

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Cr. M P. No. 379 of 2018**

1. Koushal Kumar Singh S/o Aditya Narayan Singh, aged about 58 years, R/o- KIG 97, Vaishalinagar, Bhilai Durg, District- Durg, Chhattisgarh
2. Ramesh Kumar S/o Jagannath Patel, aged about 40 years, R/o- Camp No. 1, near Basant Talkies, Bhilai, Power House, District- Durg, Chhattisgarh

---- Petitioners**Versus**

The State of Chhattisgarh through- Railway Security Force, Post Bhilai
District- Durg, Chhattisgarh

---- Respondent

For Petitioners	:	Shri A. K. Prasad, Advocate
for Respondents/State	:	Smt. M. Asha, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy**Order On Board****28/02/2018**

The present petition under Section 482 of CrPC has been filed seeking for a modification of the judgment dated 31.01.2014 passed by this Court in Criminal Revision No. 597/2003 whereby this Court has dismissed the revision and affirmed the judgment of conviction and sentence dated 02.12.2003 passed in Criminal Appeal No. 187 of 2003.

2. The prayer made by the counsel for the petitioners is for a modification of the sentence which was imposed by the First Appellate Court in Criminal Appeal No. 187 of 2003 on 02.12.2003.

3. Counsel for the petitioners at this juncture submits that the present petitioners had gone to the trial Court for surrendering promptly after rejection

of the criminal revision but for want of records which did not reach back the Trial Court from the High Court, surrendering of petitioners could not be materialised. It is only in the year 2018 when the record reached back, they had gone to the trial Court and by that time the petitioner no.1 had suffered from grievous medical ailments on account of which the present petition has been filed.

4. Hon'ble the Supreme Court in a case law reported in (2014) 10 SCC 754 – Abdul Basit alias Raju V. Mohd. Abdul Kadir Chaudhary has held at Para 21 that it is an accepted principle of law that when a matter has been finally disposed of by a court, the court in the absence of a direct statutory provision becomes functus officio and cannot entertain a fresh prayer for relief in the matter unless and until the previous order of final disposal has been set aside or modified to that extent. It is also settled law that the judgment and order cannot be reviewed by the court passing such judgment and order in the absence of any express provision in the Code for the same. Section 362 of the Code operates as a bar to any alteration or review of the cases disposed of by the court. The singular exception to the said statutory bar is correction of clerical or arithmetical error by the Court.

5. Further, Their Lordships in **AIR 2012 SCC 364 at Para 26 – State of Punjab Vs. Davinder Pal Singh Bhullar and others** has held that there is a bar to review the judgment which reads as under:

“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, Cr.P.C., 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 Balwa and others., AIR 2001 SC 43; and Chhanni v. State of U.P., AIR 2006 SC 305. Moreover, the prohibition contained in Section 362 Cr.P.C., is absolute; after the judgment is signed, even the High Court in exercise of its inherent power under Section 482 Cr.P.C., 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 S.C. 2145)”)

6. Further, Their Lordships in AIR 2011 SC 1232 – Vishnu Agrawal Vs. State of U.P., and others has specifically laid down that “there is distinction between a review petition and a recall petition. While in a review petition, the Court considers on merits whether there is an error apparent on the face of the record, in a recall petition the Court does not go into the merits but simply recalls an order which was passed without giving any opportunity of hearing to an affected party.

7. That given the facts and circumstances of the case, more particularly the fact that the present CrMP itself being filed after more than 4 years from the date of the order passed by this Court affirming the order of the First appellate Court, this Court does not have the power to alter the judgment or to review the same except to the extent of clerical or technical error if any. In the given facts and circumstances of the case, this Court does not find any merit in the present petition.

8. The opinion of this Court stands fully fortified from the judgment of the Supreme Court in the case of **Abdul Basit alias Raju V. Mohd. Abdul Kadir Chaudhary** reported in **(2014) 10 SCC 754** so also in the case of **State of**

Punjab Vs. Davinder Pal Singh Bhullar and others reported in **AIR 2012 SC 364**.

9. The grounds raised would not be sustainable in the light of the two judgments of the Supreme Court referred in the preceding paragraphs. However, at this juncture, it is necessary to instruct the Registrar General to enquire as to why it took more than four years' time to send the record back to the trial Court and necessary instruction should be given to the officers of the Registry to ensure that the moment the criminal appeal/revisions are finally decided, the records should be forthwith sent to the trial Court for further necessary steps.

10. Accordingly, the present CrMP stands rejected.

11. It is made clear that the reluctance of this Court to entertain the present petition would not preclude the petitioners to avail the other remedies available to them under law.

Sd/-
(P. Sam Koshy)
JUDGE