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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 05th April, 2016

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CRL.M.C. 245/2016

TRIMURTI EXPORTS & ORS.

..... Petitioners

Represented by: Mr.Virender Goswami,
Ms. Soni Singh, Mrs. Swati
Goswami and Mr.Swami
Dharmendra, Advocates.

Versus

M/S MODELAMA EXPORTS LTD.

..... Respondent

Represented by: Mr. Rajat Wadhwa,
Mr. Kunal Aggarwal and
Mr. Mukul Mathur,
Advocates.

AND

+

CRL.M.C. 380/2016

RASHID KHAN

..... Petitioner

Represented by: Mr.Virender Goswami,
Ms. Soni Singh, Mrs. Swati
Goswami and Mr. Swami
Dharmendra, Advocates.

Versus

M/S MODELAMA EXPORTS LIMITED

..... Respondent

Represented by: Mr. Rajat Wadhwa,
Mr. Kunal Aggarwal and
Mr. Mukul Mathur,
Advocates.

AND

+

CRL.M.C. 388/2016

DEVENDRA N KAMAT

..... Petitioner

Represented by: Mr.Virender Goswami,
Ms. Soni Singh, Mrs. Swati
Goswami and Mr. Swami
Dharmendra, Advocates.

Versus

M/S MODELAMA EXPORTS LIMITED

..... Respondent

Represented by: Mr. Rajat Wadhwa,
Mr. Kunal Aggarwal and
Mr. Mukul Mathur,
Advocates.

AND

+ **CRL.M.C. 389/2016**
BHALCHANDRA S BHAKLE Petitioner
Represented by: Mr. Virender Goswami,
Ms. Soni Singh, Mrs. Swati
Goswami and Mr. Swami
Dharmendra, Advocates.

Versus

M/S MODELAMA EXPORTS LIMITED Respondent
Represented by: Mr. Rajat Wadhwa,
Mr. Kunal Aggarwal and
Mr. Mukul Mathur,
Advocates.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

Crl.M.A. No. 3854/2016 in Crl. M.C. 245/2016,
Crl.M.A. No. 3693/2016 in Crl. M.C. 380/2016,
Crl.M.A. No. 3848/2016 in Crl. M.C. 388/2016 &
Crl.M.A. No. 3856/2016 in Crl. M.C. 389/2016

1. Vide Crl. M.A. No.3854/2016, the applicant/respondent seeks recalling of the order dated 29.01.2016 and vide Crl. M.A. Nos.3693, 3848 and 3856 of 2016, the applicant/respondent seeks recalling of the order dated 05.02.2016.

2. It is noted that vide order dated 29.01.2016, while disposing of Crl.M.C.No.245/2016, this Court passed the order as under:-

“2. On perusal of the order dated 03.12.2015 it is seen that learned Trial Court recorded that CWI

Mr.Gagan Gulati has been cross-examined on various dates i.e. 30.11.2013, thereafter on 06.03.2014, 20.04.2014, 21.04.2014, 19.05.2015, 13.07.2015 and 31.08.2015. It is further recorded that on said dates full opportunity was granted to the learned counsel for petitioner to cross – examine the complainant. Not only that learned Trial Court has also recorded that it is 04.15 PM and learned counsel was asked to complete the cross-examination and the Court was ready to sit beyond Court hours of 5.00 PM.

3. Keeping in view the fact that cross examination was going from 30.11.2013 till 31.08.2015, the endeavour of the Court was to conclude the proceedings as early as possible. However, on perusal of the aforesaid order it does not seem that learned counsel for petitioner had ever avoided for cross-examination of CW1. But some practical bottlenecks either from the Court and complainant or learned counsel for petitioner was there. As stated by learned counsel for petitioner that complainant has filed lengthy evidence on affidavit, therefore, sufficient time is required for the said purpose.

4. I find no error in the orders passed by learned Trial Court, however, in the interest of justice, I direct learned Trial Court to afford two dates to petitioner for the conclusion of cross examination of CW1. It is hereby made clear that no adjournment shall be entertained on any pretext.”

3. It is further noted that vide order dated 05.02.2016 while disposing of CrI.M.C.No.380/2016, 388/2016, 389/2016 this Court passed the order as under:-

“2. It is pertinent to mention here that vide CrI. M.C. 245/2016, order dated 03.12.2015 passed in 723/K/2012 was sought to be quashed and the same was allowed vide order dated 29.01.2016.

3. Keeping in view the aforesaid order passed by this Court, I hereby direct the trial court to afford two dates

to the petitioner for conclusion of cross-examination of CW1. However, no further adjournment shall be entertained on any pretext.

4. It is made clear that Trial Court will not mix the time given in the complaint case no. 723/K/2012 and fix each and every matter on different dates for the purpose of cross-examination.

5. Accordingly, the petition is allowed.”

4. Learned counsel appearing on behalf of the applicant/respondent submits that as admitted by the petitioners vide order dated 26.03.2015 passed in CrI. M.C.Nos.3410/2014, 3380/2014, 3388/2014 and 3409 of 2014, this Court directed for joint trial of all those four complaint cases. Whereas vide order dated 05.02.2016, as noted above, this Court directed that the Trial Court will not mix the time given in the complaints and shall fix each and every matter on different dates for the purpose of cross-examination. In this way, this Court has set aside the order dated 26.03.2015 passed by the Coordinate Bench of this Court, which is not permissible under the law.

5. The case of the applicant is that the petitions were disposed of without issuing notice and hearing the respondent, thus the order is null and void.

6. Learned counsel appearing on behalf of the petitioners has opposed the instant applications and submitted that the present applications are not maintainable being filed in petitions under Section 482 Cr.P.C., which have already been disposed of. Moreover, as per provisions of Section 362 Cr.P.C., no court shall alter or review the judgment or the final order except to correct the clerical or arithmetical error.

7. I have heard the learned counsel for the parties at length.
8. In the case of *State of Punjab Vs. Davinder Pal Singh Bhullar and Ors. etc. AIR 2012 SC 364*, the Supreme Court observed as under:

“III. BAR TO REVIEW/ALTER JUDGMENT

26. *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 Code of Criminal Procedure. 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 and Ors. AIR 2001 SC 43; and Chhanni v. State of U.P. : AIR 2006 SC 3051)*

Moreover, the prohibition contained in Section 362 Code of Criminal Procedure. is absolute; after the judgment is signed, even the High Court in exercise of its inherent power under Section 482 Code of Criminal Procedure. has no authority or jurisdiction to alter/review the same. (See: Moti Lal v. State of M.P. : AIR 1994 SC 1544; Hari Singh Mann (supra); and State of Kerala v. M.M. Manikantan Nair : AIR 2001 SC 2145).

27. *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 Code of Criminal Procedure. 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 and Ors. v. Mahboob Ilahi : 1970 Cri.L.J. 378; Deepak Thanwardas Balwani v. State of Maharashtra and Anr. 1985 Cri.L.J. 23; Habu v. State of Rajasthan : AIR 1987 Raj. 83 (F.B.); Swarth Mahto and Anr. v. Dharmdeo Narain Singh: AIR 1972 SC 1300; Makkapati Nagaswara Sastri v. S.S. Satyanarayan : AIR 1981 SC 1156; Asit Kumar Kar v. State of West Bengal and Ors. : (2009) 2 SCC 703; and Vishnu Agarwal v. State of U.P. and Anr. : AIR 2011 SC 1232)."

9. The admitted case is that the aforesaid petitions were disposed of without issuing notice, thus, in violation of natural justice and in such a situation, as per the judgment of the Supreme Court in the case of ***Davinder Pal Singh Bullar*** (*supra*), this Court has inherent power to recall such order. Moreover, power of recall is different from the power of altering/reviewing the judgment.

10. It is pertinent to mention here that while passing this order, this Court is not reviewing the judgment for which no provision is prescribed under the Code of Criminal Procedure. Since no notice was given to the applicant/respondent while disposing of the cases noted above, therefore, this Court has power to recall such order and pass further directions as required under the law.

11. In case of ***Uma Nath Pandey and Ors. Vs. State of U.P. and Anr., (2009) 4 SCR 374***, Supreme Court observed as under:

“8. The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should appraise the party determinatively the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of this principle found its way into the "Magna Carta". The classic exposition of Sir Edward Coke of natural justice requires to "vocate, interrogate and adjudicate". In the celebrated case of Cooper v. Wandsworth Board of Works (1863) 143 ER 414, the principle was thus stated:

Even God did not pass a sentence upon Adam, before he was called upon to make his defence. "Adam" says God, "where art thou? hast thou not eaten of the tree whereof I commanded thee that thou shouldest not eat."

12. Admitted case of the parties is that all the matters were directed to be tried jointly vide order dated 26.03.2015, whereas, this Court vide order dated 05.02.2016 directed the Trial Court to fix each and every matter on

different dates for the purpose of cross-examination. The fact remains that said orders were passed without issuing notice and without hearing the other side. If in such an eventuality any mistake is occurred, this Court has power under Section 482 Cr.P.C. to recall the order. Therefore, keeping in view the order dated 26.03.2015 passed by this Court, I hereby direct the Trial Court to afford two dates to the petitioners for conclusion of cross-examination of CW1, however, no further adjournment shall be entertained on any pretext. I further direct that all the matters shall be listed together in pursuance of the order dated 26.03.2015.

13. In view of the above discussion, the aforesaid applications are allowed. Consequently, orders dated 05.02.2016 and 29.01.2016 are modified as directed above.

14. Accordingly, the applications are allowed on above terms.

15. Order *dasti* to the parties.

SURESH KAIT
(JUDGE)

05 APRIL, 2016

sb/M