

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**REVIEW APPLICATION (CIVIL) NO. 36 OF 2015
IN WP/9203/2014**

**RUSHIKESH VINAYAKRAO BHOSALE
VERSUS
STATE OF MAHARASHTRA AND OTHERS**

...

Advocate for Applicant : Shri G.L.Deshpande h/f Lale Yelwatkar S. N..
AGP for Respondents 1 to 4 : Shri D.R.Korde.

...

**CORAM: RAVINDRA V. GHUGE, J.
DATE :- 08th January, 2016**

Per Court:

1 The Review Petitioner has moved this Review Petition on the ground that the judgment dated 29.10.2014 delivered by this Court in Writ Petition No.9203/2014 suffers from an error apparent on the face of the record.

2 I have heard Shri Deshpande, learned Advocate for the Review Petitioner, for quite sometime.

3 With his assistance I have gone through the grounds raised in the review petition.

4 Only two grounds out of the seven set out in the review

petition require some attention which are as follows:-

- “(II) *The applicant says and submits that it is necessary to review the order of this Hon'ble High Court in writ petition in view of the changed circumstance that now the only hurdle/ rider in way of the applicant of his conviction by criminal court has now been set aside and the Apex Court in the judgment of Vidhyacharan Shukla vs. Purshootamlal Kushik held that disqualification disappears with acquittal as the acquittal acts with retrospective effect.*”
- “(V) *However, in view of the judgment of Hon'ble Apex Court in the case of Manilal vs. Shree Parmailal reported in 1971 (1) SCR 798 held that the order of acquittal wipes of the conviction and sentence for all purposes, and as effectively as if it had never been passed. An order of acquittal annulling and vioding a conviction operates from nativity and the facts of the present case are not similar to the K. Prabhakaran's case thus the applicant deserves relief prayed for.*”

5 Shri Deshpande has fairly stated that this Review Petition is based on the subsequent acquittal dated 17.11.2014 post the judgment under review which is dated 29.10.2014.

6 He further submits that in Summary Criminal Trial No.1524/2012 under Section 138 of the Negotiable Instruments Act, the Review Petitioner was convicted under Section 255(2) of the Code of Criminal Procedure and was sentenced to suffer simple imprisonment for six months. The amount of Rs.2,70,000/- was also directed to be paid to the original Complainant, failing which the Review Petitioner was to suffer

further simple imprisonment for three months. As a consequence of the same, the election of the Review Petitioner as a member of the Gram Panchayat, Matola held in October, 2012 was in jeopardy. His disqualification followed under the Maharashtra Village Panchayats Act, 1958.

7 He, therefore, submits that the acquittal of the Review Petitioner post the judgment under review needs to be considered to have an effect which would date back to his conviction and hence that is an error apparent on the face of the record.

8 He has relied upon the following judgments in support of his above submissions:-

- (a) *Board of Control for Cricket in India and another vs. Netaji Cricket Club and others*, **AIR 2005 SC 592(1)**.
- (b) *Nawabkhan Abbaskhan vs. State of Gujarat*, **AIR 1974 SC 1471**.
- (c) *Ram Kumar Barnwal vs. Ram Lakhan*, **(2007) 5 SCC 660**.

9 I have considered the submissions of Shri Deshpande as have been recorded herein above.

10 The Apex Court in the Board of Control for Cricket in India case (supra) has observed in paragraph 93 as under:-

“93. It is also not correct to contend that the Court while exercising its review jurisdiction in any situation whatsoever cannot take into consideration a subsequent event. In a case of this nature when the Court accepts its own mistake in understanding the nature and purport of the undertaking given by the learned Senior Counsel appearing on behalf of the Board and its correlation with as to what transpired in the AGM of the Board held on 29th September, 2004, the subsequent event may be taken into consideration by the Court for the purpose of rectifying its own mistake.”

11 The above judgment would be of no assistance to the Review Petitioner. An event was not narrated when the Court heard the matter. In the light of the Court having accepted its mistake in understanding the nature and purport of the undertaking as given by the counsel, led the Apex Court to conclude that a subsequent event would be taken into consideration for the purpose of rectifying its own mistake.

12 The Apex Court in the case of Nawabkhan Abbaskhan (supra) has observed in paragraphs 19 and 20 as under:-

“19. In the present case, a fundamental right of the petitioner has been encroached upon by the police commissioner without due hearing so the Court quashed it – not killed it then but performed the formal obsequies of the order which had died at birth. The legal result is that the accused was never guilty of

flouting an order which never legally existed.

20. *We express no final opinion on the many wide-ranging problems in public law of illegal orders and violations thereof by citizens grave though some of them may be. But we do hold that an order which is void may be directly and collaterally challenged in legal proceedings. An order is null and void if the statute clothing the administrative tribunal with power conditions it with the obligation to hear, expressly or by implication. Beyond doubt, an order which infringes a fundamental freedom passed in violation of the audi alteram partem rule is a nullity. When a competent court holds such official act or order invalid, or sets it aside, it operates from nativity i.e. the impugned act or order was never valid. The French Jurists call it Linexistence or outlawed (p.127 Brown and Garner, French Administrative Law) and could not found the ground for a prosecution. On this limited ratio the appellant is entitled to an acquittal. We allow his appeal.”*

13 The issue before the Apex Court was with regard to an order, which infringes fundamental freedom and passed in violation of the audi alteram partem rule, was a nullity. It was thus, held that where a competent court holds such act or order invalid or sets it aside, it would mean that the impugned act or order was never valid.

14 I am afraid that this judgment would not assist the Review Petitioner because it is not his case that this Court while delivering the judgment under review had no authority to deliver the said judgment thereby, rendering the said judgment a nullity.

15 In Ram Kumar Barnwal case (supra), the Apex Court has observed in paragraph 10 as under:-

“10. In *Pasupuleti Venkateswarlu v. Motor & General Traders* (1975) 1 SCC 770, it was observed as follows:-

3.

4.

5. The law we have set out is of ancient vintage. We will merely refer to *Lachmeshwar Prasad Shukul v. Keshwar Lal Chaudhuri* (AIR 1941 FC 5) which is a leading case on the point. Gwyer C.J., in the above case, referred to the rule adopted by the Supreme Court of the United States in *Patterson v. State of Alabama* (294 U.S. 600, 607):

'We have frequently held that in the exercise of our appellate jurisdiction we have power not only to correct error in the judgment under review but to make such disposition of the case as justice requires. And in determining what justice does require, the Court is bound to consider any change, either in fact or in law, which has supervened since the judgment was entered.

and said that that view of the Court's powers was reaffirmed once again in the then recent case of *Minnesota v. National Tea Co.* 309 U.S. 551, 555. Sulaiman J., in the same case (AIR 1941 FC 5) relied on English cases and took the view that an appeal is by way of a re-hearing and the Court may make such order as the Judge of the first instance could have made if the case had been heard by him at the date on which the appeal was heard. Varadachariar J., dealt with the same point a little more comprehensively. We may content ourselves with excerpting one passage which brings out the point luminously (at p. 103) :

'It is also on the theory of an appeal being in the nature of a re-hearing that the courts in this country have in numerous cases recognized that in

moulding the relief to be granted in a case on appeal, the court of appeal is entitled to take into account even facts and events which have come into existence after the decree appealed against.”

16 The said ratio would be of no assistance to the Review Petitioner since the issue before the Apex Court was with regard to a rehearing of an appeal. The conclusion was that the Court could have made such an order at the first instance if the case would have been heard on the date on which the appeal was posted for hearing.

17 In the instant case, the Review Petitioner was acquitted and the conviction was set aside on 17.11.2014 when the learned District and Sessions Judge dealing with Appeal No.38/2014 noted as under:-

“Complainant, Accused and their Advocates are present. Parties admit contents in the compromise pursis at Exhibit 24. The Complainant accepted Rs.1,55,000/- towards full and final settlement. Thus, Accused is acquitted and his bail bond stands cancelled. The case is disposed of.”

18 There is no dispute that the date on which this Court delivered the judgment under review, the present Petitioner had suffered conviction and simple imprisonment for six months. Failure to pay the amount was to lead to further simple imprisonment for three months. It is also not in dispute that the Review Petitioner has compromised with the

original Complainant before the learned District and Sessions Judge and it was on account of the said compromise that the Petitioner was acquitted.

19 The Apex Court, in the case of Lily Thomas vs. Union of India, AIR 2000 SC 1650, has considered the scope of review in paragraphs 52 and 55 as under:-

“52. *The dictionary meaning of the word “review” the “the act of looking, offer something again with a view to correction or improvement. It cannot be denied that the review is the creation of a statute. This Court in Patel Narshi Thakershi v. Pradyumansinghji Arjunshinghji, AIR 1970 SC 1273 held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise. It cannot be denied that justice is a virtue which transcends all barriers and the rules or procedures or technicalities of law cannot stand in the way of administration of justice. Law has to bend before justice. If the Court finds that the error pointed out in the review petition was under a mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice nothing would preclude the Court from rectifying the error. This Court in S. Nagaraj V. State of Karnataka, 1993 Supp(4) SCC 595 held :*

“Review literally and even judicially means re-examination or re-consideration. Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law the Courts and even the statutes lean strongly in favour of finality of decision legally and properly made. Exceptions both statutorily and judicially have been carved out to correct accidental mistakes or miscarriage of justice. Even when there was no statutory provision and no rules were framed by the highest Court indicating the circumstances in which it could rectify its order the Courts culled out such power to avoid abuse of

process or miscarriage of justice. In *Prithwi Chand Lal Choudhary v. Sukhraj Rai*, AIR 1941 FC 1 that Court observed that even though no rules had been framed permitting the highest Court to review its order yet it was available on the limited and narrow ground developed by the Privy Council and the House of Lords. The Court approved the principle laid down by the Privy Council in *Rajunder Narain Rae v. Bijai Govind Singh* (1836) 1 Moo PC 117 that an order made by the Court has final and could not be altered.

“.....nevertheless, if by misprison in embodying the judgments, by errors have been introduced, these Courts possess, by Common Law, the same power which the Courts of record and statute have of rectifying the mistakes which have crept in The House of Lords exercises a similar power or rectifying mistakes made in drawing up its own judgments, and this Court must possess the same authority. The Lords have however gone a step further, and have corrected mistakes introduced through in inadvertence in the details of judgments; or have supplied manifest defects in order to enable the decrees to be enforced, or have added explanatory matter; or have reconciled inconsistencies. Basis for exercise of the power was stated in the same decision as under :

‘It is impossible to doubt that the indulgence extended in such cases is mainly owing to the natural desire prevailing to prevent irremediable injustice being done by a Court of last resort, where by some accident, without any blame, the party has not been heard and an order has been inadvertently made as if the party had been heard.’

Rectification of an order thus stems from the fundamental principle that justice is above all, it is exercised to remove the error and not for disturbing finality. When the Constitution was framed the substantive power to rectify or recall the order passed by this Court was specifically provided by Art. 137 of the Constitution. Our Constitution makers who had the practical wisdom to visualise the efficacy of such provision expressly conferred the substantive power to review any judgment or order by Art. 137 of the Constitution. And Cl. (c) or Art. 145 permitted this Court to frame rules as

to the conditions subject to which any judgment or order may be reviewed. In exercise of this power Order 40 had been framed empowering this Court to review an order in civil proceedings on grounds analogous to Order 47 Rule 1 of the Civil Procedure Code. The expression, 'for any other sufficient reason' in the clause has been given an expanded meaning and a decree or order passed under misapprehension of true state of circumstances has been held to be sufficient ground to exercise the power. Apart from Order 40, Rule 1 of the Supreme Court Rules this Court has the Inherent power to make such orders as may be necessary in the interest in justice or to prevent the abuse of process of Court. The Court is thus not precluded from recalling or reviewing its own order if it is satisfied that it is necessary to do so for sake of justice."

The mere fact that two views on the same subject are possible is no ground to review the earlier judgment passed by a Bench of the same strength."

- "55. *It follows, therefore, that the power of review can be exercised for correction of a mistake and not to substitute a view. Such powers can be exercised within the limits of the statute dealing with exercise of power. The review cannot be treated an appeal in disguise. The mere possibility of two views on the subject is not a ground for review. Once a review petition is dismissed no further petition of review can be entertained. The rule of law of following the practice of the binding nature of the larger Benches and not taking different views by the Benches of co-ordinated jurisdiction of equal strength has to be followed and practiced. However, this Court in exercise of its powers under Art. 136 or Art. 32 of the Constitution and upon satisfaction that the earlier judgments have resulted in deprivation of fundamental rights of a citizen or rights created under any other statute, can take a different view notwithstanding the earlier judgment."*

20 I do not find any ground raised by the Review Petitioner which could indicate an error apparent on the face of the judgment under

review. As such, this Review Petition is dismissed.

21 At this juncture, Shri Deshpande submits that in the fresh elections for Gram Panchayat, Matola, the Review Petitioner had filed his nomination papers and the Returning Officer has rejected the same on the ground that he had suffered conviction. Subsequent acquittal referred to above was not taken into account by the Returning Officer. Rejection of his nomination is subject matter of Writ Petition No.4204/2015 before the learned Single Judge of this Court which has stayed the election by an ad-interim order dated 21.04.2015. He, therefore, prays that result of this Review Petition should not come in the way of his pending petition.

22 It is made clear that this order is with regard to the Review Petition. The Review Petitioner can canvass all grounds set out in Writ Petition No.4204/2015 on their own merits.

kps

(RAVINDRA V. GHUGE, J.)