

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

CRIMINAL APPLICATION (APPW) NO.15/2021
IN
CRIMINAL WRIT PETITION NO.543/2020 (D)

- APPLICANTS :** 1. Mohammad Yamin Naeem Mohammad,
 (Original petitioners) Aged – about 32 years, Occu. driver R/o
 Lalbara, Tq. Billari, Jimurabad, Sambhal,
 Uttar Pradesh, India.
2. Mohammad Jamshed Sakir Mohammad,
 Aged about 18 years, Occu. - cleaner
 R/o Lalbara, Tq. Billari, Jimurabad,
 Sambhal, Uttar Pradesh, India.
3. Mohammad Sarfaras Sharif Mohammad,
 Aged – Major, Occu. - Business R/o Lalbara,
 Tq. Billari, Jimurabad, Sambhal, Uttar Pradesh,
 India.
4. Gulshan Kumar s/o Sohna Ram Aneja,
 aged about 64 years proprietor of Gagan
 Cargo, having its office at 140, Rajendra
 Market, near Tis Hajari Court, Delhi, India.

...VERSUS...

- NON-APPLICANTS :** 1. The State of Maharashtra, through
 (Original respondents) Police Station Incharge, Police Station
 (Thane) Jaulka, Dist. Washim.
2. The Commissioner of Food Safety
 Food and Drugs Administration,
 Maharashtra State, Survey No.341,
 Bandra Kurla Complex, Bandra (East),
 Mumbai 400 051.

3. The Food & Safety Administration,
through Assistant Commissioner and
Designated Officer (Food), Near
Akashwani, Civil Lines, Akola.

S/Shri Rahul M. Bhangde and Ajay Somani, Advocates for applicants
Shri S.A. Ashirgade, APP for non-applicants/State

**CORAM : SUNIL B. SHUKRE AND
AVINASH G. GHAROTE, JJ.**

Order reserved on : 10/06/2022
Order pronounced on : 22/07/2022

PER COURT :

1. The present application seeks a review of the judgment dated 09/01/2021. The parameters of review have been spelt out by the Hon'ble Apex Court in *Smt. Meera Bhanja Vs. Nirmala Kumari Choudhury (1995) 1 SCC 170* as under :

“8. It is well settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1, CPC. In connection with the limitation of the powers of the court under Order 47, Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution of India, this Court, in the case of *Aribam Tuleshwar Sharma v. Aribam Pishak Sharma* [(1979) 4 SCC 389 : AIR 1979 SC 1047], speaking through

Chinnappa Reddy, J., has made the following pertinent observations: (SCC p. 390, para 3)

“It is true as observed by this Court in Shivdeo Singh v. State of Punjab [AIR 1963 SC 1909], there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate power which may enable an appellate court to correct all manner of errors committed by the subordinate court.”

9. Now it is also to be kept in view that in the impugned judgment, the Division Bench of the High Court has clearly observed that they were entertaining the review petition only on the ground of error apparent on the face of the record and not on any other ground. So far as that aspect is concerned, it has to be kept in view that an error apparent on the face of record must be such an error which must strike one on mere looking at the record and would not

require any long-drawn process of reasoning on points where there may conceivably be two opinions. We may usefully refer to the observations of this Court in the case of *Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale* [AIR 1960 SC 137 : (1960) 1 SCR 890] wherein, K.C. Das Gupta, J., speaking for the Court has made the following observations in connection with an error apparent on the face of the record:

“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 be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ.”

In *Haridas Das Vs. Usha Rani Banik (Smt) and others*, (2006) 4 SCC 78, considering *Meera Bhanja* (supra), it has been held as under as under :

13. In order to appreciate the scope of a review, Section 114 CPC has to be read, but this section does not even adumbrate the ambit of interference expected of the court since it merely states that it “may make such order thereon as it thinks fit”. The parameters are prescribed in Order 47 CPC and for the purposes of this lis, permit the defendant to press for a rehearing “on account of some mistake or error apparent on

the face of the records or for any other sufficient reason". The former part of the rule deals with a situation attributable to the applicant, and the latter to a jural action which is manifestly incorrect or on which two conclusions are not possible. Neither of them postulate a rehearing of the dispute because a party had not highlighted all the aspects of the case or could perhaps have argued them more forcefully and/or cited binding precedents to the court and thereby enjoyed a favourable verdict. This is amply evident from the Explanation to Rule 1 of Order 47 which states that the fact that the decision on a question of law on which the judgment of the court is based has been reversed or modified by the subsequent decision of a superior court in any other case, shall not be a ground for the review of such judgment. Where the order in question is appealable the aggrieved party has adequate and efficacious remedy and the court should exercise the power to review its order with the greatest circumspection. This Court in Thungabhadra Industries Ltd. v. Govt. of A.P [(1964) 5 SCR 174 : AIR 1964 SC 1372] held as follows: (SCR p. 186)

"[T]here is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterised as vitiated by 'error apparent'. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. ... where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out."

15. A perusal of Order 47 Rule 1 shows that review of a judgment or an order could be sought: (a) from the discovery of new and important matters or evidence which after the exercise of due diligence was not within the knowledge of the applicant; (b) such important matter or evidence could not be produced by the applicant at the time when the decree was passed or order made; and (c) on account of some mistake or error apparent on the face of the record or any other sufficient reason.”

2. Thus, from the above, the following can be culled out:

(a) Review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1 of the Code of Civil Procedure.

(b) The the power of review can be exercised :

(i) on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made;

(ii) where some mistake or error apparent on the face of the record is found, which mistake or error has to be self evident and must be such an error which must strike one on mere looking at the record. That is to say where without any

elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it, 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 be an error apparent on the face of the record.

(iii) on any analogous ground.

But :

(c) it may not be exercised on the ground that the decision was erroneous on merits as a review is not an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. That would be the province of a court of appeal. A power of review is not to be confused with appellate power which may enable an appellate court to correct all manner of errors committed by the subordinate court.

(d) it does not postulate a rehearing of the dispute because a party had not highlighted all the aspects of the case or could perhaps have argued them more forcefully and/or cited

binding precedents to the court and thereby enjoyed a favourable verdict.

(e) The fact that the decision on a question of law on which the judgment of the court is based has been reversed or modified by the subsequent decision of a superior court in any other case, shall not be a ground for the review of such judgment.

(f) Where the order in question is appealable the aggrieved party has adequate and efficacious remedy and the court should exercise the power to review its order with the greatest circumspection.

It would thus be apparent that unless a plea seeking review falls within the above parameters, a review shall not lie.

3. The present application for review has to be considered in light of the above parameters.

4. A bare perusal of the application seeking review would make it apparent that what is being sought is not a review but a

rehearing for the reason that grounds are raised stating how the observations of this Court were incorrect, which cannot be grounds for review but grounds for appeal. On this ground itself the application needs to be rejected.

5. Further grounds are raised that some of the judgments/orders, which have been annexed to the petition as annexures, namely, *M/s. M.S.S. Foods and Processor Vs. The Commissioner of Food Safety and Drug Administration, Maharashtra State and others (Criminal Writ Petition No.793/2019) decided on 04/09/2019* and *Nilesh S/o Narayan Sanghvi Vs. State of Maharashtra Through Police Station Officer, MIDC Police Station, Akola Tq. And Distt. Akola [Criminal Application (APL) No.442/2020] decided on 09/09/2020*, were not relied upon, in spite of which, they have been considered, which also cannot be a ground for review. A ground is also raised that judgments in *M/s. Omkar Agency, through its Proprietor Vs. The Food Safety and Standards Authority of India and another, 2016 SCC OnLine Pat 9231* and *Anand Ramdhani Chaurasia and another Vs. The State of Maharashtra, through Public Prosecutor Office, Samta Nagar Police Station, Kandivali (East)*

Mumbai and others (Criminal Writ Petition No.3607/2019) decided on 13/09/2019 were not referred to or relied during oral hearing. *M/s. Omkar Agency* and *Anand Ramdhani Chaurasia* (supra) were enclosed in the list of reliances subsequently placed on record on 21/11/2020. It is material to note that if a judgment/order is annexed as an annexure to the petition, the logical conclusion, would be that such enclosure as an annexure, is for the purpose of placing reliance upon the same, otherwise there is no reason whatsoever why the judgment/order should be an annexure. Even if it is not addressed during the course of argument, the Court will be justified to consider it in view of the fact that it has been made an annexure to the petition or enclosed in the list of reliances, otherwise it will become open for a contention that though the judgment/order was annexed/relied upon, the same was not considered. If the judgment/order was not to be considered, a pursis to that effect could have been filed, which not being so done, the grievance cannot be raised.

6. The contention that the route for transportation ought not to have been considered as the same was not canvassed is

incorrect as the learned Additional Public Prosecutor, had made submissions regarding the transportation from alternative routes (para 15/pg.189 of the reply).

7. Without going into the individual grounds, we find that the grounds which are raised are not the grounds, which would fall within the scope and ambit of review as is indicated from a perusal of the same. In fact, they entail rehearing of the entire matter which is not permissible in the review jurisdiction and therefore, cannot be entertained. There is no merit in the review application and the same accordingly rejected. No costs.

(AVINASH G. GHAROTE, J.)

(SUNIL B. SHUKRE, J.)

Wadkar