

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

CRIMINAL APPLICATION NO.419 OF 2019

IN

CRIMINAL APPEAL NO.670 OF 2005

Irfankha Afghankha
VS.

State of Maharashtra, through PSO, Pimpalgaon, Taluka Khamgaon, District Buldhana

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. Sangram Sirpurkar, Advocate for the applicant.
Ms Kalyani Deshpande, APP for non-applicant/State.

CORAM : ROHIT B. DEO, J.

DATE : 5th AUGUST, 2021

1. This application purports to invoke the provisions of Sections 4 and 6 of the Probation of Offenders Act, 1958 (Act).

2. The applicant is convicted under Section 304 Part-II of the Indian Penal Code and sentenced to undergo imprisonment of 5 years and to payment of fine of Rs.3,000/-.

3. The applicant preferred Criminal Appeal 670 of 2005, which is dismissed by this Court vide judgment dated 05.01.2019.

4. The application is liable to be dismissed on the short ground that in view of the provisions of Section 362 of the Criminal Procedure Code, 1973 (Code) this Court is precluded from considering grant of probation after delivering the judgment of conviction and imposing sentence of imprisonment. It is trite law, that such consideration would tantamount to exercise of power of review of the sentence imposed.

5. The reliance placed by Mr. Sangram Sirpurkar, on the decision of the Hon'ble Supreme Court in ***Chhanni Vs. State of Uttar Pradesh (2006) 5 SCC 396*** is clearly misplaced. The facts were that the High Court refused to consider probation after delivering the judgment, and in exercise of plenary powers under Article 142 of the Constitution of India, the Hon'ble Supreme Court, remitted the matter to the High Court for considering the prayer to grant benefit of probation. The plenary power is exercised by the Hon'ble Supreme Court in the peculiar facts, as it apparent from a bare reading of paragraph 9 of the decision with reads thus:-

“ The High Court is justified in its view that there is no provision for modification of the judgment. But considering the peculiar circumstances we direct the High Court to consider the application under the Probation Act or Section 360 of the Code, as the case may be, so far as the appellant is concerned and pass the appropriate order within

three months from the receipt of this order. We make it clear that we have not expressed any opinion as regards the merits.”

6. More apposite is the later decision of the Hon'ble Supreme Court in, ***State of Madhya Pradesh Vs. Man Singh*** in Criminal Appeal No.410 of 2011, paragraphs 3, 4 and 5 of which decision read thus:-

“3. The accused-respondent, Man Singh filed an appeal. The Sessions Judge dismissed the appeal. On the issue of sentence he found that the accused had been dealt with leniently and refused to interfere with the sentence. A criminal revision was filed in the High Court. The High Court affirmed the conviction but reduced the substantive sentence from one year to the period already undergone and enhanced the fine Rs.10,000/-.

4. The accused-respondent, Man Singh deposited the fine and then filed a petition under Section 482 of CrPC praying that the fine had been deposited and since he is in Government job, he may be granted benefit of the Act. The learned Judge, without giving any other reasons, directed as follows:-

“After having heard learned counsel for the parties, prayer is allowed and the benefit of Probation of Offenders Act is extended to the petitioner for the purpose that the sentence, which has already undergone would not affect service career of the

petitioner.

With the aforesaid observations petition stands disposed of C.C. today.”

This order is challenged before us. At the outset, we note that the manner in which the learned Judge entertained the petition under Section 482 CrPC is highly improper and uncalled for. There is no power of review granted to the Courts under CrPC. As soon as the High Court had disposed of the original revision petition, upheld the conviction, reduced the sentence to the period already undergone and enhanced the fine, it became functus officio and, as such, it could not have entertained the petition under Section 482 CrPC for altering the sentence.

5. *It is well settled law that the High Court has no jurisdiction to review its order either under Section 362 or under Section 482 of CrPC. The inherent power under Section 482 CrPC cannot be used by the High Court to reopen or alter an order disposing of a petition decided on merits. After disposing of a case on merits, the Court becomes functus officio and Section 362 CrPC expressly bars review and specifically provides that no Court after it has signed its judgment shall alter or review the same except to correct a clerical or arithmetical error. Recall of judgment would amount to alteration or review of judgment which is not permissible under Section 362 CrPC. It cannot be validated by the High Court*

invoking its inherent powers.”

7. The application is dismissed.

JUDGE

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