

IN THE COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR
CRIMINAL APPLICATION (APPA) NO. 829/2017
IN
CRIMINAL APPEAL NO. 225/2003
 (Sham s/o Ambulal Jaiswal vs. State of Maharashtra)

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 Office Notes, Office Memoranda of
 Coram, appearances, Court's orders
 of directions and Registrar's orders

Court's or Judge's order

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 Mr. R.L. Khapre, Adv.for appellant/applicant
 Mr. S.B.Bissa, A.PP. for respondent -State.

CORAM : MRS. SWAPNA JOSHI, J.
DATED : 6th October, 2017.

This Application is filed by the appellant/accused for recalling the judgment and order dated 28.9.2017 and granting an opportunity of hearing to the counsel for appellant/accused.

2. Heard Shri R.L.Khapre, the learned counsel for the appellant/applicant and Mr. S.B.Bissa, learned APP for respondent -State.

3. Criminal Appeal No. 225/2003 has been disposed of by me, by judgment and order dated 28.9.2017 dictated in an open Court with final order. Later on, the judgment was typed, signed and uploaded on the official website of the High Court.

4. On 29.9.2017, at 10.30 am., the learned counsel for the appellant mentioned the matter seeking recalling the order. However, no application was placed before the Court. As aforesaid, in the interregnum, this Court has signed the judgment

and uploaded it. Today, the application has come up before the Court.

5. Mr. Bissa, the learned A.P.P. contended that the instant Application has become infructuous, in view of the fact that the judgment and order has already been signed and uploaded on the website.

6. In view of the specific provisions contained in Section 362 of the Cr.P.C. mandating that save as otherwise provided by the 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, this Court cannot review/recall /alter the judgment.

7. So far as the hearing of the matter in the absence of the learned counsel for the appellant is concerned, this Court, as aforesaid, had called out the matter. However the learned counsel was absent in the morning session. In the afternoon session, around 4.00 p.m. the matter proceeded upon hearing the learned APP and the judgment and order was dictated in open Court. It is worthwhile to note that the matters being very old, were notified on Monthly Board on the official website of the High Court as well as the High Court Bar Association.

8. In this context, an useful reference of the judgment in the case of Surya Baksh Singh vs. State of Uttar Pradesh, reported in (2014) 14 SCC 222, can be made, wherein it has held by the Hon'ble Apex Court that in case of appeal against conviction,

absence of convict or his pleader at hearing of appeal, the appointment of *amicus curiae* by Court in such a case not a mandatory course to be followed by the High Court, in case of absence of the convict or his pleader in an appeal against conviction.

9. In my opinion, the Application being devoid of merit, deserves to be rejected. Hence, Criminal Application is rejected.

JUDGE

sahare