



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.10.2019

CORAM:

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THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.(MD) No.13999 of 2019

V.Deivanayagam

...Petitioner

Vs.

Saravanan

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. to record the compromise and acquit the petitioner from conviction and sentence imposed by I Additional Sub Judge, Tirunelveli in CA No.64 of 2005 dated 31.03.2006 in confirming the judgment of the Judicial Magistrate, Tenkasi, Tirunelveli District in CC No.542 of 2003 dated 17.2.2005 and release the petitioner from Central Prison, Palayamkottai by compounding the offence.

For Petitioner : Mr.K.Samidurai

ORDER

This petition has been filed seeking direction to record the compromise and acquit the petitioner from conviction and sentence imposed by I Additional Sub Judge, Tirunelveli in CA No.64 of 2005 dated 31.03.2006 confirming the judgment of the Judicial Magistrate, Tenkasi, Tirunelveli District in CC No.542 of 2003 dated 17.2.2005 and release the petitioner from Central Prison, Palayamkottai.

2. The learned counsel for the petitioner would submit that the respondent initiated proceedings under Section 138 of the Negotiable Instrument Act against the petitioner and in the said proceedings, the petitioner was convicted and sentenced to undergo one year simple imprisonment and to pay a fine of Rs.4000/- in default to undergo three months simple imprisonment by judgment dated 17.02.2005. As against which, the petitioner preferred appeal in C.A.No.64 of 2005 and the learned I Additional Sub Judge, Tirunelveli vide judgment dated 31.03.2006 dismissed the same and confirmed the conviction and sentence imposed by the trial court. Challenging the same, the petitioner preferred revision before this Court in Crl.R.C(MD) No.69 of 2007 and this Court by order dated 03.12.2010 modified the sentence and directed him to pay a fine of Rs.1,00,000/- in addition to the fine amount already paid as



compensation to the complainant instead of one year simple imprisonment imposed by the court below. Even after the dismissal of the revision, the petitioner did not comply with the conditions imposed by this Court. Therefore, he was remanded to prison on 30.08.2019.

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3. The learned counsel for the petitioner would further submit that as directed by this court, the petitioner has now complied with the said condition and paid the entire amount to the defacto complainant and the defacto complainant has also accepted the same. Today the defacto complainant also present before the Court and stated that the entire amount was received by him from the petitioner.

4. The learned counsel for the petitioner relied upon the judgment of this Court in the case of ***R.Sivakala-vs- D.Sethuram in [2019 (2) T.N.L.R.368 (Mad)]***, wherein it is held as follows:

"5.D.Simpson and Ors. Versus S.T.Perumal and Ors reported in MANU/TN/0928/2014, wherein this Court had elaborately dealt, as regards the principal of functus officio would not apply even after the dismissal of the revision filed before this Court and making reliance on Judgments of the Hon'ble Apex Court in these aspects has held as follows:-

"21. Having so understood the sweep of the powers under Section 482 Cr.P.C. I need only mention that the powers under Article 226/227 of the Constitution are coextensive if not wider in its sweep. The powers under Section 482 Cr. P.C. as also Article 226 and 227 of the Constitution are available with the Court to do justice in a given case when the conscience of the Court is satisfied that powers must be invoked.

22. It will be apposite to straight away look at Section 320 Cr. P.C. again. Section 320 does not specifically refer to composition prior to the commencement of the prosecution or of composition after the sentence has become final. Section 320, which must be reckoned as consolidating the law relating to composition, does not specifically refer to pre-cognizance and post- finality (of conviction) compositions. Section 320(9) Cr.

P.C. only says that there shall be no composition except in accordance with the provisions of Section 320 Cr. P.C. In as much as Section 320 does not specifically refer to compositions-pre-cognizance or post-finality, and Section 320(1) only speaks of composition without any fetters or limitations about time and stage, section 320(9) cannot be held to fetter the powers in such



23. The rationale underlying Section 482 Cr. P.C. is that the interests of justice may at times transcend the interests of mere law. In the peculiar facts and circumstances of a given case when the High Court considers it necessary, proper and fit and feels impelled and compelled to act in aid of justice, it should not be without powers and helpless. While appreciating the width and amplitude of the powers under Section 482 Cr. P.C. this principle cannot be lost sight of. Of course if there is a specific express bar or if the stipulations point to an implied bar, such powers cannot normally be invoked.

24. We now come to the crucial question as to whether this court, having already disposed of the revisions, can invoke the powers under Section 482 Cr. P.C. The revision has been disposed of and the verdict of guilty, conviction and sentence have now become final. I have come across decisions which stipulate that in view of Section 362, even this Court exercising original power as a criminal court under Section 482 Cr. P.C. cannot go against the mandate of Section 362. The decision in Smt. Sooraj Devi v. Pyare Lal and Another. MANU/SC/0228/1981 : (1981) 1 SCC 500 clearly holds that after the judgment is pronounced, on the same facts powers under Section 482 Cr. P.C. cannot be invoked in view of the specific bar under Section 362. This position has been held repeatedly. In Hari Singh Mann v. Harbhajan Singh Bajwa MANU/SC/0665/2000 : AIR 2001 SC 43, it was held by the Supreme Court as follows in paragraphs 8 and 9:

8. XXX XXX The practice of filing miscellaneous petitions after the disposal of the main case and issuance of fresh directions in such miscellaneous petitions by the High Court are unwarranted, not referable to any statutory provision and in substance the abuse of the process of the Court.

9. There is no provision in the Code of Criminal Procedure authorising the High Court to review the judgment W.P.C. No. 34540 of 2006 & connected cases passed either in exercise of its appellate or revisional or original criminal jurisdiction. Such power cannot be exercised with the aid or under the cloak of Section 482 of the Code.

In State of Kerala v. M.M. Manikantan Nair MANU/SC/0307/2001 : AIR 2001 SC 2145 the Supreme Court held so in paragraph 6:



6. The Code of Criminal Procedure does not authorise the High Court to review its judgment or order passed either in exercise of its appellate, revisional or original jurisdiction. Section 362 of the Code prohibits the Court after it has signed its judgment or final order disposing a case from altering or reviewing the said judgment or order except to correct a clerical or arithmetical error. This prohibition is complete and no criminal Court can review its own judgment or order after it is signed.

In Moti Lal v. State of Madhya Pradesh AIR MANU/SC/0362/1994 : 1994 SC 1544 the Supreme Court held so in paragraph 2:

2. Section 362 Cr. P.C. in clear terms lays down that the Court cannot alter judgment after the same has been signed except to correct clerical or arithmetical errors. That being the position the High Court had no jurisdiction under Section 482 Cr. P.C. to alter the earlier judgment.

In Damodaran v. State 1992(2) KLT 165 and in Tanveer Aquil v. State of Madhya Pradesh : 1990 Suppl. SCC 63 we find observations which suggest that a post revision composition cannot be readily accepted. Those decisions, according to me, only reiterate the principle that a trial, appellate or revisional court which is functus officio in respect of a subject matter cannot thereafter exercise powers in respect of such disposed of matters in view of Section 362 Cr. P.C.

25. But these decisions cannot be held to cover a situation when post-revision there has been a substantial change in the circumstances and a later request is made in a separate application under Section 482 Cr. P.C. or Article 226 of 227 of the Constitution. That question was specifically considered by the Supreme Court in Mostt. Simrikhia v. Smt. Dolley Mukherjee (MANU/SC/0440/1990 : 1990 CrL. L.J. 1599). In paragraph 2 of the said decision, the Supreme Court has observed thus:

If there had been change in the circumstances of the case, it would be in order for the High Court to exercise its inherent powers in the prevailing circumstances and pass appropriate orders to secure the ends of justice or to prevent the abuse of the process of the Court. Where there is no such changed circumstances and the decision has to be arrived at on the facts that existed as on the date of the earlier order, the exercise of the power to reconsider the same



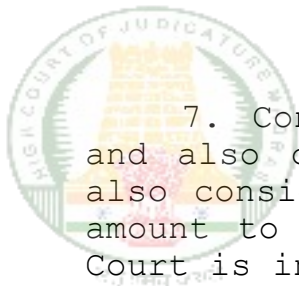
materials to arrive at different conclusion is in effect a review, which is expressly barred under S. 362.

In the instant cases, when the revision petition was disposed of by this Court, this circumstance—that the parties settled the dispute and the complainant compounded the offence was not there at all. It is a subsequent change in circumstance. The decision in Mostt. Simrikhia v. Smt. Dolley Mukherjee (supra) squarely applies. That was a case where an earlier application under Section 482 Cr. P.C. was dismissed, but still the Supreme Court held that a change in circumstances is sufficient to justify the invocation of the powers afresh under Section 482 Cr. P.C. notwithstanding the bar under Section 362 Cr. P.C. In the instant case, the powers under Section 482 Cr. P.C. have not been sought to be invoked earlier. Only the revisional powers were exercised. That is all the more the reason why under the changed circumstances the extra ordinary inherent jurisdiction under Section 482 Cr. P.C. can be invoked. In the light of the dictum in Mostt. Simrikhia earlier decisions rendered and subsequent decisions, which do not refer to the said decision specifically and in which the opinion is expressed that the powers under Section 482 Cr. P.C. cannot be invoked after disposal of the revision in view of the bar under Section 362, cannot be held to lay down the law correctly.”

5. The learned counsel would further submit that in the light of the above judgment of this Court, since there is change in circumstances of the case the request of the petitioner may be considered.

6. It is seen that this Court had earlier modified the sentence imposed on the petitioner on 03.12.2010. The relevant portion reads thus:

“8. In the result, the revision petition is modified, so far as the sentence is concerned and accordingly, the revision petitioner/accused is directed to pay a fine of Rs.1,00,000/- (Rupees One lakh only) in addition to the fine amount already paid and the same shall be paid as compensation to the respondent/complainant, instead of the sentence for a period of one year simple imprisonment, imposed by the court below within six weeks from the date of receipt of a copy of this order. If the fine amount is not paid and the conditional order is not complied with, the petitioner/accused shall undergo the sentence already imposed by the Court below”.



7. Considering the above facts and circumstances of the case and also considering the change in circumstances of the case and also considering the fact that the petitioner had paid the entire amount to the defacto complainant as modified by this Court, this Court is inclined to release the petitioner from prison.

8. Accordingly, the Superintendent of Police, Central Prison, Palayamkottai is directed to release the petitioner namely V.Deivanayagam, S/o. Vallinayagam, 27 Mettu Street, Keelapavoor Post, Alangulam, Tirunelveli District from Prison forthwith.

9. With the above observation and direction, the Criminal Original Petition is disposed of.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar

To

1. The I Additional Sub Judge,
Tirunelveli.
2. The Judicial Magistrate, Tenkasi,
Tirunelveli District.
3. The Superintendent,
Central Prison, Palayamkottai.
4. The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.K.SAMIDURAI, Advocate (SR-91094[F] dated 03/10/2019

Crl.O.P. (MD) No.13999 of 2019
03.10.2019

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