

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.270 of 2023

In
Civil Writ Jurisdiction Case No.7985 of 2023

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Jyoti Kumari alias Smt. Jyoti Pandey Wife of Late Shesh Nath Pandey (Deceased) and Daughter of Awadh Bihari Chaubey, resident of Village-Jalilpur (Sonpa), P.O.-Sonpa, P.S.-Rajpur, District-Buxar.

... .. Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Home Affairs, New Delhi.
2. D.G. of Police CRPF, New Delhi.
3. I.G. CRPF, Western Sector Navi Mumbai.
4. I.G. Northern Sector CRPF, R. K. Puram, New Delhi.
5. DIG GC Gandhi Nagar Group Center CRPF, Chiloda Road, Gandhi Nagar Gujarat.
6. Commandant 70 Bn, CRPF Bawana Camp North West District-Delhi.
7. Kumari Priti @ Priti Pandey, W/o Late Shesh Nath Pandey, D/o Awadhesh Dubey, Resident of Village-Simari Ramo Patti, PO and PS-Simri, District-Buxar.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Saket Kumar, Advocate.
For the Union of India : Ms. Punam Kumari Singh, C.G.C.

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

3 19-04-2024 Heard Mr. Saket Kumar, learned counsel appearing on behalf of the petitioner and Ms. Punam Kumari Singh, learned counsel for the Union of India.

2. Ms. Punam Kumari Singh, learned counsel appearing on behalf of the Union of India informs that the present review petition filed for the review of the order dated 24.08.2023 passed in C.W.J.C. No. 7985 of 2023 is not maintainable as the petitioner has not been able to point out any



typographical error or arithmetical mistake in the order as per the provision of Section 114 read with Order 47 Rule 1 of the Code of Civil Procedure which is reproduced hereinafter:

1. Application for review of judgment

(1) Any person considering himself aggrieved-

(a) by a decree or Order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or Order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the 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, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the Order.”

3. Learned counsel has further relied upon the judgment of the Apex Court in the case of **Lily Thomas & Ors. Vs. Union of India & Ors.** reported in **(2000) 6 SCC 224**. Relevant Paragraph Nos. 52, 56 and 58 are reproduced hereinafter:

“52. The dictionary meaning of the word “review” is “the act of looking, offer something again with a view to correction or improvement”. It cannot be denied that the review is the creation of a statute. This Court in *Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji* [(1971) 3 SCC 844 : AIR 1970 SC 1273] held that the power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise. It cannot be denied that justice is a virtue which transcends all



barriers and the rules or procedures or technicalities of law cannot stand in the way of administration of justice. Law has to bend before justice. If the Court finds that the error pointed out in the review petition was under a mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist and its perpetration shall result in a miscarriage of justice nothing would preclude the Court from rectifying the error. This Court in *S. Nagaraj v. State of Karnataka* [1993 Supp (4) SCC 595 : 1994 SCC (L&S) 320 : (1994) 26 ATC 448] held : (SCC pp. 619-20, para 19)

“19. Review literally and even judicially means re-examination or reconsideration. Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law the courts and even the statutes lean strongly in favour of finality of decision legally and properly made. Exceptions both statutorily and judicially have been carved out to correct accidental mistakes or miscarriage of justice. Even when there was no statutory provision and no rules were framed by the highest court indicating the circumstances in which it could rectify its order the courts culled out such power to avoid abuse of process or miscarriage of justice. In *Raja Prithwi Chand Lal Choudhury v. Sukhraj Rai* [AIR 1941 FC 1] the Court observed that even though no rules had been framed permitting the highest court to review its order yet it was available on the limited and narrow ground developed by the Privy Council and the House of Lords. The Court approved the principle laid down by the Privy Council in *Rajunder Narain Rae v. Bijai Govind Singh* [(1836) 1 Moo PC 117 : 2 MIA 181] that an order made by the Court was final and could not be altered:

‘... nevertheless, if by misprision in embodying the judgments, errors have been introduced, these courts possess, by common law, the same power which the courts of record and statute have of rectifying the mistakes which have crept in.... The House of Lords exercises a similar power of rectifying mistakes made in drawing up its own judgments, and this Court must possess the same authority. The Lords have however gone a step further, and have corrected mistakes introduced through inadvertence in the details of judgments; or have supplied manifest defects in order to enable the decrees to be enforced, or have added explanatory matter, or have reconciled inconsistencies.’



Basis for exercise of the power was stated in the same decision as under:

‘It is impossible to doubt that the indulgence extended in such cases is mainly owing to the natural desire prevailing to prevent irremediable injustice being done by a court of last resort, where by some accident, without any blame, the party has not been heard and an order has been inadvertently made as if the party had been heard.’

Rectification of an order thus stems from the fundamental principle that justice is above all. It is exercised to remove the error and not for disturbing finality. When the Constitution was framed the substantive power to rectify or recall the order passed by this Court was specifically provided by Article 137 of the Constitution. Our Constitution-makers who had the practical wisdom to visualise the efficacy of such provision expressly conferred the substantive power to review any judgment or order by Article 137 of the Constitution. And clause (c) of Article 145 permitted this Court to frame rules as to the conditions subject to which any judgment or order may be reviewed. In exercise of this power Order XL had been framed empowering this Court to review an order in civil proceedings on grounds analogous to Order 47 Rule 1 of the Civil Procedure Code. The expression, ‘for any other sufficient reason’ in the clause has been given an expanded meaning and a decree or order passed under misapprehension of true state of circumstances has been held to be sufficient ground to exercise the power. Apart from Order XL Rule 1 of the Supreme Court Rules this Court has the inherent power to make such orders as may be necessary in the interest of justice or to prevent the abuse of process of court. The Court is thus not precluded from recalling or reviewing its own order if it is satisfied that it is necessary to do so for sake of justice.”

The mere fact that two views on the same subject are possible is no ground to review the earlier judgment passed by a Bench of the same strength.

“56. It follows, therefore, that the power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated like an appeal in disguise. The mere possibility of two views on the subject is not a ground for review. Once a review petition is dismissed no further



petition of review can be entertained. The rule of law of following the practice of the binding nature of the larger Benches and not taking different views by the Benches of coordinated jurisdiction of equal strength has to be followed and practised. However, this Court in exercise of its powers under Article 136 or Article 32 of the Constitution and upon satisfaction that the earlier judgments have resulted in deprivation of fundamental rights of a citizen or rights created under any other statute, can take a different view notwithstanding the earlier judgment.”

“58. Otherwise also no ground as envisaged under Order XL of the Supreme Court Rules read with Order 47 of the Code of Civil Procedure has been pleaded in the review petition or canvassed before us during the arguments for the purposes of reviewing the judgment in *Sarla Mudgal case* [*Sarla Mudgal, President, Kalyani v. Union of India*, (1995) 3 SCC 635 : 1995 SCC (Cri) 569] . It is not the case of the petitioners that they have discovered any new and important matter which after the exercise of due diligence was not within their knowledge or could not be brought to the notice of the Court at the time of passing of the judgment. All pleas raised before us were in fact addressed for and on behalf of the petitioners before the Bench which, after considering those pleas, passed the judgment in *Sarla Mudgal case* [*Sarla Mudgal, President, Kalyani v. Union of India*, (1995) 3 SCC 635 : 1995 SCC (Cri) 569] . We have also not found any mistake or error apparent on the face of the record requiring a review. Error contemplated under the rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched. It must be an error of inadvertence. No such error has been pointed out by the learned counsel appearing for the parties seeking review of the judgment. The only arguments advanced were that the judgment interpreting Section 494 amounted to violation of some of the fundamental rights. No other sufficient cause has been shown for reviewing the judgment. The words “any other sufficient reason appearing in Order 47 Rule 1 CPC” must mean “a reason sufficient on grounds at least analogous to those specified in the rule” as was held in *Chhajju Ram v. Neki* [AIR 1922 PC 112 : 49 IA 144] and approved by this Court in *Moran Mar Basselios Catholicos v. Most Rev. Mar Poulouse Athanasius* [AIR 1954 SC 526 : (1955) 1 SCR 520] . Error apparent on the face of the proceedings is an error which is based on clear ignorance or disregard of the provisions of law. In *T.C. Basappa v. T. Nagappa* [AIR 1954 SC 440 : (1955) 1 SCR 250] this Court held that such error is an error which is a patent error and not a mere wrong decision. In *Hari Vishnu Kamath v. Ahmad Ishaque* [AIR 1955 SC 233 : (1955) 1 SCR 1104] it was held:

“[I]t is essential that it should be something more than a mere



error; it must be one which must be manifest on the face of the record. The real difficulty with reference to this matter, however, is not so much in the statement of the principle as in its application to the facts of a particular case. When does an error cease to be mere error, and become an error apparent on the face of the record? Learned counsel on either side were unable to suggest any clear-cut rule by which the boundary between the two classes of errors could be demarcated.

Mr Pathak for the first respondent contended on the strength of certain observations of Chagla, C.J. in — ‘*Batuk K. Vyas v. SuratBorough Municipality* [AIR 1953 Bom 133 : 54 Bom LR 922] ’ that no error could be said to be apparent on the face of the record if it was not self-evident and if it required an examination or argument to establish it. This test might afford a satisfactory basis for decision in the majority of cases. But there must be cases in which even this test might break down, because judicial opinions also differ, and an error that might be considered by one Judge as self-evident might not be so considered by another. The fact is that what is an error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case.”

Therefore, it can safely be held that the petitioners have not made out any case within the meaning of Article 137 read with Order XL of the Supreme Court Rules and Order 47 Rule 1 CPC for reviewing the judgment in *Sarla Mudgal case* [*Sarla Mudgal, President, Kalyani v. Union of India*, (1995) 3 SCC 635 : 1995 SCC (Cri) 569] . The petition is misconceived and bereft of any substance.”

4. In view of the aforesaid provision of the Code of Civil Procedure and the law laid down by the Apex Court, the review petition is not maintainable and accordingly, stands dismissed.

(Purnendu Singh, J)

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