

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL MISC. APPLICATION NO. 237 OF 2019
IN
CRIMINAL WRIT PETITION NO. 225 OF 2018

Baptista Menino Vaz

... Applicant

Versus

Datta Vishnu Dessai

... Respondents

Shri P.P. Singh, Advocate for the Applicant.

Shri J. A. Lobo, Advocate for the Respondent.

Coram:- PRITHVIRAJ K. CHAVAN, J.

Reserved on : 17th September, 2019

Pronounced on : 18th September, 2019

ORDER :

This is an application for recalling the orders passed on 04/09/2019 by this Court.

2. On 04/09/2019 this Court had passed the following order:

“On 15/07/2019, following order was passed:

“The office note at flag X indicates that the cheque bearing No.254742 dated 01.07.2019 of Rs.1,00,000/- has been realised along with cheque No.285193 dated 03.07.2019 of Rs.177/- towards cheque bounce charges. The learned Counsel for the petitioner submits that Mr. P.P. Singh is admitted in the hospital. She therefore, seeks four weeks time. However, three weeks time is granted.

2. It is made clear that there will be no further extension of time on any ground.

3. Stand over to 05.08.2019.”

2. *Today, the learned Counsel for the petitioner moved an application seeking adjournment on the ground that Counsel Shri P.P. Singh is unable to attend today due to personal difficulty as well as due to his recent discharge from the hospital on Saturday. Photostat copy of the Medical Certificate is annexed. It reveals that the Counsel was admitted on 14/08/2019 and was discharged on 17/08/2019. Today is 21/08/2019. The Counsel could have appeared today. Even otherwise there are two more Counsel representing the petitioner who also could have argued the matter. Nevertheless, by way of indulgence, one more opportunity is granted.*

3. *At the request of the learned Counsel for the petitioner, stand over to 04/09/2019.”*

3. Heard Shri P.P. Singh, the learned Counsel for the applicant, who reiterated the grounds raised in the application.

4. The learned Counsel for the respondent has placed reliance on the judgment of the Supreme Court in case of ***Sunita Jain V/s. Pawan Kumar Jain and Ors.***¹. The law as to exercise of the inherent powers by the High Court under Section 482 Cr.P.C. is no more res integra. Such powers, indeed are to be exercised in the rarest of rare cases only for securing the ends of justice or to prevent the abuse of the process of the Court. Similarly, the Code of Criminal Procedure does not provide any powers of review of an order passed by a Criminal Court.

¹ (2008) 2 SCC 705

Power of review is not an inherent power which can only be exercised if there is a specific or express provision to that effect. It would be advantageous to refer to paras 30 to 34 which read thus:

“31. The section makes it clear that a Court cannot alter or review its judgment or final order after it is signed except to correct clerical or arithmetical error. The scheme of the Code, in our judgment, is clear that as a general rule, as soon as the judgment is pronounced or order is made by a Court, it becomes functus officio (ceases to have control over the case) and has no power to review, override, alter or interfere with it.

32. No doubt, the section starts with the words Save as otherwise provided by this Code. Thus, if the Code provides for alteration, such power can be exercised. For instance, sub-section (2) of Section 127. But in absence of express power, alteration or modification of judgment or order is not permissible.

*33. It is also well settled that power of review is not an inherent power and must be conferred on a Court by a specific or express provision to that effect. [Vide **Patel Narshi Thakershi V/s. Pradyumansinghji Arjunsinghji**, (1971) 3 SCC 844]. No power of review has been conferred by the Code on a Criminal Court and it cannot review an order passed or judgment pronounced.*

*34. In **Hari Singh Mann v. Harbhajan Singh Bajwa & Ors.**, (2001) 1 SCC 169, this Court held that a High Court has no jurisdiction to alter or review its own judgment or order except to the extent of correcting any clerical or arithmetical error. It deprecated the practice of filing Criminal Miscellaneous Petitions after disposal of main matters and issuance of fresh directions in such petitions. The Court said:*

"10. Section 362 of the Code mandates that

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 an arithmetical error. The section 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 disentitled to entertain a fresh prayer for the same 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 official order disposing of a case is signed. Such an order cannot be altered except to the extent of correcting a clerical or an arithmetical error.”

5. This Court has passed an order on 04/09/2019, by reiterating the earlier orders which speak for themselves. It being a final order, disposing of the said Writ Petition, there is no question of reviewing the same. This Court has become functus officio and, therefore, the application is without any substance and, hence, the application stands rejected.

PRITHVIRAJ K. CHAVAN, J.

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6. At this stage, Mr. Singh prays for staying the effect and operation of the order passed by this Court on 04/09/2019.

7. Ms. P. Mandrekar, request for adjourning the matter till 20/09/2019.

8. At her request, stand over to 20/09/2019.

PRITHVIRAJ K. CHAVAN, J.