HARI SINGH MANN

v.

HARBHAJAN SINGH BAJWA AND ORS.

NOVEMBER 1, 2000

[K.T. THOMAS AND R.P. SETHI, JJ.]

Criminal Procedure Code, 1973:

Section 482—Inherent powers—Order passed under—Review of—Permissibility—Held; Not permissible—No review of order is contemplated under Cr.P.C.—After disposal of the main petition issuance of fresh direction in a miscellaneous petition is unwarranted, not referable to any statutory provision and is an abuse of the process of court.

Section 362—Judgment or final order—Review or alteration of—After final disposal—Permissibility—Held; Not permissible—The court becomes functus officio once the final disposal order is signed—Such an order can neither be reviewed nor altered except to correct a clerical or arithmetical error.

Respondent No. 1, a practising Advocate, filed a petition under Section 482 of the Criminal Procedure Code, 1973 before the High Court for directions. A Single Judge of the High Court disposed of the petition with certain directions to the Senior Superintendent of Police (SSP).

After the disposal of the aforesaid petition respondent No. I again filed a Criminal Miscellaneous Petition before the High Court for fresh directions. The same Single Judge, without notice to the appellants, directed the SSP not to comply with the earlier directions.

Thereafter, the appellant filed a Criminal Miscellaneous Petition for quashing the latter order of the High Court on the ground of its being illegal, against the well established principles of law and being a review of the earlier order which was not permissible under the criminal law. The High Court dismissed the petition. Hence this appeal.

Allowing the appeals, the Court

HELD : 1. The impugned orders were passed completely ignoring the

A basic principles of criminal law. No review of an order is contemplated under the Criminal Procedure Code, 1973. After the disposal of the main petition, there was no lis pending in the High Court wherein the respondent could have filed any miscellaneous petition. The filing of a miscellaneous petition not referable to any provision of the Code of Criminal Procedure or the rules of the Court cannot be resorted to as a substitute of fresh litigation. The B record of the proceedings shows that directions in the case filed by the respondent were issued without notice to any of the appellants. Merely because respondent No. 1 was an Advocate, did not justify the issuance of directions at his request without notice to the other side. The impugned orders could not have been passed by the High Court under its inherent power under C Section 482 of the Code of Criminal Procedure. The practice of filing miscellaneous petitions after the disposal of the main case and issuance of fresh directions in such miscellaneous petitions by the High Court are unwarranted, not referable to any statutory provision and in substance an abuse of the process of the court. [318-C-E]

D *State of Orissa* v. *Ram Chander Agarwala,* AIR (1979) SC 87, relied on.

Talab Haji Hussain v. *Madhukar Purshottam Mondkar,* AIR (1958) SC 376, held inapplicable.

E *Sankatha Singh* v. *State of U.P.,* [1962] Supp. 2 SCR 871 and *Suptd. and Remembrancer of Legal Affairs W.B.* v. *Mohan Singh,* AIR (1975) SC 1002, cited.

2.1. Section 362 of the Code mandates that no court, when it has signed its judgment or final order disposing of a case, shall alter or review the same F except to correct a clerical or arithmetical error. The Section is based on an acknowledged principle of law that once a matter is finally disposed of by a Court, the said Court in the absence of a specific statutory provision becomes functus officio and disentitled to entertain a fresh prayer for the same relied unless the former order of final disposal is set aside by a court of competent G jurisdiction in a manner prescribed by law. The Court becomes functus officio the moment the official order disposing of a case is signed. Such an order cannot be altered except to the extent of correcting a clerical or arithmetical, error. [320-A-B, C]

2.2. The impugned order of the High Court which is not referable to H any statutory provisions, having been passed in a review petition in a criminal

case, is without jurisdiction and liable to be quashed. [320-E] A

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 908 and 909 of 2000.

From the Judgment and Order dated 21.4.99 and 30.4.99 of the Punjab and Haryana High Court in Crl. Misc. No. 20653/99 in Crl. Misc. No. 15-M/ 99 and Crl. Misc. No. 12429 of 1999 in Crl. Misc. No. 15-M of 1999. B

Nidhesh Gupta, Naveen Singh and Ms. Naresh Bakshi for the Appellant.

In-person for the Respondent No. 1.

Rajiv Dutta for the State. C

The Judgment of the Court was delivered by

SETHI, J. Leave granted.

Respondent No.1 who is a practising Advocate filed a petition under D Section 482 of the Code of Criminal Procedure in the High Court of Punjab and Haryana with prayers:

"(i) Call for the records of the case for the purpose of perusal,

(ii) direct the respondent No.6 i.e. Station House Officer of Police E Station, Kharar, District Roopnagar as well as Senior Superintendent of Police, Roopnagar (respondent No.3) to register a case on the basis of complaint dated 14.12.1998 (Annexure P-4) lodged by the petitioner as well as MLR dated 11.12.1998 (Annexure P-3) of the petitioner without any further delay.

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(iii) direct any judicial officer to hold inquiry/ investigation in the aforesaid case in view of the serious allegations levelled by the petitioner against senior Police Officer of District Roopnagar.

(iv) direct the respondent No .2 (DGP Punjab) to immediately transfer the respondent No. 4, 5 and Inspector Jasdev Singh, who is presently G posted as SHO of Police Station Kharar, District Roopnagar, so that free, fair and impartial investigation/ inquiry may be conducted by some judicial officer in view of the peculiar facts of the case under reference."

In his petition the respondent No.1 contended that he was conducting H

A several civil/criminal cases filed by M/s.Falcon Breeders Private Limited as well as its Directors against the appellant and respondent No. 8. It was alleged that with a motive to compel the respondent No.1-Advocate to withdraw as counsel of the said company and its Directors, the appellant and respondent No. 8. hatched a criminal conspiracy to implicate him in false and fabricated criminal cases. They were alleged to have mixed up with one Ranjit Singh, Deputy District Attorney (Legal) attached with the office of Senior Superintendent of Police, District Roopnagar, Punjab and managed the registration of a case against the respondent No.1 and his clients being FIR No.151 dated 10.12.1988 at Police Station Kharar for various offences under the Indian Penal Code. In furtherance of the alleged conspiracy a raid was conducted on 11.10.1988 in the house of one Ravnit Singh, a client of the respondent No.1. The respondent No.1 reached at the house of Ravnit Singh, when called, and found there a contingent of police. It is alleged that the moment the respondent No.1 came out of his car, he was roughed up and thrown in an open truck. He was taken to Police Station, Sector 11, Chandigarh where DDR No.24 dated 11.10.1988 was registered. He further alleged that thereafter he was whisked away to Police Station, Kharar. His arms were tied behind his back and a piece of cloth was tied around his eyes. He was thereafter taken to an unknown destination and was pushed in an isolated room where the appellant herein and respondent No.8 were already waiting. He was subjected to criminal torture by using third degree methods for about 2-3 hours. The respondent No.6 was also alleged to have caused injuries upon the said Advocate with a sharp knife below the knees, without provocation. Red chillies are stated to have been sprinkled on his fresh wounds with the object to harm, injure and terrorise him. He was threatened to be eliminated by the police personnel and the appellant. After the torture process, the eyes of the respondent No.1 were again blind-folded and he was brought back to Police Station, Kharar where his wife Mrs. Gursharan Kaur had reached by that time. Upon her raising hue and cry he was sent to Civil Hospital, Kharar for conduct of his medical examination where he was examined by Dr.Balwinder Singh. He was stated to have been released on 11.10.1998 after about 3 hours by the orders of the Judicial Magistrate, First Class, Kharar. He claimed to have filed a written complaint in Police Station, Kharar for registration of FIR against the alleged culprits. The copies of the complaint are stated to have been sent to Chief Minister, Punjab, Chief Secretary, Punjab, Principal Secretary, Punjab, the Director General of Police, Police SSP, Roopnagar, Chief Justice of India and the Home Minister of India. As no action was taken on his complaint, he filed a petition in the High Court with prayers as noted hereinabove.

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After hearing the respondent No.1, who appeared in person, the learned Single Judge of the High Court disposed of his petition on 7.1.1999 with directions:

> "After hearing the petitioner, who is an Advocate himself, this court is of the considered opinion that no case for direct registration of the case is made out and a preliminary enquiry is required. In these circumstances, the present petition is disposed of with the directions to the SSP, Roopnagar, to look into the allegations of the petitioner and if he comes to the conclusion that some cognizable offence has been committed by respondents 7 or 8 or anybody else, he shall order for the registration of the case. If the allegations of the petitioner are found to be false, the petitioner shall be prosecuted u/s 182 IPC. The petitioner can lead such evidence in support of his case before the SSP who shall conclude the investigation within 3 months from the receipt of the copy of the order."

After the disposal of the petition filed by the respondent No.1 and consequently action taken in pursuance to the directions issued against the SSP, Roopnagar, the respondent No.1 again filed a Miscellaneous Petition which was registered as Criminal Miscellaneous No.M-15 of 1999 and disposed of on 30.4.1999 by the same learned Single Judge, apparently without notice to the appellant herein or any other respondent in that petition, with directions:

> "The petitioner submits that he has filed a Criminal Complaint on 9.3.1999 in the court of Mrs. Neelam Arora JMIC, Kharar and she has taken cognizance and in this view of the matter he does want to prosecute his allegations with the SSP, who may be directed not to take any action because the matter is already subjudice before the competent court of jurisdiction. Therefore, now directions are given to SSP Roopnagar not to comply with directions dated 7.1.1999 and not to file any calendra under Section 182 IPC against the petitioner".

The appellant herein also filed a Criminal Miscellaneous No.20653 of 1999 on 31st May, 1999 with prayer for quashing the Court order dated 30th April, 1999 on the ground of its being illegal, against the well established principles of law and being a review of order dated 7.1.1999 not permissible under the criminal law. The said application was dismissed by the learned Single Judge on 21st July, 1999. The present appeals have been filed with prayer for quashing the orders passed by the learned Single Judge on 30th April, 1999 and 21st July, 1999 mainly on the ground of the orders being

A without jurisdiction.

The respondent No.1 who appeared in person tried to justify the impugned orders with submissions that the High Court has the power to pass any order in any proceeding at any stage, in the interests of justice to eliminate any threat to a fair trial. In support of his contention he relied upon B a judgment of this Court in *Talab Haji Hussain* v. *Madhukar Purshottam Mondkar & Anr.,* AIR (1958) SC 376.

We have noted with disgust that the impugned orders were passed completely ignoring the basic principles of criminal law. No review of an order is contemplated under the Code of Criminal Procedure. After the disposal of C the main petition on 7.1.1999, there was no lis pending in the High Court wherein the respondent could have filed any miscellaneous petition. The filing of a miscellaneous petition not referable to any provision of Code of Criminal Procedure or the rules of the Court, cannot be resorted to as a substitute of fresh litigation. The record of the proceedings produced before D us shows that directions in the case filed by the respondents were issued apparently without notice to any of the respondents in the petition. Merely because the respondent No.1 was an Advocate, did not justify the issuance of directions at his request without notice of the other side. The impugned orders dated 30th April, 1999 and 21st July, 1999 could not have been passed by the High Court under its inherent power under Section 482 of the Code E of Criminal Procedure. The practice of filing miscellaneous petitions after the disposal of the main case and issuance of fresh directions in such miscellaneous petitions by the High Court are unwarranted, not referable to any statutory provision and in substance the abuse of the process of the court.

F There is no provision in the Code of Criminal Procedure authorising the High Court to review its judgment passed either in exercise of its appellate or revisional or original criminal jurisdiction. Such a power cannot be exercised with the aid or under the cloak of Section 482 of the Code. This Court in *State of Orissa* v. *Ram Chander Agarwala,* AIR (1979) SC 87 held:

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> "Before concluding we will very briefly refer to cases of this Court cited by counsel on both sides, [1958] SCR 1226: AIR (1958) SC 376 relates to the power of the High Court to cancel bail. The High Court took the view that under S.561A of the Code, it had inherent power to cancel the bail, and finding that on the material produced before H the Court it would not be safe to permit the appellant to be at large,

cancelled the bail, distinguishing the decision in 72 Ind App 120: AIR (1945) PC 94 (supra) and stated that the Privy Council was not called upon to consider the question about the inherent power of the High Court to cancel bail under S.561A. In *Sankatha Singh* v. *State of U.P.*, [1962] Supp. 2 SCR 871: AIR (1962) SC 1208 this Court held that S.369 read with S.424 of the Code of Criminal Procedure specifically prohibits the altering or reviewing of its order by a court. The accused applied before a succeeding Sessions Judge for re-hearing of an appeal. The learned Judge was of the view that the appellate court had no power to review or restore an appeal which has been disposed of. The Supreme Court agreed with the view that the appellate court had no power to review or restore an appeal. This Court, expressing its opinion that the Sessions Court had no power to review or restore an appeal observed that a judgment, which does not comply with the requirements of S.367 of the Code, may be liable to be set aside by a superior court but will not give the appellate court any power to set it aside itself and re-hear the appeal observing that "Sec.369 read with S.424 of the Code makes it clear that the appellate court is not to alter or review the judgment once signed, except for the purpose of correcting a clerical error. Reliance was placed on a decision of this Court in *Supdt. and Remembrancer of Legal Affairs W.B.* v. *Mohan Singh,* AIR (1975) SC 1002 by Mr. Patel, learned counsel for the respondent wherein it was held that rejection of a prior application for quashing is no bar for the High Court entertaining a subsequent application as quashing does not amount to review or revision. This decision instead of supporting the respondent clearly lays down, following *Chopra's* case AIR (1955) SC 633 (supra) that once a judgment has been pronounced by a High Court either in exercise of its appellate or revisional jurisdiction, no review or revision can be entertained against that judgment as there is no provision in the Criminal Procedure Code which would enable the High Court to review the same or to exercise revisional jurisdiction. This Court entertained the application for quashing the proceedings on the ground that a subsequent application to quash would not amount to review or revise an order made by the Court. The decision clearly lays down that a judgment of the High Court on appeal or revision cannot be reviewed or revised except in accordance with the provisions of the Criminal Procedure Code. The provisions of S.561A of the Code cannot be invoked for exercise of a power which is specifically prohibited by the Code."

A Section 362 of the Code mandates that 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. The Section is based on an acknowledged principle of law that once a matter is finally disposed of by a Court, the said Court in the absence of a specific statutory provision becomes *functus officio* and disentitled to entertain a fresh prayer for the same relief B unless the former order of final disposal is set aside by a court of competent jurisdiction in a manner prescribed by law. The court becomes *functus officio* the moment the official order disposing of a case is signed. Such an order cannot be altered except to the extent of correcting a clerical or arithmetical error. The reliance of the respondent on *Talab Haji Hussain's* case (supra) is C misconceived. Even in that case it was pointed that inherent powers conferred on High Courts under Section 561A (Section 482 of the new Code) has to be exercised sparingly, carefully and with caution and only where such exercise is justified by the tests specifically laid down in the section itself. It is not disputed that the petition filed under Section 482 of the Code had been finally disposed of by the High Court on 7.1.1999. The new Section 362 of the Code D which was drafted keeping in view the recommendations of the 41st Report of the Law Commission and the Joint Select Committees appointed for the purpose, has extended the bar of review not only to the judgment but also to the final orders other than the judgment.

E The impugned orders of the High Court dated 30.4.1999 and 21.7.1999 which is not referable to any statutory provisions having been passed apparently in a review petition in a criminal case is without jurisdiction and liable to be quashed. In view of what has been stated hereinabove, the appeals are allowed and the impugned order of the High Court dated 30.4.1999 and 21.7.1999 are set aside restoring its original order dated 7.1.1999.

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V.S.S. Appeals allowed.