

STATE REP. BY D.S.P., S.B. C.I.D., CHENNAI

v.

K.V. RAJENDRAN & ORS.

(Criminal Appeal No. 1389 of 2008)

SEPTEMBER 2, 2008

[TARUN CHATTERJEE AND P. SATHASIVAM, JJ.]

*Code of Criminal Procedure, 1973 – ss. 482 and 362 –
Petition u/s 482 seeking transfer of investigation to CBI –
Petition disposed of by High Court rejecting the plea –
Subsequently High Court granting the same relief in
interlocutory application filed in the disposed of petition –
Propriety of – Held: The petition, having been disposed of on
merit, it was not open to High Court in exercise of power u/s
482 to reopen and alter its order – s. 362 prohibits altering or
review of final order – Court cannot give a go-by to statutory
provisions and instead evolve a new provision in the garb of
inherent jurisdiction – The only course open to the applicants
was to file independent petition seeking such transfer in view
of the subsequent events.*

**Respondents filed a petition u/s 482 Cr.P.C. seeking
inter alia transfer of the investigation in a case against
them for offence u/ss. 177, 186 and 506 (ii) IPC, from SBCID
to CBI. The petition was disposed of by High court reusing
to transfer the same. After about 3 ½ years DSP (SBCID)
filed an application in the disposed of petition seeking
modification of the final order to the effect that direction
for investigation should be given to DSP (CB CID) and
not to DSP (SBCID) as the same was not empowered to
conduct the investigation. Respondent also filed an
interlocutory application in the disposed of petition
seeking again, transfer of the investigation to CBI on the
ground that he and the witnesses were ill treated and
harassed by the Investigating Officer; and that the**

A investigation was not being conducted in unbiased manner. High Court, by the impugned order allowed the application directing transfer of the investigation to CBI. Hence the present appeal.

Partly allowing the appeal, the Court

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HELD: 1.1 The High Court fell in error in reopening the issue which was finally decided and refused earlier in the exercise of power under Section 482 Cr.P.C. on a petition which was filed in a disposed of petition. High Court was not justified in handing over the investigation of the case from the State Police authorities to the CBI authorities. [Paras 4 and 25] [1145,C;1153,A]

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1.2 Section 362 Cr.P.C. expressly provides that no Court which has signed its judgment and final order disposing of a case, shall alter or review the same except to correct clerical or arithmetical error save as otherwise provided by the Court. Such being the position and in view of the express prohibition in Cr.P.C. itself in the form of Section 362, exercise of power under Section 482 Cr.P.C. cannot be exercised to reopen or alter an order disposing of a petition decided on merits. Section 362 Cr.P.C. cannot apply in the facts and circumstances of the present case. There was no clerical or arithmetical error in the order. [Paras 17, 21 and 24] [1150,H; 1151,A; 1151,H; 1152,A; 1152.E]

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Sankatha Singh vs. State of U.P. 1962 Supp 2 SCR 817 – relied on.

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1.3 Section 482 Cr.P.C. enables the High Court to make such order as may be necessary to give effect to any order under Cr.P.C. or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. The inherent powers, however, as much are controlled by principle and precedent as are its express powers by statutes. If a matter is covered by an express letter of law, the court cannot give a go-by to the statutory provisions

and instead evolve a new provision in the garb of inherent jurisdiction. [Para 18] [1151,B-C] A

Hari Singh Mannn vs. Harbhajan Singh Bajwa and Ors. 2001 (1) SCC 169; *Simrikha vs. Dolley Mukherjee and Chhabi Mukherjee and Anr.* 1990 (2) SCC 437; *Smt Sooraj Devi vs. Pyare Lal and Anr.* AIR 1981 SC 736 – relied on. B

1.4 In the present case, the High Court, in the original final order, disposing of the petition under Section 482 Cr.P.C. has specifically given reasons for rejecting the prayer for handing over the investigation to the CBI authorities. That apart, after the final order was passed rejecting the prayer of the respondent to hand over the investigation to the CBI authorities, by which, the criminal petition filed under Section 482 was practically rejected, it was not open to the High Court to pass a fresh order in the disposed of petition or even in the pending petition of the DSP (SB CID), directing investigation to be made by the CBI authorities. [Paras 22 and 23] [1152,B-C] C

1.5 The respondents did not file any independent application for transferring the investigation from the State Police authorities to the CBI authorities on certain events which had occurred after the final order was passed by the High Court disposing of the earlier criminal petition under Section 482 Cr.P.C.. A prayer could be made by the respondents before the High Court for transferring the investigation from the State Police authorities to the CBI by filing a fresh petition under Section 482 Cr.P.C. in view of subsequent events that had taken place after the final order disposing of the earlier criminal petition was passed. [Para 25] [1152,E-G] D E F

Case Law Reference G

2001 (1) SCC 169	Relied on.	15
1990 (2) SCC 437	Relied on.	16
AIR 1981 SC 736	Relied on.	19

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A **1962 Supp 2 SCR 817 Relied on. 20**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 1389 of 2008

B From the final Judgment and Order dated 1.10.2004 of
the High Court of Judicature at Madras in Crl. M.P. No. 3713 of
2001 in Crl. O.P. No. 19352 of 1998

M.S. Ganesh, V.G. Pragasam, S. Joseph Aristotle and S.
Prabu Ramasuramanian for the Appellant.

C Kamini Jaiswal for the Respondent.

A. Sharan, ASG., Vikas Sharma, P. Parameşwaran and T.
Raja for the CBI.

The Judgment of the Court was delivered by

D **TARUN CHATTERJEE, J. 1. Leave granted.**

E 2. The only question that needs to be decided in this appeal
is whether in the exercise of the inherent powers under Section
482 of the Code of Criminal Procedure (in short, i§ the Codej"),
an order disposing of a criminal petition, refusing to grant any
relief, could be modified and, thereafter, an investigation, which
was with the State Police authorities could be transferred to the
Central Bureau of Investigation (in short, i§the CBIj").

F 3. A criminal petition under Section 482 of the Code was
filed by the respondents for transfer of the investigation which
had been initiated for an offence under Sections 177, 186 and
506(ii) of the Indian Penal Code to the CBI. In the year 1998,
the said criminal petition was disposed of by the High Court
refusing to transfer the investigation to CBI. By the said order
G the High Court, while disposing of the said criminal petition,
held that it was not necessary to hand over the investigation to
CBI in the facts and circumstances of the case and the SBCID
was directed to continue with the investigation. After more than
3 ? years of the final order refusing to transfer the investigation
H to CBI, an Interlocutory Application was filed in the disposed of

criminal petition by the complainant/respondents but this time, the learned Single Judge of the Madras High Court transferred the investigation to the CBI and directed the State Police to hand over the records to CBI forthwith. It is this order, by which the investigation was transferred to CBI, is in appeal before us, which, on grant of leave, was heard in the presence of learned counsel for the parties.

4. In our view, the High Court fell in error in reopening the issue which was finally decided and refused earlier in the exercise of power under Section 482 of the Code on a petition which was filed in a disposed of petition at the instance of the DSP [SB CID]. Before we take up this question for our decision, it would be appropriate to narrate the facts of this case leading to the filing of this appeal in a nutshell :-

5. On 26th of August, 1998 the Revenue Divisional Officer (in short 'the RDO') Mayiladuthurai received a phone call regarding smuggling of sandalwood and teak wood logs. The RDO immediately made enquiries and discovered that the call was a false alarm. During the enquiry it also came to light that the caller was one K.V Rajendran son of Vardarajan (the Respondent herein). He had impersonated as a reporter of the Indian Express and made a hoax call to the officer. On 27th of August, 1998 at 01.00 hrs, the RDO appeared before the Superintendent of Police Nagapattinam and made a complaint against the Respondent. He produced a statement given by the Respondent wherein he had admitted the allegations made against him. The Respondent was identified as a Lecturer in Government Presidency College, Madras. On the personal complaint of the RDO, a case was registered in Poraiyar police Station against the Respondent under Sections 177, 186 and 506(ii) of the Indian Penal Code. The Respondent was arrested and in the morning of 27th of August 1998, he was produced before the Judicial Magistrate No. 2 Mayiladuthurai and remanded to judicial custody. On the next day, the respondent was granted bail and was released from custody. On 2nd of September, 1998, the respondent herein alleged to have given

A a complaint against the RDO and other officers for having tortured him and for having committed other illegal acts between 26th of August 1998 and 28th August, 1998.

B 6. On 06th of September, 1998, the respondent filed a petition before the State Human Rights Commission, Tamil Nadu. On this complaint, the District Collector, Nagapattinam, ordered an elaborate enquiry and on the basis of such an order, a report was submitted to him. On 05th of October, 1998, the District Revenue Officer (DRO) and the Additional District Magistrate submitted the report of their enquiry to the District Collector. According to this report, the allegations leveled against the RDO and the other personnel by the respondent appeared to be an afterthought and totally false. On 08th of October, 1998, the aforesaid report was forwarded to the State Human Rights Commission, Tamil Nadu. The Commission accepted the report and informed the respondent that the Commission was satisfied that no further enquiry should be conducted at the level of the Commission. The Commission did not proceed with the matter and following the view taken by them, a departmental enquiry that was initiated, was also dropped.

E 7. In October 1998, the respondent filed the aforesaid criminal petition under Section 482 of the Code in the Madras High Court seeking the following reliefs:

- F (a) Direction to immediately register an FIR based on the complaint filed on 02nd of September, 1998;
- (b) Transfer further investigation to the Central Bureau of Investigation;
- (c) Order payment of compensation of Rs One lakh.

G 8. As noted herein earlier, by a final order dated 1st of March, 2001, a learned Single Judge of the High Court disposed of the said criminal petition under Section 482 of the Code refusing to transfer the investigation to CBI and also directed that the question of granting compensation would arise at a later stage. The said order was passed on the basis of the findings arrived at by the learned Judge, which are as follows:

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"The third Respondent has already conducted confidential inquiry and submitted that report to Superintendent of Police, SB CID stating that there are enough prima facie materials to take action on the complaint given by the Appellant against the sixth Respondent and others.

Under these circumstances, it would be appropriate to direct the third Respondent to register FIR for the various offences mentioned in the complaint given by the Appellant dated 2.9.1998 against Karunakaran, RDO sixth Respondent and other officials and conduct investigation. Since the confidential report show that the preliminary confidential enquiry has been conducted in a proper way by the third Respondent, it is unnecessary to hand over the investigation to the CBI. Accordingly, the Deputy Superintendent of Police, SBCID, Nagapattinam District, the third Respondent is directed to register an FIR, as noted above and take suitable action against the persons concerned in accordance with the procedure contemplated under law, continue the investigation and file a final report.

Regarding the claim of interim compensation, the learned counsel for the Appellant cited judgments in Bodhisatwa Gautam v. Subhra Chakraborty (1996 (1) SCC 49)) and D.K. Basu Vs. State of W. B. (1995 (1) SCC 416).

In my view, the question of compensation can be considered at a later stage. The more important is that the RDO has taken law into his own hands and caused serious prejudice to the personal liberty of the Appellant has to be booked and investigation has to be conducted after registration of the FIR. Therefore, the question regarding the entitlement of compensation and quantum of the same can be considered by the appropriate forum and at the appropriate stage.

With these observations, the petition is allowed.

A *Consequently, no separate order is necessary in Crl. M.P. No. 9037 of 1998."*

9. A plain reading of the aforesaid order, refusing to hand over the investigation to CBI, would show that the said order was a final order rejecting the prayer of the appellant before the High Court. Subsequent to the disposing of the application, that is to say, after 3 ? years, the DSP (SB CID) Chennai had filed an application in the aforesaid disposed of petition saying that on the date of the aforesaid final order of the High Court dated 1st of March, 2001, there was no post of DSP (SB CID) Nagapattinam, as the said post was abolished by a Government order dated 17th of May, 2000. It was also brought to the notice by the DSP (SB CID) Nagapattinam that in Rule 57 of the Manual for Instructions for State Special Branch, the Special Branch Officers were not empowered to conduct investigation of cases. Accordingly, an application was filed by him in the disposed of criminal petition for modification of the final order dated 1st of March, 2001 and for a direction to the DSP (CB CID) Nagapattinam instead of DSP (SB CID) Nagapattinam for investigation. This application filed by DSP (SBCID) was registered as Crl. M.P. 3713/2001.

10. During the pendency of this application filed by the DSP [SB CID], an application was filed by the respondent complaining that he and the witnesses were ill treated and harassed by the Investigating Officer and the investigation was not conducted in an unbiased manner and accordingly, investigation must be transferred to CBI as prayed for by him earlier.

11. The aforesaid application filed by DSP (SB CID) Nagapattinam, and the application filed by the complainant/respondent in the disposed of criminal petition were heard by the same learned Judge and this time, by the impugned order, the learned Judge directed that it would be better to transfer the investigation to CBI and, accordingly, the Investigating Officer was directed to hand over the case diary and other records

forthwith to the Director, CBI, New Delhi, who will hand over the same to a competent officer to make further investigation and take appropriate action against the concerned and file the final report within three months from the date of the receipt of the order. By the aforesaid order, the original final order refusing to hand over the investigation to CBI authorities dated 1st of March, 2001, was modified. It is this order now in appeal before us.

12. We have heard the learned counsel for the parties and examined the impugned order as well as the final order dated 1st of March, 2001 rejecting the prayer of the respondents to hand over the investigation to the CBI authorities and other materials on record.

13. In our view, the learned Judge of the Madras High Court had fallen in error in passing the impugned order. The following questions need to be considered by us :

- (I) Whether the High Court had become functus officio with the disposal of the criminal petition by the judgment and order dated 01st of March, 2001?
- (II) Whether the High Court, in exercise of its inherent power under Section 482 of the Code can modify its earlier judgment and order?

14. Before we take up the questions for our decision, we may look into the law on the questions posed before us.

15. In the case of *Hari Singh Mann vs. Harbhajart Singh Bajwa & others* (2001) 1 SCC 169, this Court held:

"There is no provision in the Code Of Criminal Procedure authorizing 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. Section 362 CrPC has extended the bar of review not only to judgment but also to the final orders other than the judgment. Section 362 is based on an

A *acknowledged principal of law that once a matter is finally*
disposed of by a court, the said court in the absence of
statutory provision becomes *functus officio* and is
disentitled to entertain a fresh prayer for the same relief
unless the former order is set aside by a court of
B *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
an arithmetical error.”

C 16. Yet, in the case of *Simrikha vs. Dolley Mukherjee and*
Chhabi Mukherjee & Anr, (1990) 2 SCC 437, this court held:

D “The inherent power under Section 482 is intended to
prevent the abuse of the process of the Court and to
secure ends of justice. Such power cannot be exercised
to do something, which is expressly barred under the
Code. If any consideration of the facts by way of review
is not permissible under the Code and is expressly
barred, it is not for the Court to exercise its inherent power
to reconsider the matter and record a conflicting decision.
E If there had been change in the circumstances of the
case, it would be in order for the High Court to exercise
its inherent powers in the prevailing circumstances and
pass appropriate orders to secure the ends of justice or
to prevent the abuse of the process of the Court. Where
F there is no such changed circumstances and the decision
has to be arrived at on the facts that existed as on the
date of the earlier order, the exercise of the power to
reconsider the same materials to arrive at different
conclusion is in effect a review, which is expressly barred
G under Section 362.”

H 17. Keeping the principles, as laid down by the aforesaid
decisions of this Court in mind, let us now look to Section 362
of the Code, which expressly provides that no Court which has
signed its judgment and final order disposing of a case, shall

alter or review the same except to correct clerical or arithmetical error save as otherwise provided by the Court. At this stage, the exercise of power under Section 482 of the Code may be looked into.

18. Section 482 enables the High Court to make such order as may be necessary to give effect to any order under the Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. The inherent powers, however, as much are controlled by principle and precedent as are its express powers by statutes. If a matter is covered by an express letter of law, the court cannot give a go-by to the statutory provisions and instead evolve a new provision in the garb of inherent jurisdiction.

19. In the case of *Smt Sooraj Devi vs. Pyare Lal & Anr*, AIR 1981 SC 736, this Court held *that the inherent power of the Court cannot be exercised for doing that which is specifically prohibited by the Code.*

20. Similar view was expressed in the case of *Sankatha Singh vs. State of U.P.* [1962] Supp 2 SCR 817, in which it was held:

"It is true that the prohibition in Section 362 against the Court altering or reviewing its judgment is subject to what is "otherwise provided by this Code or by any other law for the time being in force". Those words, however, refer to those provisions only where the Court has been expressly authorised by the Code or other law to alter or review its judgment. The inherent power of the Court is not contemplated by the saving provision contained in Section 362 and, therefore, the attempt to invoke that power can be of no avail."

21. As noted herein earlier, Section 362 of the Code prohibits reopening of a final order except in the cases of clerical or arithmetical errors. Such being the position and in view of the express prohibition in the Code itself in the form of Section

A 362, exercise of power under Section 482 of the Code cannot be exercised to reopen or alter an order disposing of a petition decided on merits.

B 22. In the present case, we find that the High Court, in the original final order, disposing of the petition under Section 482 of the Code has specifically given reasons for rejecting the prayer for handing over the investigation to the CBI authorities.

C 23. That apart, after the final order was passed rejecting the prayer of the respondent to hand over the investigation to the CBI authorities, by which, the criminal petition filed under Section 482 was practically rejected, it was not open to the High Court to pass a fresh order in the disposed of petition or even in the pending petition of the DSP (SB CID) Nagapattinam, directing investigation to be made by the CBI authorities.

D 24. As noted herein earlier, Section 362 of the Code prohibits a Court from making alternation in a judgment after the final order or Judgment was signed by the Court disposing of the case finally except to correct clerical or arithmetical errors. In our view, therefore, Section 362 of the Code cannot apply in the facts and circumstances of the present case. There was no clerical or arithmetical error in the order.

F 25. That apart, the respondents did not file any independent application for transferring the investigation from the State Police authorities to the CBI authorities on certain events which had occurred after the final order was passed by the High Court disposing of the earlier criminal petition under Section 482 of the Code. A prayer could be made by the respondents before the High Court for transferring the investigation from the State Police authorities to the CBI by filing a fresh petition under G Section 482 of the Code in view of subsequent events that had taken place after the final order disposing of the earlier criminal petition was passed. Again, as noted herein earlier, the respondents had never applied for transferring the investigation from State Police authorities to the CBI by making an H independent application. Accordingly, we do not think that the

High Court was justified in handing over the investigation of the case from the State Police authorities to the CBI authorities. It is needless to mention that it would be open for the respondent to make independent application under Section 482 of the Code if they find that subsequent events having been taken place, the investigation must be transferred from State Police authorities to CBI. Accordingly, we are unable to sustain the impugned order of the High Court in view of our discussions made hereinabove. Therefore, the impugned order is set aside. The appeal is thus allowed.

26. We make it clear once again that if a fresh criminal petition under Section 482 of the Code is filed by the respondents for transferring the investigation from State Police authorities to CBI after bringing certain subsequent events that had taken place after the disposal of the original criminal petition if there be any, it would be open for the High Court to entertain such application if it is warranted and decide the same in accordance with law for which we express no opinion on merit.

27. For the reasons aforesaid, the appeal is thus allowed to the extent indicated above.

K.K.T.

Appeal partly allowed.