

25.09.2024

Sl.No. 3

Ct. 32

Amalranjan

In The High Court at Calcutta
Criminal Revisional Jurisdiction
Appellate Side

CRR 1437 of 2017

With

CRAN 1/2024

Smt. Madhabilata Mondal

Vs.

Sri Haradhan Mondal and anr.

Mr. Rajat Sinha Ray..... for the applicant

Mr. Sujoy Sarkar

Mr. Prasun Mukherjee

Mr. Rahul Chachan

Ms. Sneha Srivastava..... for the o.p. /petitioner

Re: **CRAN 1/2024**

1. This is an application for recalling of a judgment and order passed by this Court ex parte on 15.07.2024 in the instant case.
2. It is the contention of the petitioner that the opposite party never received any notice or the revisional application prior to disposal of the revisional application. The ex parte judgment has been passed by this Court in favour of the petitioner/wife, whereby allowed the interim maintenance to the Petitioner/wife @ Rs. 5000/= per month.
3. It is submitted by the learned counsel for the applicant/husband that the Petitioner/wife initially sent the notice in connection with revisional application not in proper residential and postal address as such postal

department returned the service with remarks “address cannot be located”. Accordingly, this Court has directed the petitioner to serve again upon the opposite party no. 1/husband mentioning the full address of the applicant/opposite party no.1 herein by registered post with acknowledgement due or by speed post and file affidavit of service on the next date of hearing.

4. Despite the said order passed by this Court, learned advocate appearing on behalf of the applicant/opposite party no. 1 submitted that without full address and proper residential and postal address of the husband again sent notice on the same address as before and obtained and managed the postal remarks “Not claimed” for her personal gain. Therefore, such service deemed to have not a good service as such he prays for recalling of judgment and order dated 15.07.2024 passed ex parte.
5. He also placed reliance upon an unreported judgment passed in **Appeal (Crl.) 982-983 of 2003 (Dilawar Singh Vs. Parvinder Singh @ Iqbal Singh & Anr.)** dated 08.11.2005 by the Hon’ble Supreme Court to support his contention that Court has power to recall its judgment and order ex parte when it was obtained on the basis of suppression of fact and without service of notice.
6. On the other hand, learned advocate appearing on behalf of the petitioner/wife submitted that service of notice was made in proper and full address and as same as

address given in case pending before learned Trial Court but the applicant/husband did not claim the article as such Postal Department returned the article with remarks “Not Claimed”. The remark “Not claimed” is a good service and upon reliance of the postal department report, this Court heard the matter ex parte on merit and passed the judgment and order on 15.07.2024. It is further submitted that there is no scope to recall the said judgment, which was decided on merit in view of the Section 362 of the Code of Criminal Procedure, 1973. He further placed a reliance of two judgments passed in the case of **Anish Loharuka Vs. State of West Bengal**¹ and **Rabbani Khanam Vs. State**² to bolster his contention as such he prays for rejection of this application.

7. Heard the submissions of the parties and on perusal of the application as well as annexures thereto, this Court is of the view that the judgment and order was passed ex parte by this Court on 15.07.2024 on merit, when none represented the opposite party no. 1/husband at the time of call in spite of good service. The postal remark as ‘not claimed’ is a good service. Address mentioned in the envelope found full and proper for service of notice. Even if the parties unheard and judgment signed and delivered that cannot be recalled and reviewed by the

¹ 2022 0 Supreme (Cal) 571;

² 2004 0 CriLR 1035 : 2004 0 Supreme (Cal) 580.

Court in view of the provision laid down in the Code of Criminal Procedure.

8. This Court has no scope to recall a signed judgment or final order, except for correcting clerical or arithmetical error under Section 362 of Cr.P.C. which has specific bar of the Court to alter review judgment or final order which was disposed of except to correct the clerical or arithmetical error.
9. Section 362 of the Code of Criminal Procedure is very specific which reproduced hereinbelow:

“S. 362. Court not to alter 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.”

10. In view of the above facts and circumstances, the prohibition is complete and no criminal court or even High Court can recall or review its own judgment or order after it is signed. However, the bar of Section 362 of the CrPC does not debar the Hon’ble Supreme Court in considering the legality of the judgment and order. Judgments relied by the Petitioner/wife are squarely applicable in this present case.
11. Therefore, this application for recalling of judgment and order by this Court has no merit. Hence, application for

recalling of a judgment and order passed by this Court
ex parte on 15.07.2024 in the instant case is rejected.

12. Accordingly, **CRAN 1/2024** is, thus, disposed of.
13. All parties are to act in terms of the copy of this order
downloaded from the official website of this Court.
14. Urgent Photostat certified copy of this order, if applied
for, be given to the parties on compliance of all legal
formalities.

(Ajay Kumar Gupta, J.)