

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

CRM-M-28012-2019

Reserved on: 13.07.2022

Pronounced on: 20.07.2022

D.P.BHAGAT

.....Petitioner

Versus

STATE OF PUNJAB AND OTHERS

.....Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Argued by: Mr. Abhinav Gupta, Advocate
for the petitioner.

Mr. Harpreet Singh Multani, AAG, Punjab.
For respondents No. 1 and 3.

Respondent No. 2 – Suresh Saggar, in person.

SURESHWAR THAKUR, J.

1. The respondent No. 2 herein, one Suresh Saggar, had instituted an application cast under Section 156(3) Cr.P.C., before the learned empowered court concerned. Through the above application, he had asked for the registration of an FIR against the accused named therein, qua offences constituted under Sections 120-B, 201, 406, 409, 420, 465, 468, 471 of the IPC, read with Sections 7, 11, 12, 13(i), (c), (d), (ii), (iii) and 13(2) of the Prevention of Corruption Act, 1988. However, thereons, the learned empowered court concerned, made a dis-affirmative order, as, embodied in Annexure P-2.

2. The above dis-affirmative order, as made on the application of respondent No. 2, became founded, upon, the submissions of the applicant, and, of the learned Additional Public Prosecutor. Moreover, a perusal of the impugned order, reveals that it also became founded, upon, this court quashing an earlier preferred

petitioners' application, cast under Section 156(3) Cr.P.C.

3. However, subsequently the respondent No. 2, moved an application seeking recall of the order embodied in Annexure P-2. The reason for respondent No. 2 claiming relief, for recall of the order made on 18.09.2018, became groved in the factum, that it became untenably anviled, upon, misrepresentation of the law, and, facts by rather the Additional Public Prosecutor, besides, became grooved, in it emanating from misconception of law, and, facts, and, thereupon, it leading to gross mis-exercise of jurisdiction(s).

4. The learned Additional Sessions Judge concerned, made an affirmative order on the respondent's No. 2 application, asking for the recalling of the earlier thereto order, as, made on 18.09.2018, and, also ordered for arguments being heard, upon, the respondent's No. 2 application, cast under Section 156(3) Cr.P.C., read with Section 190 Cr.P.C.

5. The petitioner herein becomes aggrieved from the above order, and, have made a challenge thereto. The contest which has erupted amongst the petitioner, and, co-respondent No. 2, is appertaining, to the legal permissibility of the learned Additional Sessions Judge, Amritsar to, through an order made on 08.01.2019, hence recall, and, or, review the earlier thereto order, as, made by him on 18.09.2018.

6. The controversy (supra), which has erupted amongst the above litigants, would become rested, on this court making an interpretation of Section 362 Cr.P.C., provisions whereof, become extracted hereinafter. On there incisive reading, it becomes unfolded,

qua theirs completely forbidding the Court concerned, to recall, or, review a sealed, and, signed order, except for the makings corrections hence of therein carried arithmetical errors, or, typographical mistakes.

“362. Court not to after 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. Imminently, the order strived to be reviewed by co-respondent No. 2, and, which became ultimately reviewed by the learned Court concerned, was not asked to be reviewed, or, recalled on the ground, of its apparently carrying arithmetical errors, or, typographical mistakes, rather it became strived to be reviewed, on the ground that, it was passed on mis-representation of law, and, facts, as made to the court, by the Additional Public Prosecutor concerned.

8. The respondent No. 2, has upon the above ground, of the order initially made by the learned Additional Sessions Judge, Amritsar being ridden with the above vices, rather obviously, has strived to ensure qua its becoming validated by this court. He supports his above argument, through placing reliance, upon, a verdict of the Hon'ble Supreme Court, reported in **2022(2) Criminal Court Cases 748 (S.C.)** titled '**Ganesh Patel Vs. Umakant Rajoria**', decided on 07.03.2022, wherein, the Hon'ble Apex Court had condoned, and, validated the recalling, and, reviews of orders, as, made by the High Court, through its exercising jurisdiction under Section 482 Cr.P.C., even rather irrespective of the embargo cast in Section 362 Cr.P.C. This Court is definitely bound to revere the above mandate. However, the facts

therein, are completely distinct to the facts in hand, and, obviously make the above verdict (supra), to become not applicable to the facts at hand. The stark distinctive fact, become comprised in the factum, that the verdict (supra), applies to the jurisdiction(s) exercised by High Courts under Section 482 Cr.P.C., and, obviously does not apply to review jurisdictions exercised or exercisable by criminal courts of competent jurisdiction, other than the High Court, who obviously do not enjoy any inherent power, as the High Court enjoys, nor can they outside the mandate carried in Section 362 Cr.P.C., review, or, recall orders, as became, rather untenably reviewed in the instant case, and or, became reviewed, rather completely outside the contours of the mandate carried in Section 362 Cr.P.C.

9. In consequence, the impugned order falls outside the jurisdictional competence of the learned court concerned, and, obviously it is required to be quashed. The present petition is allowed and, the impugned order dated 08.01.2019 (Annexure P-3) is accordingly set aside. However, liberty is reserved to the co-respondent No. 2, to through availing the appropriate recourses constitute a challenge thereto.

20.07.2022
kavneet singh

(SURESHWAR THAKUR)
JUDGE

Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*