

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.23267 of 2017

- =====
1. Akhchaibar Mishra, S/o Late Nathuni Mishra,
 2. Surendra Mishra, S/o Akhachaibar Mishra, Both residents of Vill.- Parsaura, P.S.- Sahpur, Distt.- Bhojpur.

.... Petitioner/s

Versus

The State of Bihar.

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Awadhesh Kumar Mishra

For the Opposite Party/s : Mr. Suresh Prasad Singh

=====

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
CAV ORDER

3 -05-2017 The petitioners have filed a petition under Section 482 of the Code of Criminal Procedure for modification in order dated 22.10.2014 passed in I.A.No.1899 of 2014 and for extension of time to deposit additional payment of Rs.5,000/- arising out of Cr. Appeal No.255 of 2002 dismissed on 21.2.2014 with observation as made in Para 5 & 6 as follows : -

“5. Having regard to the facts and circumstances, subject to deposit of Rs.5,000/- by each of the appellant within a period of four months their sentence is reduced as undergone. On such deposit, the amount shall go to the informant.

6. With the above modification in sentence as awarded by the trial Court, the Appeal is hereby dismissed.”

2. It further appears from perusal of the record that out of 04 appellants, appellant no.2 (Raj Grihi Mishra) and appellant



no.3 (Birendra Mishra) died on 17.10.2012 and 26.6.2010.

3. It further appears that two appellants i.e. appellant no.1 & 4 filed I.A. No.1899 of 2014 in the aforesaid Appeal for modification of order dated 21.2.2014 and also prayed for extension of time as they were living outside and they could not be informed about direction of deposit of amount so that they could deposit the required amount.

4. It also appears that the aforesaid I.A. petition was heard by the Hon'ble Court on 22.10.2014 by the Bench of Hon'ble Mr. Justice Akhilesh Chandra and the period was extended till 3rd of December, 2014, subject to condition additional payment of Rs.5,000/- each by the appellant nos.1 and 4 and pursuant to that order, it appears that the aforesaid amount was not deposited by the appellant nos.1 and 4, as such they have moved this Court by filing the present Appeal under Section 482 of the Cr.P.C. for extension of the period.

5. It has been submitted on behalf of the appellants that due to wrong advice of local conducting Lawyer, they could not deposit Rs.5,0000/- each on 1.12.2014 and they were also under misconception of the fact that order dated 21.2.2014 has already been complied. Now the appellants came to know that learned Fast Track Court –I, Bhojpur at Ara has issued warrant on



3.3.2017 commencing with order dated 21.2.2017 against the appellants and then they filed requisition for certified copy on 10.3.2017 and they received certified copy on 18.3.2017, which shows that they have violated the order of this Court by not depositing additional payment of Rs.5,000/- so their sentence is not to be treated to have been reduced, as such they have prayed for extending the period already granted by order dated 21.10.2014 by filing this Appeal.

6. Heard learned A.P.P.

7. Section 362 of the Cr.P.C. deals with alteration or review of judgment & order and provides as follows :

“362. Court not to alter judgment. -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.”

8. The Hon’ble Supreme Court dealing with the above provisions has held in the case of ***Smt. Sooraj Devi- Vrs.- Pyare La & Anr.) reported in A.I.R. 1981 SCC 736 in para 5 as follows: -***

“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 can not 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 Code 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 authorized 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.”

9. However, in the present case, it has also been argued by the learned counsel for the appellants that they are not praying for alteration of the judgment rather they are only praying that the time, which has been granted for depositing the amount, shall be extended for the ends of justice and it does not come under the purview of the review or alteration of the judgment passed by this Court.

10. Now doubt as per Section 362 of Cr.P.C., this Court is not entitled for alteration or modification in judgment and order passed by this Court. However, considering the fact that this relates to only extending the time granted earlier and no alteration or review in the judgment has been sought and further the appellants could not deposit the amount earlier due to wrong advice of lawyer and now warrant has been issued against them.



11. As such for the ends of justice, this Court thinks it proper to extent the time for further one month from the date of this order for compliance of direction in view of judgment dated 21.2.2014 passed in Cr. Appeal No.255 of 2002 and order dated 22.10.2014 passed in I.A.No.1899 of 2014.

12. It is made clear that this inherent power has been exercised in the peculiar facts and circumstances of the case for the ends of justice.

13. Accordingly, this application is allowed to the extent as stated above.

(Vinod Kumar Sinha, J)

chn/-

U			
---	--	--	--

