

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

CRAN 4/2019 (Old CRAN 381 of 2019)

In

C.R.R. 508 of 2017

Sankar Podder

Versus

The State of West Bengal & Others

For the Petitioner : Dr. P.N. Mishra, Adv.
Ms. Praggya Mishra, Adv.
Mr. Avnish P. Tiwari, Adv.
Mr. Pratik Mishra, Adv.

For the State : Mr. Amita Gaur, Adv.
Mr. Anand Keshari, Adv.

Heard on : 24.01.2025

Judgment on : 28.02.2025

Ajay Kumar Gupta, J:

CRAN 4 of 2019 (Old CRAN 381 of 2019)

1. This is an application filed by the petitioner praying for rectifying or modifying or recalling and/or setting aside the judgment dated 28.11.2018 passed in this Criminal Revisional application being CRR 508 of 2017 by the then Hon'ble Single Bench for the ends of justice by exercising inherent power to undo miscarriage of justice which is apparent on the face of record due to error, inadvertence or omission and/or not taking foundational cited judgment into consideration and putting reliance on a non-cited non-applicable judgment into consideration Suo motu by the then Hon'ble Justice in passing the judgment dated 28.11.2018.

2. Sans unnecessary details, the facts of the case are mentioned hereunder for proper and effective disposal of this application: -

3. On 04.04.2013, at about 20.05. hrs, a written complaint was received by the Officer-in-Charge, Balagarh Police Station from B.L. & L.R.O., Balagarh, Hooghly with an allegation, *interalia*, that one Sankar Poddar, petitioner herein had established an unauthorised brick field style as 'M/s. Poddar Brick Field' at Mouza – Guptiparachar, J.L. No. – 10, P.S. – Balagarh, violation of Section 4(C) of the West Bengal Land Reforms Act, 1955.

4. On the basis of aforesaid complaint, a case was registered being Balagarh P.S. Case No. 83/13 dated 04.04.2013 under Section 4(D) of the West Bengal Land Reforms Act, 1955 and initiated investigation.

5. After completion of investigation, a Charge Sheet being Charge Sheet No. 110 of 2013 dated 31.05.2013 under Section 4(D) of the West Bengal Land Reforms Act, 1955 was submitted against the petitioner.

6. Challenging the said FIR as well as Charge Sheet, the petitioner filed a Revisional application under Section 482 of the Code of Criminal Procedure, 1973 before this Court seeking for quashing of the proceeding being G.R. Case No. 493/2013 arising out of Balagarh P.S. Case No. 83/13 dated 04.04.2013 under Section 4(D) of the West Bengal Land Reforms Act, 1955 pending before the Learned Judicial Magistrate, 5th Court, Hooghly.

7. After hearing both the parties, the then Hon'ble Single Bench dismissed the Criminal Revisional application after observing therein that a prima facie case under Section 4D of the West Bengal Land Reforms Act, 1955 has been made out against the petitioner. The Hon'ble Justice further held that the decision relied upon by the learned counsel for the petitioner in the case of **Baijnath Kedia Vs.**

The State of Bihar and Others¹, Behram Khurshid Pesikaka Vs. State of Bombay² and Sant Lal Gupta and Others Vs. Modern Cooperative Group Housing Society Limited and Others³ are not apposite for the purpose of the present case.

8. Mr. Mishra, learned counsel appearing on behalf of the petitioner argued and submitted that the Judgment passed on 28.11.2018 is apparently error on record and the same was not taken cited foundational judgment into considerations. Therefore, the said Judgment is required to be reviewed/recalled by this Court.

9. The second ground for review argued by the learned counsel was that the Court had ignored a binding precedent and not relied upon the judgments cited by the petitioner, hence, committed a patent error. Learned counsel further argued that ignorance of a binding precedent is fatal and amounted to a manifest and palpable error. To support of his contention, learned counsel has placed reliance of a particular paragraphs 33 to 35 in the case of ***Dr. Vijay Laxmi Sadho Vs. Jagdish⁴***. And paragraphs 27 to 32 in the case of ***Dr. Shah Faesal and others. vs Union of India and another⁵***

¹ AIR 1970 SC 1436;

² AIR 1955 SC 123;

³ (2010) 13 SCC 336;

⁴ (2001) 2 SCC 247.

⁵ (2020) 4 SCC 1

10. The third ground for review argued by learned counsel appearing on behalf of the petitioner was that the Hon'ble Justice omitted the findings of the Judgment relied by the petitioner and said omission by the Hon'ble Single Bench is a clerical error and the same can be corrected under Section 482 of the CrPC albeit bar provided under Section 362 of the Cr.PC. To support of his argument, learned counsel has placed reliance of judgments passed in the cases of ***Satya Narayan Sharma vs State of Rajasthan***⁶, ***Ram Ishwar Chaudhary and Others Vs. The State of Bihar***⁷

11. Finally, the learned counsel argued that the petitioner prays for recalling of the Judgment and the said prayer cannot be refused by strictly applying the provisions of Section 362 of the CrPC. To buttress his argument, he has placed reliance on particular paragraphs 8 and 9 of a judgment passed in the case of ***Vishnu Agarwal Vs. State of U.P. and Anr.***⁸

12. On the contrary, the learned counsel appearing on behalf of the State submitted that the present application is nothing but an **'Appeal in disguise'** and further submitted that there is no error apparent on the record. The review or recall of the previous order passed on merit by the subsequent Bench is extremely limited and

⁶(2001) 8 SCC 607;

⁷ 1986 CRI.L.J. 1366: (1986) BLJ 102;

⁸ 2011 AIR SCW 1473: 2011 CRI. L.J. 1744.

the same is curtailed by Section 362 of the CrPC. Therefore, the present application for modifying, recalling and/or setting aside or to rectify the final Judgment dated 28.11.2018 passed in CRR No. 508 of 2017 needs to be dismissed with impunity.

13. Learned counsel further submitted that it is crystal clear from the said final judgment that having decided the principal issue as to whether the proceeding can be quashed under Section 482 of the CrPC or not, the Court was absolutely justified in deciding the same issue on the merits of the case. Accordingly, the argument of the learned counsel appearing on behalf of the petitioner that a binding precedent had been ignored and omitted, is without any basis whatsoever. In the present facts and circumstances, this application is not at all maintainable and the same may be dismissed.

14. The learned counsel further submitted that the application is barred under the provision as laid down under Section 362 of the CrPC.

15. Having heard the arguments and submissions made by the parties and upon perusal of the judgments referred by the learned counsel appearing on behalf of the petitioner, this Court would like to threshold at the very outset that it would be apt to discuss the

jurisdiction of this Court in reviewing/recalling the earlier Judgment passed by the then Single Bench.

16. On a reading and comprehension of the Hon'ble Supreme Court Judgments passed time and again on this issue, the following principles emerge: -

i. The power of review or recall or modify is limited power and would be governed by Section 362 of the CrPC.

ii. The Court can review or recall its judgment when there is discovery of new and important matter or evidence that was in spite of exercise of due diligence not within the knowledge or could not produce due to cogent reasons by the party seeking a review or recall or modify.

iii. The Court may review, recall or modify its order or judgment on account of some clerical or arithmetical mistake or error apparent on the face of the record.

iv. An error which is not self-evident and has to be detected by a process of reasoning is not an error apparent on the face of the record.

v. The review, recall or modify of earlier Judgment has a limited purpose and cannot be allowed to be ‘an appeal in disguise’. There is a sharp distinction between an erroneous decision that can be only appealed against and an error apparent on the face of the record that is subject-matter to review, recall and modify.

17. One more aspect of the matter needs to be kept in mind regarding finality of judgments being left in suspense and the same has been exquisitely described by Hon’ble Justice Krishna Iyer in **P. N. Eswara Iyer V. The Registrar, Supreme Court of India**⁹ wherein he laments and states:

“..... unchecked review has never been the rule. It must be supported by proper grounds. Otherwise, every disappointed litigant may avenge his defeat by a routine review adventure and thus obstruct the disposal of the ‘virgin’ dockets waiting in the long queue for preliminary screening or careful final hearing.....”

Justice Iyer goes on to further state as follows:

“Frivolous motions for review would ignite the ‘gambling’ element in litigation with the finality of

⁹ **1980 (2) SCR 889; 1980 (4) SCC 680**

judgments even by the highest court, being left in suspense. If, every vanquished party has a filing at 'review' lucky dip and if, perchance, notice was issued in some cases to the opponent the latter-and, of course, the former, - would be put to great expense and anxiety. The very solemnity of finality, so crucial to judicial justice, would be frustrated if such a game were to become popular."

18. Considering the above facts and circumstances, this Court would like to proceed with the merit of the application. Upon careful perusal of the judgment passed by the then Hon'ble Single Bench on 28.11.2018, this Court finds the said judgment was passed on merit and the Hon'ble Justice observed as follows:

"The allegation against the petitioner is conversion of land by extracting brick earth without compliance of the provision of section 4C of the WBLR Act which is an offence within the meaning of section 4D of the said Act. Having regard to the facts and circumstances of the case with reference to the materials collected in course of investigation, it appears that a prima facie case under section 4D of the West Bengal Land Reforms Act has been made out against the petitioner."

19. While observing the aforesaid reason, a Judgment of a Division Bench passed in the case of ***State of West Bengal Vs. Sanjeevani Projects (P) Ltd.***¹⁰ was relied by the Bench.

20. It was further held by the Learned Single Bench that the judgments relied by the petitioner are not apposite for the purpose of the present case.

21. In addition to that this Court would like to refer Section 362 of the CrPC for ready reference 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.”

22. In the light of the above discussions, this Court does not repose confidence on the submissions made by the learned counsel appearing on behalf of the petitioner that there is error apparent on the face of the record rather it was decided on merit. It may be erroneous but that does not come within the purview of clerical or arithmetical error.

¹⁰ 2006 (1) CHN 241.

23. It is well-settled that an incorrect interpretation of provisions of law or interpretation of judgments relied by the petitioner cannot be constituted a ground for review, recall or modify of the earlier judgment either on inherent jurisdiction of the High Court or provision of Section 362 of the CrPC.

24. Even the High Court is not vested with such power in view of the specific bar under Section 362 of the CrPC. This Court is conscious that High Courts can take recourse to the inherent power to recall a judgment or order only to a limited extent, notwithstanding the restriction under Section 362 of the CrPC.

25. The Judgments, whatsoever relied by the petitioner herein above, are not at all relevant to make success in the facts and circumstances of the present case in hand. There is no clerical mistake or arithmetical error in the final judgment of the then Hon'ble Single Bench. Therefore, there is no need for review, recall or modify the Judgment dated 28.11.2018.

26. For the reasons stated hereinabove, I am of the considered view that this is not a fit case for review, recall or modify of the earlier judgment dated 28.11.2018 passed by the then Hon'ble Single Bench.

27. Accordingly, **CRAN 4 of 2019 (Old CRAN 381 of 2019)** is, thus, **dismissed**.

28. Let a copy of Judgment/order be communicated to the Trial Court for information.

29. Urgent photostat certified copy of this Judgment, if applied for, is to be given as expeditiously to the parties on compliance of all legal formalities.

(Ajay Kumar Gupta, J)

P. Adak (P.A.)