

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL MISC. APPLICATION NO.35 OF 2015
IN
CRIMINAL WRIT PETITION NO.113 OF 2012.

STATE OF GOA,
THROUGH INVESTIGATION OFFICER. APPLICANT.

V/S

JOSE MARIE ALBERT
VALES ALIAS ROBERT VALES. RESPONDENT.

Mr. S. R. Rivankar, Public Prosecutor for the State.

Mr. Pavithran A.V., Advocate for the respondent.

CORAM :- F.M. REIS, J.

Date : - 30 JULY 2015.

P.C. :

Heard Mr. S. R. Rivankar, learned Public Prosecutor
appearing for the applicant/State and Mr. Pavithran, learned Counsel
appearing for the respondent.

2. This is an application filed by the Applicant/State for
review/recall of an order dated 5th March, 2013, passed by this Court

in Criminal Writ Petition No.113/2012. The learned Counsel appearing for the respondent has opposed the said application on the ground that such an application is not maintainable in law and relies upon a Judgment of the Apex Court reported in (1981) 1 SCC 500 in the case of *Smt. Sooraj Devi vs. Pyare Lal and another*. The Apex Court, in the said Judgment at paras 4 and 5, has observed thus :

“ 4. The sole question before us is whether the High Court was right in refusing to entertain Criminal Miscellaneous Application No. 5127 of 1978 on the ground that it had no power to review its order dated September 1, 1970. Section 362 of the Code of Criminal Procedure declares: “Save as otherwise provided by this Code or by any other law for the time being in force, 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” It is apparent that what the appellant seeks by the application is not the correction of a clerical or arithmetical error. What she desires is a declaration that the High Court order dated September 1, 1970 does not affect her rights in the house property and that the direction to restore possession to Pyare Lal is confined to that portion only of the house property respecting which the offence of trespass was committed so that she is

not evicted from the portion in her possession. The appellant, in fact, asks for an adjudication that the right to possession alleged by her remains unaffected by the order dated September 1, 1970. Pyare Lal disputes that the order is not binding on her and that she is entitled to the right in the property claimed by her. Having considered the matter, we are not satisfied that the controversy can be brought within the description “clerical or arithmetical error”. A clerical or arithmetical error is an error occasioned by an accidental slip or omission of the court. It represents that which the court never intended to say. It is an error apparent on the face of the record and does not depend for its discovery on argument or disputation. An arithmetical error is a mistake of calculation, and a clerical error is a mistake in writing or typing. *Master Construction Co. (P) Ltd. v. State of Orissa* (1966) 3 SCR 99.

5. The appellant points out that he invoked the inherent power of the High Court saved by Section 482 of the Code and that notwithstanding the prohibition imposed by Section 362 the High Court had power to grant relief. Now it is well settled that the inherent power of the court cannot be exercised for doing that which is specifically prohibited by the Code (*Sankatha Singh v. State of U.P.* AIR 1962 SC

1208). It is true that the prohibition in Section 362 against the court altering or reviewing its judgment is subject to what is “otherwise provided by this Court or by any other law for the time being in force”. Those words, however, refer to those provisions only where the court has been expressly authorised by the Code or other law to alter or review its judgment. The inherent power of the court is not contemplated by the saving provision contained in Section 362 and, therefore, the attempt to invoke that power can be of no avail.”

Taking note of the said observations of the Apex Court in the said Judgment, the question of invoking powers under Section 482 of the Code of Criminal Procedure as claimed by the applicant, in the present case, does not arise at all. The review sought by the applicant is not on account of any clerical mistake, nor averments therein would justify invoking inherent powers under Section 482 of the Code of Criminal Procedure.

3. Hence, the application stands, accordingly, dismissed, as not maintainable.

F.M. REIS, J.

ssm.