

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.345 of 2019

In
Letters Patent Appeal No.2046 of 2016

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Bishwamitra Singh @ Vishwamitra Singh @ Vishwamitra Singh Yadav, Son
of Sri Lallan Singh Yadav, R/o Vill-Simri Bhan Bharauli Patti, P.S.-Simri,
District-Buxar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar
2. The Director General of Police, Government of Bihar, Patna.
3. The Deputy Inspector General of Police Rail, Government of Bihar, Patna.
4. The Superintendent of Police Rail, Katihar.
5. The Inspector Rail, Barauni Railway Police Station, Barauni, District-Begusarai.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Rajiv Ranjan Kr. Pandey, Adv.
For the Opposite Party/s : Mr. Prabhat Kumar Verma, AAG 3

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE PARTHA SARTHY)

Date : 19-01-2022

The instant application has been filed by the
appellant seeking review of the order dated 17.9.2019 passed in
L.P.A. No. 2046 of 2016 (**Bishwamitra Singh versus the State
of Bihar and Ors.**) by which the appeal preferred by the writ
petitioner-appellant was dismissed and the order dated 2.7.2013
passed by the learned Single Judge in CWJC no.14583 of 2008



was affirmed.

The facts in brief are that while the passengers were travelling in the general compartment of the train, GRP personnel including the appellant herein started demanding money from them. The matter was reported and after protest by the public at the railway station, criminal proceeding as also departmental proceeding were initiated. In the criminal proceedings the passengers who were in the train and travelling to different destinations did not turn up to depose in the trial on behalf of the prosecution and the accused including the appellant herein were acquitted. However in the departmental proceeding the appellant along with other GRP personnel were dismissed from service.

The appellant and others challenged their dismissal by filing writ applications which were all heard together and the learned Single Judge by order dated 2.7.2013 passed in CWJC no.14583 of 2008 was pleased to dismiss the writ petitions.

It is against the order dated 2.7.2013 dismissing the writ petitions that LPA No.2046 of 2016 was preferred by the appellant. By order dated 17.9.2019 the Division Bench of this Court taking note of the facts of the case dismissed the appeal by order dated 17.9.2019, relevant portion of which is quoted



hereinbelow:

“.....The charges have been proved in the joint departmental proceedings. In criminal case, charges are proved beyond reasonable doubt, whereas, in the departmental proceeding, the principle of preponderance of probability applies, not beyond reasonable doubt.

In such view of the matter, we do not find any merit in the present case. Accordingly, this appeal is dismissed and order dated 02.07.2013 passed by a learned Single Judge in CWJC no.14583 of 2008 is affirmed.”

Heard learned counsel for the petitioner in the review application as also learned counsel for the respondents.

On perusal of the materials on record in the review application, the only contention raised on behalf of the petitioner for review of the order dated 17.9.2019 is that the opening line of the said order mentions that no one appears for the appellant as well as the respondents. Thus it is submitted that in absence of the counsel for the appellant who could not appear at the time of hearing of the appeal due to his being in judicial custody in a criminal case, the matter could not be explained properly and the appeal was dismissed without hearing the parties. It is thus submitted that the review be



allowed to the extent of rehearing the counsel for the appellant who could not appear at the time of hearing.

It may be submitted here that Order 47 of the Code of Civil Procedure deals with review. A bare reading of Order 47 Rule 1 of the Code provides that a person aggrieved by an order may prefer a review on discovery of new and important matter or evidence which after exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made or on account of some mistake or error apparent on the face of the record or for any other sufficient reason.

It may be mentioned here that the Hon'ble Supreme Court in the case of **Parsion Devi and Others versus Sumitri Devi and Others** [(1997) 8 SCC 715] held that it is well settled that review proceedings have to be strictly confined to the ambit and scope of Order 47 Rule 1 of the Code of Civil Procedure. In paragraph 9 of the judgment, the Supreme Court proceeded to hold as follows:

“9. Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face



of the record justifying the court to exercise its power review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be "reheard and corrected". A review petition, it must be remembered has a limited purpose and cannot be allowed to be "an appeal in disguise."

In the case of **Col. Avtar Singh Sekhon versus Union of India and Others** [1980 Suppl. SCC 562] the Hon'ble Supreme Court in paragraph 12 held as follows:

"12 A review is not a routine procedure. Here we resolved to hear Shri Kapil at length to remove any feeling that the party has been hurt without being heard. But we cannot review our earlier order unless satisfied that material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice. *In Sow Chandra Kanta and Anr. v. Sheik Habib* this Court observe.

"A review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility..... The present stage is not a virgin ground but review of an earlier order which has the normal feature



of finality."

In the case **Satyanarayan Laxminarayan Hegde & Others versus Mallikarjun Bhavanappa Tirumale** [AIR 1960 SC 137], with respect to error apparent on the face of record, the Hon'ble Supreme Court in paragraph 17 held as follows:

"17.....An error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to an error apparent on the face of the record....."

In the case of Lily Thomas versus Union of India [(2000)6 SCC 224] the Hon'ble Supreme Court held that the mere fact that the two views on the same subject are possible is no ground to review the earlier judgment.

So far as the facts of the present case is concerned, no error whatsoever has been pointed out by the learned counsel for the review petitioner, the only ground submitted by learned counsel being that as learned counsel for the appellant-review petitioner could not appear at the time of hearing of the case, the case may be reviewed.

No error on the face of the record nor any other ground justifying a review of the order dated 17.9.2019 having



been pointed out by the review petitioner, the Court finds no merit in the instant application.

In view of the above, the review application is dismissed.

(Sanjay Karol, CJ)

(Partha Sarthy, J)

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