

R. DAYANANDA SAGAR ETC.

v.

VATAL NAGARAJ ETC.

April 23, 1976

[H. R. KHANNA, M. H. BEG AND V. R. KRISHNA IYER, JJ.]

*Review of judgment of Supreme Court should not be a routine sequel to a defeat in Court—Constitution of India, Art. 137 and Order XL of the Supreme Court Rules, 1966 read with Order XLVI, Rule 1 of the Civil Procedure Code.*

The petitioner filed a review petition on the ground that certain observations in the judgment amounted to almost branding him as an unindicted criminal—guilty of abetting forgery and perjury and they should be obliterated.

Dismissing the petitions and modifying the rigour of the observations, the Court, held :

(1) A judgment of the final Court of the land is final. A review of such a judgment is an exceptional phenomenon, permitted only when a grave and glaring error or other well-established ground is made out. Unfounded and indiscriminate petitions almost as a routine sequel to defeat in court should be avoided despite the theoretical possibility of success. [121 F.G]

*Obiter* : Wisdom cannot be confounded with obstinacy and a charitable construction of a situation cannot be excluded. [122 E]

CIVIL APPELLATE JURISDICTION : Review Petition Nos. 43 and 44 of 1975.

Application for review of this Hon'ble Court's Judgment dated 11th October 1974 in the matter of Civil Appeal No. 1738 of 1973.

A. K. Sen, M. Veerappa and Altaf Ahmed for the Petitioners in Review Petition No. 43 of 1975.

V. S. Desai and R. B. Datar for the Petitioners in Review Petition No. 44 of 1975.

The Order of the Court was delivered by

KRISHNA IYER, J. A judgment of the final Court of the land is final. A review of such a judgment is an exceptional phenomenon, permitted only where a grave and glaring error or other well-established ground is made out. Unfortunately, the theoretical possibility, successful in a microscopic rarity of cases, has led to frequent, unfounded and indiscriminate petitions, almost as a routine sequel to a defeat in Court. The present review petitions fall under the latter category and fail by the former test and are therefore dismissed.

Shri Asoke Sen made a limited submission on behalf of Dayananda Sagar in CMP 2095 of 1975 that certain observations in the judgment almost branding his client as an unindicted criminal—guilty of abetting forgery and perjury—were altogether unmerited and should be obliterated. While we cannot agree to this course, we admit that these

**A** strictures are in no way integral to the decision, although relevant if we take an overall view.

**B** It is true that the words used are strong and we felt then that they were warranted. After hearing both sides we deem it meet to soften the judicial blow. Shri Sen submits that we were misled in reaching the inference drawn. Maybe, we were. Judge Learned Hand once said that the spirit of liberty is 'the spirit which is not too sure that it is right'. That great Judge was 'fond of recalling Cromwell's statement : 'I beseech ye in the bowels of Christ, think that ye may be mistaken'. He told a Senate Committee, 'I should like to have that written over the portals of every church, every school and every court-house, and may I say, of every legislative body in the United States. I should like to have every court begin. 'I beseech ye in the bowels of Christ, think that we may be mistaken'. (Yale Law Journal : Vol. 71, 1961 November part).

**C** In a sense, it is this likelihood of error that persuaded Jesus Christ to caution : 'Judge not, that ye be not judged'. Our search for truth sometimes reaches a blind alley expressed by Bacon : "what is truth ?" said Jestig Pilato : and would not stay for an answer'."

**D** In this conspectus of great sayings, we are inclined to be humble in spirit and free to tone down the harshness of the characterisation to some extent. We would content ourselves by saying that the materials placed before us in appeal, read in the light of the conclusions of the High Court, may well lead to the inference and justify the observations made by us, although it may not be ruled out that a more innocent inference exculpating any role for the petitioner is possible. Thus far, we modify the rigour, but decline to cancel, as pleaded by the petitioner. Wisdom cannot be confounded with obstinacy and a charitable construction of a situation cannot be excluded. That is why we have consented to the dilution.

S.R.

*Petitions dismissed.*