

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Miscellaneous No.36403 of 2018**

Arising Out of PS.Case No. -724 Year- 1992 Thana -MADHUBANI COMPLAINT CASE District-  
MADHUBANI

- =====
1. Md. Alquaman, Son of Abdul Hamid.
  2. Md. Qaiyum, Son of Abdul Hamid,
  3. Zarina Khatoon @ Karo, wife of Md. Ayub, all resident of Village- Bhoj Pandaul Tole Hasanpur, P.S. Bisfi, District- Madhubani.

.... .... Petitioner/s

Versus

1. The State of Bihar.
2. Maitun Nishan, D/o Md. Mofiz, Resident of Village Khairi Banka Tole Hasanpur, P.S. Bisfi, Distt. Madhubani.

.... .... Opposite Party/s

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**Appearance :**

For the Petitioner/s : Mr. Md. Shahnawaz Ali, Adv.

For the Opposite Party/s : Mr. Mithilesh Kumar Khare, APP

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**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH**

**ORAL JUDGMENT**

**Date: 17-07-2018**

Heard learned counsel for the petitioners and learned counsel for the State.

2. This application under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C.') has been filed by the petitioners for quashing the order dated 24.04.2018 passed by the learned Additional Sessions Judge 6<sup>th</sup>, Madhubani in Cr.Misc. No. 13 of 2018 whereby he has dismissed the application filed by the petitioner for recalling the judgment dated 16.05.2017 passed in Cr.Appeal No. 47 of 1998.

3. The petitioners were convicted inter alia under Section 498-A of the Indian Penal Code and sentenced to undergo R.I. for one year and a fine of Rs.1,000/- each by the judgment delivered by the learned Judicial Magistrate 1<sup>st</sup> Class, Madhubani in C.R.Case No. 724



of 1992 corresponding to T.R. No. 723 of 1998.

4. Being aggrieved by the judgment of conviction and the order of sentence passed by the learned Magistrate, the petitioners filed an appeal before the learned Sessions Judge vide Cr.Appeal No. 47 of 1998. The said appeal was admitted for hearing and the petitioners were allowed to continue on bail. Subsequently, when the appeal was taken up for hearing, neither the appellants nor their counsel appeared before the appellate court. From perusal of the impugned order 24.04.2018, it would be manifest that several notices were issued to the petitioners but they did not respond to the notice issued by the court. Seeing no way out, the appellate court appointed one Shambhu Sharan Mishra, an advocate, to assist the court as amicus curiae. After hearing the amicus curiae, the appellate court dismissed the appeal finding no error in the judgment and order passed by the court of Magistrate.

5. Subsequently, the petitioners preferred Cr. Misc. No. 13 of 2018 before the appellate court for recall of the judgment passed in Cr.Appeal No. 47 of 1998 on the ground that they had not been given an opportunity of being heard. The appellate court vide impugned order dated 24.04.2018 dismissed the application filed by the petitioners.

6. Being aggrieved by the order dated 24.04.2018, the petitioners have approached this Court by way of filing the instant



application under Section 482 of the Cr.P.C.

7. On query, learned counsel for the petitioners submitted that the application was filed before the court below under Section 385 of the Cr.P.C. He submitted that since the petitioners were never given opportunity of being heard, it was incumbent upon the appellate court to have recalled its judgment and it ought to have given an opportunity to the petitioners to place their case and only thereafter the appellate court could have delivered its judgment.

8. In my considered opinion, the application filed by the petitioners before the appellate court was thoroughly misconceived. On merits, the appellate court had no jurisdiction to recall or review its own order in view of the express bar under Section 362 of the Cr.P.C, which reads as under :-

**“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.”

9. The provisions prescribed under Section 362 of the Cr.P.C. applies to judgments as well as final orders. It prohibits the court from altering or reviewing any judgment or final order disposing of the case after it has been signed except for the purpose of correction of clerical or arithmetical error. As soon as the judgment or final order disposing of a case is signed, it becomes final and the



court becomes functus officio.

10. So far as Section 385 of the Cr.P.C. is concerned, it simply provides that once the appeal is admitted and notice is issued, the appellate court should dispose of the appeal on merits and there is no provision for dismissing the appeal in default on non-appearance of the appellant. It also provides that the appeal cannot be restricted to any selected ground which is specified in the petition and it should be decided on merits.

11. In the instant case, the appellate court had dismissed the appeal on merits. There was no clerical or arithmetical error. Hence, the court below could not have recalled or reviewed its final judgment in view of Section 362 of the Cr.P.C. Since the appeal has not been disposed of in default, there is no application to Section 385 of the Cr.P.C. The application filed before the court below was meritless. Hence, the same was rightly dismissed.

12. In that view of the matter, the application, being devoid of any merit, is dismissed.

**(Ashwani Kumar Singh, J)**

Pradeep/-

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