

15.01.2021
SL No.2
pk

**CRR 910 of 2019
(CRAN 2 of 2021)**

(Through Video Conference)

Ramesh Chandra Singh and another
Versus
C. B. I. ACB, Kolkata

Mr. Satadru Lahiri

...for the Petitioner.

Mr. Kishore Dutta, Ld. A. G.,
Mr. S. G. Mukherjee, Ld. P. P.,
Mr. S. Chatterjee,
Mr. D. Mahato,
Mr. S. Patel

...for the State.

Mr. Y. Z. Dastoor, Ld. A. S. G.,
Mr. Anirban Mitra

... for the C. B. I.

CRAN 2 of 2021 has been filed by the State of West Bengal for recalling of the judgement and order dated 12.3.2020 passed in CRR 910 of 2019.

Learned Additional Solicitor General has raised the question of maintainability of the application.

The Learned Advocate General placed order dated 5th August, 2019 when the Revision petitioner was directed to implead and serve the State. On 4th March, 2020 the State was represented and the parties filed notes of argument thereafter. Learned Advocate General would argue that State was not called upon to make submission in the matter. He then submits that the judgment ought to be recalled since the State was not heard. He relied upon decision of the Supreme Court in the case of **State of Punjab Vs. Davinder Pal Singh Bhullar**

reported in **(2011) 14 SCC 770 Para 46**. He also placed and relied upon the case of **New India Assurance Co. Ltd. Vs. Krishna Kumar Pandey** reported in **2019 SCC OnLine SC 1786 Para 11 and 12**.

This Court prima facie finds that the applicant's case does not come within the purview of the exceptions laid down in the said Bhullar decision (supra) which is set out hereinunder:

“46. If a judgment has been pronounced without jurisdiction or in violation of principles of natural justice or where the order has been pronounced without giving an opportunity of being heard to a party affected by it or where an order was obtained by abuse of the process of court which would really amount to its being without jurisdiction, inherent powers can be exercised to recall such order for the reason that in such an eventuality the order becomes a nullity and the provisions of Section 362 CrPC would not operate. In such an eventuality, the judgment is manifestly contrary to the audi alteram partem rule of natural justice. The power of recall is different from the power of altering/reviewing the judgment. However, the party seeking recall/alteration has to establish that it was not at fault. (Vide *Chitawan v. Mahboob Ilahi* [1970 Cri LJ 378 (All)] , *Deepak Thanwardas Balwani v. State of Maharashtra* [1985 Cri LJ 23 (Bom)] , *Habu v. State of Rajasthan* [AIR 1987 Raj 83] , *Swarth Mahto v. Dharmdeo Narain Singh* [(1972) 2 SCC 273 : 1972 SCC (Cri) 676] , *Makkapati Nagaswara Sastri v. S.S. Satyanarayan* [(1981) 1 SCC 62 : 1981 SCC (Cri) 111] , *Asit Kumar Kar v. State of W.B.* [(2009) 2 SCC 703 : (2009) 1 SCC (Cri) 851 : (2009) 1 SCC (L&S) 541] and *Vishnu Agarwal v. State of U.P.* [(2011) 14 SCC 813])”

Counsel for the C. B. I. shall file affidavit-in-opposition to the application being CRAN 2 of 2021 for recalling of the judgement within a period of three weeks from date. Reply, if any, be filed within one week thereafter.

Learned Additional Solicitor General further submits that the judgement and order dated 12.03.2020 has been carried to the Hon'ble Supreme Court in Appeal and the hearing thereof is fixed on 29th of this month.

The point of maintainability of the application, inter alia, in view of Section 362 of the Cr. P. C. is kept open.

Let this matter be listed four weeks hence.

(Rajasekhar Mantha, J.)