

A MOHAMMED ZAKIR

v.

SHABANA & ORS.

(Criminal Appeal No. 926 of 2018)

B JULY 23, 2018

[KURIAN JOSEPH AND SANJAY KISHAN KAUL, JJ.]

C *Code of Criminal Procedure, 1973 – s.362 – Recalling of the order – High Court recalled its own order, rendering it patently erroneous – Propriety of – Held: Not proper – The whole purpose of s.362 is only to correct a clerical or arithmetical error – However, High Court sought to re-hear the matter on merits – That is impermissible under law.*

Disposing of the appeal, the Court

D **HELD: The High Court should not have exercised the power under Section 362 Cr.P.C. for a correction on merits. However patently erroneous the earlier order be, it can only be corrected in the process known to law and not under Section 362 Cr.P.C. The whole purpose of Section 362 Cr.P.C. is only to correct a clerical or arithmetical error. What the High Court**
E **sought to do in the impugned order is not to correct a clerical or arithmetical error; it sought to re-hear the matter on merits, since, according to the Judge, the earlier order was patently erroneous. That is impermissible under law. [Para 4] [1129-D-E]**

F CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 926 of 2018.

From the Judgment and Order dated 28.04.2017 of the High Court of Karnataka at Bengaluru in CrI. Petition No. 2351 of 2017.

G Gopal Sankaranarayanan(AC), Shrutanjaya Bhardwaj(AC), Joseph Aristotle S., Mrs. Priya Aristotle, Ms. Payal N. Gaikwad, Advs. for the appearing parties.

Mohammed Zakir, Appellant-in-person.

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The Judgment of the Court was delivered by

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KURIAN, J. 1. Leave granted.

2. We have heard the petitioner, who is appearing in person, Mr. Joseph Aristotle S., learned counsel appearing for Respondent Nos. 1 to 4 and Mr. Gopal Sankaranarayanan, learned counsel, who was appointed as an amicus in this matter.

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3. The appellant is aggrieved since the High Court passed an order under Section 362 Cr.P.C. dated 28.04.2017 recalling its own order dated 18.04.2017. The order dated 28.04.2017 reads as under:-

“Notwithstanding section 362 of Cr.P.C. the order rendered by this Court earlier on 18.04.2017 is found to be patently erroneous and therefore the order is withdrawn. The petition is restored to file and the registry is directed not to webhost the order passed earlier and to take note of the fact that the order is withdrawn.”

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4. The High Court should not have exercised the power under Section 362 Cr.P.C. for a correction on merits. However patently erroneous the earlier order be, it can only be corrected in the process known to law and not under Section 362 Cr.P.C. The whole purpose of Section 362 Cr.P.C. is only to correct a clerical or arithmetical error. What the High Court sought to do in the impugned order is not to correct a clerical or arithmetical error; it sought to re-hear the matter on merits, since, according to the learned Judge, the earlier order was patently erroneous. That is impermissible under law. Accordingly, we set aside the impugned order dated 28.04.2017.

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5. Now that the parties have appeared before us, we have ascertained that the appellant approached the High Court, aggrieved by the notice issued by the Sessions Court on 25.01.2017 in Criminal Appeal No.95/2017. Since the said appeal is pending before Principal City Civil and Sessions Judge, Bengaluru, we do not propose to deal with the matter on merits. Accordingly, we set aside the order dated 18.04.2017 passed by the High Court and dispose of this appeal with a direction to the Principal City Civil and Sessions Judge, Bengalure to dispose of the Criminal Appeal No.95/2017 expeditiously.

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6. Pending applications, if any, shall stand disposed of.