NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Order Reserved on : 18/02/2020

Order Delivered on : 26/06/2020

Review Petition No. 223 of 2019

B.L. Agrawal S/o Shri Ram Kumar Agrawal Aged About 54 Years R/o Samarth, Opp. United Timbers, New Timber Market, Fafadih, Raipur Chhattisgarh.

---- Petitioner

Versus

State Bureau of Investigation of Economic Offences Through S.H.O. in front of Jai Jawan Petral Pump, G. E.Road, Raipur Chhattisgarh.

---- Respondent

For the Petitioner	:	Dr. N.K. Shukla, Senior Advocate with Shri Sourabh Dangi, Advocate.
For the Respondent /State	:	Shri Adil Minhaj, G.A.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

CAV ORDER

Heard.

1. By this petition, the petitioner has sought review/ recall of the order dated 21.10.2019 passed in W.P. (Cr.) No. 8 of 2018 by this Court.

2. In W.P. (Cr.) No. 8 of 2018, the petitioner has challenged the order passed by the Special Court dated 5.10.2017, in which the prayer made by E.O.W./ A.C.B. for withdrawal of closure report with permission to make a fresh investigation was allowed. After completion of pleadings and hearing the arguments from both the sides in W.P.(Cr) No.8 of 2018, this Court has passed the order in question by dismissing the petition.

3. It is submitted by counsel for the petitioner that in the impugned order a clerical mistake is present regarding the mention of the amounts in cash and value of the jewelery. FIR mentions about the investment of Rs.60 crores in the Prime Ispat Limited alleging that it belongs to the petitioner and the deposits in various accounts standing in the name of other persons. It is shown in the FIR that cash of 68.10 lakhs and jewelery of worth Rs.70.20 lakhs were seized from different places. Out of the same, cash of Rs.23.73 lakhs and jewelery of Rs.3.76 lakhs was seized from the residence of the petitioner. The value of cash and jewelery has been mentioned in crores in the impugned order. Similarly, in paragraph 15 of the impugned order there is mention of cash Rs.3 crores found in the locker of the petitioner, held in HDFC Bank which had been actually Rs.3 lakhs and in the same paragraph there is mention of withdrawal of Rs.14 crores through debit card which actually had been only Rs.14 lakhs.

In the impugned order, reliance on the judgment of Supreme Court in the case of **Lokesh Kumar Jain vs. State of Rajasthan** reported in **(2013) 11 SCC 130**, has been referred, but the same has not been distinguished in the order. Similarly, the departmental enquiry was in favour of the petitioner and withdrawn by the State and this fact has not been appropriately considered by this Court. It is further submitted by learned Senior Counsel that the Appellate order and ground of the reasons of the Commissioner of Income-Tax Appeals, have also not been appreciated in true sense, which exonerated the petitioner from all criminal liabilities. The Income-Tax Appellate Tribunal has liability to discuss in its order which should have been considered in the impugned order. It is also submitted that the judgment had been contrary to the judgment of the Supreme Court, therefore, this can be regarded as an error apparent on the face of record.

Reliance has been placed on the judgment of Supreme Court in the case of **M/s. Videocon Industries Limited and Another vs. State of Maharashtra and Others**, reported in **AIR 2016 SC 2843** on the point that exoneration of the petitioner by the State in the departmental enquiry and by the Income-Tax Department in the matter of assessment cannot be ignored. Reliance has also been placed on the judgment of Full Bench of Kerala High Court in the case of **G. Bhagavat Singh vs. Manoj Joseph and Others,** reported in **AIR 2019 KERALA 30** on the point that review is maintainable in this case. Hence, the impugned order be reviewed and the judgment dated 21.10.2019 be recalled with a direction for further hearing.

5. Learned State counsel opposes the arguments submitted on behalf of the petitioner and submits that this review petition is not at all maintainable as the order has been passed in a criminal matter and review of any order is not permitted under the provisions of Section 362 of the Cr.P.C. It is further submitted that Section 90 of the High Court of Chhattisgarh Rules, 2007 specifically provides that any review application can be filed only on the grounds which are mentioned under the provisions of Order XLVII Rule 1 of the CPC only and this being not a case of civil matter, no such review petition could have been filed. It is also submitted that as far as it relates to the arithmetical error committed in the order, that can be rectified which would not have any effect on the order passed and is within the scope of Section 362 of the Cr.P.C.

6. Heard counsel for both the parties and perused the documents

present in the record.

Section 362 of the Cr.P.C. is 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.'

7. Writ Petition (Cr.) No. 8 of 2018 is styled as criminal writ for the reason that the petitioner had sought relief against the order passed by a Criminal Court. It is true that this Court has power to exercise the jurisdiction under Article 226 of the Constitution of India for providing constitutional remedies but this provision by itself does not become a ground to ignore the provisions of Cr.P.C., which is a statutory law for taking up any criminal proceeding and conducting the same. Therefore, the question that the review petition can be filed or not in such a case is answered accordingly that the constitutional provision is not a provision for review whereas, the provision under Section 362 of the Cr.P.C. clearly bars review in any order passed. Further, Rule 90 of the High Court of Chhattisgarh Rules, 2007 also makes it very clear that a review petition can be filed only when a ground is made out as provided under Order XLI Rule 1 of the CPC which also clarifies that Rule 90 of the High Court of Chhattisgarh Rules, 2007 is not applicable in criminal matters.

In the judgment of Supreme Court in the case of **Yashwant Sinha and Others vs. Central Bureau of Investigation**, reported in **2020 vol II SCC 338**, it has been held in paragraph 21 is as under:

'21. It will be noticed that in criminal matters, review lies on an error apparent on the face of record being established. However, it is necessary to notice what a Constitution Bench of this Court laid down in P.N. Eswara Iyer And Others v. Registrar, Supreme Court of India3:

“34. The rule [Ed.:Order 40, Rule 1 of the Supreme Court Rules] , on its face, affords a wider set of grounds for review for orders in civil proceedings, but limits the ground vis-a-vis criminal proceedings to “errors apparent on the face of the record”. If at all, the concern of the law to avoid judicial error should be heightened when life or liberty is in peril since civil penalties are often less traumatic. So, it is reasonable to assume that the framers of the rules could not have intended a restrictive review over criminal orders or judgments. It is likely to be the other way about. Supposing an accused is sentenced to death by the Supreme Court and the “deceased” shows up in court and the court discovers the tragic treachery of the recorded testimony. Is the court helpless to review and set aside the sentence of hanging? We think not. The power to review is in Article 137 and it is equally wide in all proceedings. The rule merely canalises the flow from the reservoir of power. The stream cannot stifle the source.

Moreover, the dynamics of interpretation depend on the demand of the context and the lexical limits of the test. Here “record” means any material which is already on record 3 (1980) 4 SCC 680 or may, with the permission of the court, be brought on record. If justice summons the Judges to allow a vital material in, it becomes part of the record; and if apparent error is there, correction becomes necessitous.

35. The purpose is plain, the language is elastic and interpretation of a necessary power must naturally be expansive. The substantive power is derived from Article

> 137 and is as wide for criminal as for civil proceedings. Even the difference in phraseology in the rule (Order 40 Rule 2) must, therefore, be read to encompass the same area and not to engraft an artificial divergence productive of anomaly. If the expression “record” is read to mean, in its semantic sweep, any material even later brought on record, with the leave of the court, it will embrace subsequent events, new light and other grounds which we find in Order 47 Rule 1, CPC. We see no insuperable difficulty in equating the area in civil and criminal proceedings when review power is invoked from the same source.” (Emphasis supplied)'

Reliance from the petitioner's side on the judgment of Kerala High Court in the case of **G. Bhagavat Singh vs. Manoj Joseph and Others** (supra) is distinguishable because the Kerala High Court has held that review petition against the order passed in contempt proceeding is maintainable and this judgment does not speak of any criminal proceeding.

This law holds good till date and the extraordinary power of review under Article 137 of the Constitution of India is available only to the Supreme Court, therefore, the power of review which can be exercised by this Court is only to the extent of rectifying the clerical error. As pointed out in this application and the arguments submitted, it is found that there is presence of clerical error in the order dated 21.10.2019 on page 2, the continued paragraph 2 where the figures mentioned as Rs.68.10 crores, 70.20 crores, 23.73 crores, 3.76 crores, 12.50 crores and 10.64 crores are apparently clerical mistake, in which the amounts which had been in lakhs are mentioned as crores. Therefore, this clerical error can be rectified in this order.

8. As regards, the other submissions made, that cannot be taken into consideration. The reference in the order with respect to the judgment of Rajasthan High Court in the case of **Lokesh Kumar Jain vs. State of Rajasthan** (supra) has been considered, which had been a finding of fact in that case given by the High Court and that was not a ratio of law, therefore, no answer is required to that. Similarly, the other points raised that the decision of the State Government to withdraw the departmental enquiry against the petitioner and also the decision of the Income-Tax Appellate Tribunal has not been appreciated properly and misinterpreted, cannot be given any consideration. This Court has discussed the decision of the State Government that had been in favour of the petitioner and also the orders of the Income-Tax Appellate Authority and the Income-Tax Appellate Tribunal and has given a reasoned finding in the order impugned. Any such review is not permissible, which shall be in the direction of giving a different interpretation to interfere with the previous finding already recorded.

9. The grounds for review has laid down under Order XLVII Rule 1 of the CPC are very much clear even though that is not applicable in the criminal matter, but the grounds need the reference, therefore, it is referred. There has to be an error apparent on the face of record. Secondly, there has to be some new material revealed subsequent to passing of order or there has to be some other sufficient reason on the basis of which review can be made. In this case, except for the clerical error regarding mention of the amounts, there is no other error apparent in the face of record. There is clearly no new

fact revealed and also the reasons that are given in the argument are also not new or fresh, which can be called as other sufficient reason. Therefore, the prayer made in this petition also fails in the test which has laid down under Order XLVII Rule 1 of the CPC.

10. After overall consideration of all the facts and circumstances and law applicable in this case, I am of this view that the review as prayed in the petition can be allowed only to the extent of removing the clerical error and no other prayer is fit to be allowed. Therefore, the review petition is allowed in part. It is ordered that the mention of word 'crores' with the figures given of Rs.68.10, 70.20, 23.73, 3.76 and 10.64 be now read as 'lakhs' herein-after. With regard to the other prayer made by the petitioner, the petition stands dismissed.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Nimmi