Mostt. Simrikhia vs Smt. Dolley Mukherjee @ Smt. ... on 2 March, 1990

Equivalent citations: 1990 AIR 1605, 1990 SCR (1) 788, AIR 1990 SUPREME COURT 1605, 1990 (2) SCC 437, AIR 1990 (NOC) 173 (AP), 1990 ALL CJ 619, 1990 (3) JT 79, 1990 CRIAPPR(SC) 138, 1990 APLJ(CRI) 228, 1990 CALCRILR 106, 1990 UP CRIR 262, 1990 SCC(CRI) 327, (1990) SC CR R 497, (1990) EASTCRIC 655, (1990) MAD LJ(CRI) 363, (1990) 2 MAHLR 505, (1990) 2 RECCRIR 337, (1990) 2 ANDHWR 6, (1990) 2 CHANDCRIC 62, (1990) 2 ALLCRILR 211, (1990) 2 CRIMES 271

Author: M. Fathima Beevi

Bench: M. Fathima Beevi, A.M. Ahmadi

PETITIONER:
MOSTT. SIMRIKHIA

Vs.

RESPONDENT:
SMT. DOLLEY MUKHERJEE @ SMT. CHHABIMUKHERJEE & ANR.

DATE OF JUDGMENT02/03/1990

BENCH:
FATHIMA BEEVI, M. (J)
BENCH:
FATHIMA BEEVI, M. (J)
AHMADI, A.M. (J)

CITATION:
1990 AIR 1605 1990 SCR (1) 788
1990 SCC (2) 437 JT 1990 (3) 79
1990 SCALE (1)455

ACT:
Code of Criminal Procedure, 1973: Sections 362 and 482Inherent power of High Court--To be invoked only to prevent abuse of process of Court and to secure ends of justice----Not to override express provisions barring re-view.

HEADNOTE:

A case was instituted on a private complaint by the appellant for offences under Sections 323 and 452 IPC before the Judicial Magistrate First Class, who transferred the case to Second Class Magistrate for enquiry. The Second Class Magistrate issued process to the respondents, which was challenged under Section 482 Cr.P.C., on the ground that the First Class Magistrate transferred the case without taking cognizance and that the subsequent proceedings were illegal. The High Court dismissed the petition. Again the respondents approached the High Court under Section 482 Cr.P.C. alleging that the case had not been taken cognizance of, before it was transferred. This time the High Court accepted the plea and quashed the proceedings.

This appeal, by special leave, challenges the High Court's order on the grounds that the second application under Section 482 Cr.P.C. ought not to have been entertained as it amounted to review of the earlier order and it was contrary to the spirit of section 362 Cr.P.C.

Allowing the appeal, this Court,

HELD: 1.1 The inherent power under Section 482 Cr.P.C. 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. If there had been change in the circumstances of the case, it would be in order for the High Court to exercise its inherent power in the prevailing circumstances and pass appropriate orders to secure the ends of justice or to

789

prevent the abuse of the process of the Court. Where there is no such changed circumstance and the decision has to be arrived at on the facts that existed as on the date of 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 under section 362. [790F-H; 791A]

1.2 Ira 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. The inherent jurisdiction of the High Court cannot be invoked to override bar of review under Section 362 Cr.P.C. [791E-H]

Sooraj Devi v. Pyare Lal, [1981] 1 SCC 500, relied on.

Superintendent & Rememberancer of Legal Affairs v. Mohan Singh, [1975] 3 SCC 706, referred to.

2. In the instant case, there had been a definite finding that the complaint was taken cognizance of by the Magistrate before he transferred the proceedings under section 192(2) Cr.P.C. for enquiry under section 202 Cr.P.C. This finding has been arrived at after perusal of the record of

the proceedings before the Magistrate and on a consideration of the report of the concerned Magistrate. A reappraisal of the facts on record to determine whether such cognizance had been taken in a subsequent proceeding is not, therefore, warranted. It was not open to the parties to reagitate the question by a fresh application nor was the court empowered under section 482 to reconsider the matter. [791 B-C]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 128 of 1990.

From the Judgment and Order dated 19.8.1989 of the Patna High Court in Criminal Miscellaneous No. 2314 of 1989. A.D. Sikri, Ranjan Mukherjee and D. Goburdhan for the Appellant.

R.K. Garg and A. Sharan for the Respondents. The Judgment of the Court was delivered by FATHIMA BEEVI, J. Special leave granted.

The legality of the order of the High Court dated 19.8. 1989 passed on an application made under section 482 Cr.P.C. is challenged in this appeal. In a case instituted on a private complaint by the appellant for offences under sec- tions 452 and 323 I.P.C., the Judicial Magistrate First Class, Patna, in exercise of power under section 192(2) Cr.P.C. transferred the case for enquiry under section 202 of the Code. The Court of the Second Class Magistrate, after examining witnesses, by order dated 22.3. 1985 issued proc- ess to the two accused, the respondents herein. The order of the Magistrate issuing process was challenged by the re- spondents under section 482 before the High Court. The main ground urged before the High Court was that the First Class Magistrate had transferred the case without taking cogni- zance of the offence and the subsequent proceedings were, therefore, illegal. The High Court, by its order dated 20.8.88, dismissed the petition. It was found that there was no such illegality. The respondents again made Crl. Misc. Petition 2314/89 under section 482 Cr.P.C. before the High Court alleging, inter alia, that the record of the proceed- ings on close scrutiny would indicate that the case had not been taken cognizance of before the transfer. The learned Single Judge accepted the case of the respondents and quashed the proceedings by the impugned order. The learned counsel for the appellant contended before us that the second application under section 482 Cr.P.C. was not entertainable, the exercise of power under section 482, on a second application by the same party on the same ground virtually amounts to the review of the earlier order and is contrary to the spirit of section 362 of the Cr.P.C. and the High Court was, therefore, clearly in error in having quashed the proceedings by adopting that course. We find considerable force in the contention of the learned counsel. 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 considera- tion 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. 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 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 under section

362. In the present case, there had been a definite finding that the complaint was taken cognizance of by the Magistrate before he transferred the proceedings under section 192(2) for enquiry under section 202 Cr.P.C. This finding has been arrived at after perusal of the record of the proceedings before the Magistrate and on a consideration of the report of the concerned Magistrate. A reappraisal of the facts on record to determine whether such cognizance had been taken of in a subsequent proceeding is not, therefore, warranted. The only ground on which relief was claimed is the alleged irregularity in the transfer of the proceedings. It was not open to the parties to reagitate the question by a fresh application nor was the court empowered under section 482 to reconsider the matter.

Section 362 of the Code expressly provides 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 save as otherwise provided by the Code. 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 pow- ers, however, as much are controlled by principle and prece- dent as are its express powers by statute. 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. In Superintendent & Remembrancer of Legal Affairs v. Mohan Singh, [1975] 3 SCC 706, this Court held that section 561A preserves the inherent power of the High Court to make such orders as it deemed fit to prevent abuse of the process of the Court or to secure the ends of justice and the High Court must therefore exercise its inherent powers having regard to the situation prevailing at the particular point of time when its inherent jurisdiction is sought to be invoked. In that case the facts and circumstances obtaining at the time of the subsequent application were clearly different from what they were at the time of the earlier application. The question as to the scope and ambit of the inherent power of the High Court vis-a-vis an earlier order made by it was, therefore, not concluded by this decision. The inherent jurisdiction of the High Court cannot be invoked to override bar of review under section 362. It is clearly stated in Sooraj Devi v. Pyare Lal, [1981] 1 SCC 500 that the inherent power of the court cannot be exercised for doing that which is specifically prohibited by the Code. The law is therefore clear that the inherent power cannot be exercised for doing that which cannot be done on account of the bar under other provisions of the Code. The court is not empowered to review its own decision under the purported exercise of inherent power. We find that the impugned order in this case is in effect one reviewing the earlier order on a reconsideration of the same materials. The High Court has grievously erred in doing so. Even on merits, we do not find any compelling reasons to quash the proceedings at that stage. We allow the appeal and set aside the order of the High Court.

G.N. Appeal allowed.