under the Constitution but we understand the same has since been made applicable to the matters arising under the statutes as well. Under the doctrine of "prospective overruling" the law declared by the Court applies to the cases arising in future only and its applicability to the cases which have attained finality is saved because the repeal would otherwise work hardship on those who had trusted to its existence. Invocation of the*

*doctrine of "prospective overruling" is left to the discretion of the Court to mould with the justice of the cause or the matter before the Court. This Court while deciding Gian Devi Anand case did not hold that the law declared by it would be prospective in operation. It was not for the High Court to say that the law laid down by this Court in Gian Devi Anand case would be prospective in operation. If this is to be accepted then conflicting rules can supposedly be laid down by different High Courts regarding the applicability of the law laid down by this Court in Gian Devi Anand case or any other case. Such a situation cannot be permitted to arise. In the absence of any direction by this Court that the rule laid down by this Court would be prospective in operation, the finding recorded by the High Court that the rule laid down in Gian Devi Anand case by this Court would be applicable to the cases arising from the date of the judgment of this Court cannot be accepted being erroneous."*

16. The Hon'ble Supreme Court in the case of **M.A. Murthy vs. State of Karnataka**; reported in **(2003) 7 SCC 517**, observed as under:-

*"8. The learned counsel for the appellant submitted that the approach of the High Court is erroneous as the law declared by this Court is presumed to be the law at all times. Normally, the decision of this Court enunciating a principle of law is applicable to all cases irrespective of its stage of pendency because it is assumed that what is enunciated by the Supreme Court is, in fact, the law from inception. The doctrine of prospective overruling which is a feature of American jurisprudence is an exception to the normal principle of law, was imported and applied for the first time in **L.C. Golak Nath v. State of Punjab**. In **Managing Director, ECIL v. B. Karunakar** the view was adopted. Prospective overruling is a part of the principles of constitutional canon of interpretation and can be resorted to by this Court while superseding the law declared by it earlier. It is a device innovated to avoid reopening of settled issues, to prevent multiplicity of proceedings, and to avoid uncertainty and avoidable litigation. In other words, actions taken contrary to the law declared prior to the date of declaration are validated in larger public interest. The law as declared applies to future cases. (See **Ashok Kumar Gupta v. State of U.P.** and **Baburam v. C.C.***

*Jacob.) It is for this Court to indicate as to whether the decision in question will operate prospectively. In other words, there shall be no prospective overruling, unless it is so indicated in the particular decision. It is not open to be held that the decision in a particular case will be prospective in its application by application of the doctrine of prospective overruling. The doctrine of binding precedent helps in promoting certainty and consistency in judicial decisions and enables an organic development of the law besides providing assurance to the individual as to the consequences of transactions forming part of the daily affairs. That being the position, the High Court was in error by holding that the judgment which operated on the date of selection was operative and not the review judgment in Ashok Kumar Sharma case No. II. All the more so when the subsequent judgment is by way of review of the first judgment in which case there are no judgments at all and the subsequent judgment rendered on review petitions is the one and only judgment rendered, effectively and for all purposes, the earlier decision having been erased by countenancing the review applications. The impugned judgments of the High Court are, therefore, set aside."*

17. The Hon'ble Supreme Court in the case of **K. Madhava Reddy vs. State of Andhra Pradesh**; reported in **(2014) 6 SCC 537**, observed as under:-

*"10. We have heard the learned counsel for the parties at length. The doctrine of prospective overruling has its origin in American jurisprudence. It was first invoked in this country in Golak Nath v. State of Punjab, with this Court proceeding rather cautiously in applying the doctrine, was conscious of the fact that the doctrine had its origin in another country and had been invoked in different circumstances. The Court sounded a note of caution in the application of the doctrine to the Indian conditions as is evident from the following passage appearing in Golak Nath case wherein this Court laid down the parameters within which the power could be exercised. This Court said: (AIR p. 1669, para 51)*

*"51. As this Court for the first time has been called upon to apply the doctrine evolved in a different country under different circumstances, we would like to move warily in the beginning. We would lay down the following propositions: (1) The doctrine of prospective overruling can be invoked only in matters*

*arising under our Constitution; (2) it can be applied only by the highest court of the country i.e. the Supreme Court as it has the constitutional jurisdiction to declare law binding on all the courts in India; (3) the scope of the retroactive operation of the law declared by the Supreme Court superseding its 'earlier decisions' is left to its discretion to be moulded in accordance with the justice of the cause or matter before it."*

*11. It is interesting to note that the doctrine has not remained confined to overruling of earlier judicial decision on the same issue as was understood in Golak Nath case. In several later decisions, this Court has invoked the doctrine in different situations including in cases where an issue has been examined and determined for the first time. For instance in India Cement Ltd. v. State of T.N., this Court not only held that the levy of the cess was ultra vires the power of the State Legislature brought about by an amendment to the Madras Village Panchayat Amendment Act, 1964 but also directed that the State would not be liable for any refund of the amount of that cess which has been paid or already collected. In Orissa Cement Ltd. v. State of Orissa, this Court drew a distinction between a declaration regarding the invalidity of a provision and the determination of the relief that should be granted in consequence thereof. This Court held that it was open to the Court to grant, mould or restrict the relief in a manner most appropriate to the situation before it in such a way so as to advance the interest of justice."*

*12. Reference may also be made to the decision of this Court in Union of India v. Mohd. Ramzan Khan where non-furnishing of a copy of the enquiry report was taken as violative of the principles of natural justice and any disciplinary action based on any such report was held liable to be set aside. The declaration of law as to the effect of non-supply of a copy of the report was, however, made prospective so that no punishment already imposed upon a delinquent employee would be open to challenge on that account."*

*13. In Ashok Kumar Gupta v. State of U.P., a three-Judge Bench of this Court held that although Golak Nath case regarding unamendability of fundamental rights under Article 368 of the Constitution had been overruled in Kesavananda Bharati v. State of Kerala yet the doctrine of prospective overruling was upheld and followed in several later decisions. This Court*

*further held that the Constitution does not expressly or by necessary implication provide against the doctrine of prospective overruling. As a matter of fact Articles 32(4) and 142 are designed with words of width to enable the Supreme Court to declare the law and to give such directions or pass such orders as are necessary to do complete justice. This Court observed: (Ashok Kumar Gupta case, SCC pp. 246-47, para 54)*

*"54. ... So, there is no acceptable reason as to why the Court in dealing with the law in supersession of the law declared by it earlier could not restrict the operation of law, as declared, to the future and save the transactions, whether statutory or otherwise, that were effected on the basis of the earlier law. This Court is, therefore, not impotent to adjust the competing rights of parties by prospective overruling of the previous decision in Rangachari ratio. The decision in Mandal case postponing the operation for five years from the date of the judgment is an instance of, and an extension to the principle of prospective overruling following the principle evolved in Golak Nath case."*

*14. Dealing with the nature of the power exercised by the Supreme Court under Article 142, this Court held that the expression "complete justice" are words meant to meet myriad situations created by human ingenuity or because of the operation of statute or law declared under Articles 32, 136 or 141 of the Constitution. The Hon'ble Supreme Court observed: (Ashok Kumar Gupta case, SCC pp. 250-51, para 60)*

*"60. ... The power under Article 142 is a constituent power transcendental to statutory prohibition. Before exercise of the power under Article 142(2), the Court would take that prohibition (sic provision) into consideration before taking steps under Article 142(2) and we find no limiting words to mould the relief or when this Court takes appropriate decision to mete out justice or to remove injustice. The phrase "complete justice" engrafted in Article 142(1) is the word of width couched with elasticity to meet myriad situations created by human ingenuity or cause or result of operation of statute law or law declared under Articles 32, 136 and 141 of the Constitution and cannot be cribbed or cabined within any limitations or phraseology. Each case needs examination in the light of its backdrop and the indelible effect of the decision. In the ultimate analysis, it is for this Court to exercise its power to do complete justice or prevent injustice arising from the exigencies of the cause or matter before it. The question of lack of jurisdiction or nullity*

*of the order of this Court does not arise. As held earlier, the power under Article 142 is a constituent power within the jurisdiction of this Court. So, the question of a law being void ab initio or nullity or voidable does not arise."*

*15. In Somaiya Organics (India) Ltd. v. State of U.P., this Court held that the doctrine of prospective overruling was in essence a recognition of the principle that the court moulds the relief claimed to meet the justice of the case and that the Apex Court in this country expressly enjoys that power under Article 142 of the Constitution which allows this Court to pass such decree or make such order as is necessary for doing complete justice in any case or matter pending before this Court. The Hon'ble Court observed: (SCC p. 532, para 27)*

*"27. In the ultimate analysis, prospective overruling, despite the terminology, is only a recognition of the principle that the court moulds the reliefs claimed to meet the justice of the case -- justice not in its logical but in its equitable sense. As far as this country is concerned, the power has been expressly conferred by Article 142 of the Constitution which allows this Court to "pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it". In exercise of this power, this Court has often denied the relief claimed despite holding in the claimants' favour in order to do "complete justice'."*

*16. The "doctrine of prospective overruling" was, observed by this Court as a rule of judicial craftsmanship laced with pragmatism and judicial statesmanship as a useful tool to bring about smooth transition of the operation of law without unduly affecting the rights of the people who acted upon the law that operated prior to the date of the judgment overruling the previous law."*

**18. The Hon'ble Supreme Court in the case of B.A. Linga Reddy vs. Karnataka State Transport Authority; reported in (2015) 4 SCC 515, observed as under:-**

*34. The view of the High Court in Ashrafulla has been reversed by this Court. The decision is of retrospective operation, as it has not been laid down that it would operate prospectively; more so, in the case of reversal of the judgment. This Court in P.V. George v. State of Kerala held that the law declared by a court will have*

*a retrospective effect if not declared so specifically. Referring to Golak Nath v. State of Punjab it had also been observed that the power of prospective overruling is vested only in the Supreme Court and that too in constitutional matters. It was observed: (P.V. George case, SCC pp. 565 & 569, paras 19 & 29) "19. It may be true that when the doctrine of stare decisis is not adhered to, a change in the law may adversely affect the interest of the citizens. The doctrine of prospective overruling although is applied to overcome such a situation, but then it must be stated expressly. The power must be exercised in the clearest possible term. The decisions of this Court are clear pointer thereto.*

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*29. Moreover, the judgment of the Full Bench has attained finality. The special leave petition has been dismissed. The subsequent Division Bench, therefore, could not have said as to whether the law declared by the Full Bench would have a prospective operation or not. The law declared by a court will have a retrospective effect if not otherwise stated to be so specifically. The Full Bench having not said so, the subsequent Division Bench did not have the jurisdiction in that behalf."*

*35. In Ravi S. Naik v. Union of India, it has been laid down that there is retrospective operation of the decision of this Court. The interpretation of the provision becomes effective from the date of enactment of the provision. In M.A. Murthy v. State of Karnataka, it was held that the law declared by the Supreme Court is normally assumed to be the law from inception. Prospective operation is only exception to this normal rule. It was held thus: (M.A. Murthy case, SCC pp. 520-21, para 8)*

*"8. The learned counsel for the appellant submitted that the approach of the High Court is erroneous as the law declared by this Court is presumed to be the law at all times. Normally, the decision of this Court enunciating a principle of law is applicable to all cases irrespective of its stage of pendency because it is assumed that what is enunciated by the Supreme Court is, in fact, the law from inception. The doctrine of prospective overruling which is a feature of American jurisprudence is an exception to the normal principle of law, was imported and applied for the first time in Golak Nath v. State of Punjab. In ECIL v. B. Karunakar the view was adopted. Prospective overruling is a part of the principles of constitutional canon of interpretation and can be*

*resorted to by this Court while superseding the law declared by it earlier. It is a device innovated to avoid reopening of settled issues, to prevent multiplicity of proceedings, and to avoid uncertainty and avoidable litigation. In other words, actions taken contrary to the law declared prior to the date of declaration are validated in larger public interest. The law as declared applies to future cases. (See Ashok Kumar Gupta v. State of U.P. and Baburam v. C.C. Jacob.) It is for this Court to indicate as to whether the decision in question will operate prospectively. In other words, there shall be no prospective overruling, unless it is so indicated in the particular decision. It is not open to be held that the decision in a particular case will be prospective in its application by application of the doctrine of prospective overruling. The doctrine of binding precedent helps in promoting certainty and consistency in judicial decisions and enables an organic development of the law besides providing assurance to the individual as to the consequences of transactions forming part of the daily affairs. That being the position, the High Court was in error by holding that the judgment which operated on the date of selection was operative and not the review judgment in Ashok Kumar Sharma case. All the more so when the subsequent judgment is by way of review of the first judgment in which case there are no judgments at all and the subsequent judgment rendered on review petitions is the one and only judgment rendered, effectively and for all purposes, the earlier decision having been erased by countenancing the review applications. The impugned judgments of the High Court are, therefore, set aside."*

19. The Hon'ble Supreme Court in the case of **P.V. George vs. State of Kerala**; reported in **(2007) 3 SCC 557** has held as under:-

*"27. The rights of the appellants were not determined in the earlier proceedings. According to them, merely a law was declared which was prevailing at that point of time; but the appellants were not parties therein. Thus, no decision was rendered in their favour nor any right accrued thereby."*

20. Thus, it is clear that the principle of prospective overruling would not apply in respect of the judgment passed by the Supreme Court unless and until it is expressly so

mentioned in the judgment. Furthermore, there cannot be an estoppel against the statute.

21. The Hon'ble Supreme Court in the case of **Bengal Iron Corpn. vs. CTO**; reported in **1994 Supp (1) SCC 310** has held as under:-

*"18.... ..... There can be no estoppel against the statute. ... ..... Law is what is declared by this Court and the High Court -- to wit, it is for this Court and the High Court to declare what does a particular provision of statute say, and not for the executive. Of course, the Parliament/Legislature never speaks or explains what does a provision enacted by it mean. (See Sanjeev Coke Mfg. Co. v. Bharat Coking Coal Ltd.)"*

22. Thus, where the question of law has been settled by the Courts, then it has to be held that the said question of law was in existence right from day one.

23. However, where the rights of a party have been considered and declared, then the said proceedings cannot be reopened on the ground that the judgment on the basis of which, the rights were declared, has been overruled. The Hon'ble Supreme Court in the case of **Union of India v. Madras Telephone SC & ST Social Welfare Assn.**, reported in **(2006) 8 SCC 662**; has held as under:-

*"21. Having regard to the above observations and clarification we have no doubt that such of the applicants whose claim to seniority and consequent promotion on the basis of the principles laid down in the Allahabad High Court's judgment in Parmanand Lal case have been upheld or recognised by the Court or the Tribunal by judgment and order which have attained finality will not be adversely affected by the contrary view now taken in the judgment in Madras Telephones. Since the rights of such applicants were determined in a duly constituted proceeding, which determination has attained finality, a subsequent judgment of a court or tribunal taking a contrary view*

*will not adversely affect the applicants in whose cases the orders have attained finality. We order accordingly."*

24. Thus, taking note of aforesaid, this Court is of the opinion that law laid down by the Hon'ble Apex Court in the case of **Adalat Prasad (Supra)** was applicable at time of passing of impugned order dated 25.01.2006. It is for the reason that feeling aggrieved by the order dated 05.08.2004 passed by the trial court, the revision was filed on 13.08.2004 and on 25.08.2004 the judgment in the case of **Adalat Prasad (Supra)** was pronounced.

25. On being pointed out the aforesaid, learned Senior Advocate Sri Seth as also Sri Sahai and Sri Sinha placed before this Court the order of Hon'ble Apex Court dated 06.11.2023 passed in **Petition (s) for Special Leave to Appeal (Cri) No(s).14267 of 2023 (Hyder vs. State of Kerala)**, which reads as under:-

*"Heard Mr. Ritesh Kumar Chowdhary, the learned counsel appearing for the petitioner.*

*2. The counsel submits that the petitioner who faced prosecution in a NDPS case was acquitted on 10.12.2018 by the Special Court. The said acquittal was based on the law declared by this Court in Mohan Lal vs. State of Punjab reported in (2018) 17 SCC 627. However, because of the change of law declared in Mukesh Singh vs. 2 State (Narcotic Branch of Delhi) reported in (2020) 10 SCC 120, the prosecution filed an appeal after delay of 1184 days to challenge the acquittal order.*

*3. It is submitted by the learned counsel that subsequent change of law cannot be a ground for condonation of delay or to disturb the acquittal finding. But the High Court under impugned order dated 23.06.2023 has not only condoned the huge delay of 1148 days but also decided to consider the Prosecution's appeal, on merit.*

*Issue notice, returnable in six weeks. In the meantime, further proceeding is stayed in pursuant to the impugned order dated 23.06.2023."*

26. Based upon the aforesaid order of Hon'ble Apex Court dated 06.11.2023, it is stated that the issue with regard to applicability of change of law by the Constitutional Court is pending consideration and as such hearing of the present case be deferred. However, they could not dispute that the law propounded by the Constitutional Court would apply retrospectively unless it is specifically provided in the judgment itself.

27. At this stage, it would be appropriate to refer following Paras of the judgment passed by the Hon'ble Apex Court in the case of **Union Territory of Ladakh v. Jammu & Kashmir National Conference, 2023 SCC OnLine SC 1140.**

*"32. The Court would categorically emphasize that no litigant should have even an iota of doubt or an impression (rather, a misimpression) that just because of systemic delay or the matter not being taken up by the Courts resulting in efflux of time the cause would be defeated, and the Court would be rendered helpless to ensure justice to the party concerned. It would not be out of place to mention that this Court can even turn the clock back, if the situation warrants such dire measures. The powers of this Court, if need be, to even restore status quo ante are not in the realm of any doubt. The relief(s) granted in the lead opinion by Hon. Khehar, J. (as the learned Chief Justice then was), concurred with by the other 4 learned Judges, in Nabam Rebia and Bamang Felix v. Deputy Speaker, Arunachal Pradesh Legislative Assembly, [\(2016\) 8 SCC 1](#) is enough on this aspect. We know full well that a 5-Judge Bench in Subhash Desai v. Principal Secretary, Governor of Maharashtra, [2023 SCC OnLine SC 607](#) has referred Nabam Rebia (supra) to a Larger Bench. However, the questions referred to the Larger Bench do not detract from the power to bring back status quo ante. That apart, it is settled that mere reference to a larger Bench does not unsettle*

declared law. In *Harbhajan Singh v. State of Punjab*, [\(2009\) 13 SCC 608](#), a 2-Judge Bench said:

*“15. Even if what is contended by the learned counsel is correct, it is not for us to go into the said question at this stage; herein cross-examination of the witnesses had taken place. The Court had taken into consideration the materials available to it for the purpose of arriving at a satisfaction that a case for exercise of jurisdiction under Section 319 of the Code was made out. Only because the correctness of a portion of the judgment in Mohd. Shafi [(2007) 14 SCC 544 : (2009) 1 SCC (Cri) 889 : (2007) 4 SCR 1023 : (2007) 5 Scale 611] has been doubted by another Bench, the same would not mean that we should wait for the decision of the larger Bench, particularly when the same instead of assisting the appellants runs counter to their contention.”*

*(emphasis supplied)*

**33.** In *Ashok Sadarangani v. Union of India*, [\(2012\) 11 SCC 321](#), another 2-Judge Bench indicated:

*“29. As was indicated in Harbhajan Singh case [Harbhajan Singh v. State of Punjab, [\(2009\) 13 SCC 608](#) : [\(2010\) 1 SCC \(Cri\) 1135](#)], the pendency of a reference to a larger Bench, does not mean that all other proceedings involving the same issue would remain stayed till a decision was rendered in the reference. The reference made in Gian Singh case [[\(2010\) 15 SCC 118](#)] need not, therefore, detain us. Till such time as the decisions cited at the Bar are not modified or altered in any way, they continue to hold the field.”*

*(emphasis supplied)*

**34.** On the other hand, when it was thought proper that other Benches of this Court, the High Courts and the Courts/Tribunals below stay their hands, the same was indicated in as many words, as was the case in *State of Haryana v. G D Goenka Tourism Corporation Limited*, [\(2018\) 3 SCC 5854](#):

*“9. Taking all this into consideration, we are of the opinion that it would be appropriate if in the interim and pending a final decision on making a reference (if at all) to a larger Bench, the High Courts be requested not to deal with any cases relating to the interpretation of or concerning Section 24 of the [Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013](#).*

The Secretary General will urgently communicate this order to the Registrar General of every High Court so that our request is complied with.

10. Insofar as the cases pending in this Court are concerned, we request the Benches concerned dealing with similar matters to defer the hearing until a decision is rendered one way or the other on the issue whether the matter should be referred to a larger Bench or not. Apart from anything else, deferring the consideration would avoid inconvenience to the litigating parties, whether it is the State or individuals.”

*(emphasis supplied)”*

28. Considering the aforesaid settled proposition of law, this Court is of the view that the issue related to applicability of law is well settled and in the instant case, the law subsequently propounded by the Hon'ble Apex Court would apply. It is for the reason that the trial court passed the order on 05.08.2004, as stated, based upon the law laid down in the case of **K.M. Mathew (Supra)** and immediately thereafter, the revision was preferred on 13.08.2004 and the judgment in **Adalat Prasad (Supra)** was pronounced on 25.08.2004 and till this date the order dated 05.08.2004 of trial court was not final.

29. Having considered the aforesaid, this Court is not inclined to defer the hearing of present case and in the opinion of this Court, the revisional court has not committed any error in passing the order dated 25.01.2006, whereby after setting aside the order dated 05.08.2004, by which trial court recalled the summoning order dated 26.05.1993, remanded the matter back to the trial court for deciding the same afresh.

30. So far as the order of Hon'ble Apex Court dated 06.11.2023 is concerned, it appears that the Hon'ble Apex Court interfered in the matter after taking note of fact that after huge delay of 1184 days an appeal was preferred by the State after taking note of subsequent law propounded by the Hon'ble Apex Court in the judgment passed in the case of **Mukesh Singh vs. State (Narcotic Branch of Delhi), (2020) 10 SCC 120.**

31. For the aforesaid, this Court is not inclined to interfere in the matter. Accordingly, the application is hereby **dismissed.**

32. The trial Court shall decide the application seeking discharge preferred by the applicants under Section 245 Cr.P.C. within a period of **one month** from the date a certified copy of this order is placed before it, if possible and if there is no other legal impediment in this regard, after taking note of the order passed by this Court dated 06.08.2002 in Criminal Misc. Case No. 541 of 1993. The issue of juvenility, if any, be raised the same shall also be considered. Time aforesaid has been provided after taking note of age of litigation between the parties.

**Order Date :- 19.12.2023**

Vinay/-