

A STATE OF MADHYA PRADESH

v.

MAN SINGH

(Criminal Appeal No. 410 of 2011)

B NOVEMBER 04, 2019

[DEEPAK GUPTA AND ANIRUDDHA BOSE, JJ.]

C *Code of Criminal Procedure, 1973 – s.482 – Power of High Court u/s. 482 CrPC to alter the sentence passed by the High Court itself – Respondent was prosecuted for committing offences punishable u/ss. 468, 471 & 419 of IPC – It was alleged that respondent forged a certificate and procured appointment to the post of Buffalo attendant in the veterinary department – Trial Court convicted respondent u/ss. 468, 471 & 419 IPC and sentenced him to undergo rigorous imprisonment for one year – On the issue of*
D *sentence, the respondent urged the benefit of probation of offenders Act, 1958, however, same was declined by the Trial court – Appeal was dismissed by the Appellate Court – In criminal revision, High Court affirmed the conviction but reduced the substantive sentence from one year to the period already undergone – Respondent filed the petition u/s. 482 CrPC – High Court extended the benefit of*
E *Probation Act and directed that sentence which accused has already undergone, would not affect his career – On appeal, held: There is no power to review granted to the Courts under CrPC – As soon as the High Court had disposed of the original revision petition, upheld the conviction, reduced the sentence to the period already undergone,*
F *it became functus officio and, as such, it could not have entertained the petition u/s. 482 CrPC for altering the sentence – After sentence had been imposed and served and fine paid, there was no question of granting probation – Further, there was violation of the provisions of s.4 of the Probation Act, which mandates that before passing the order of probation, it is essential to obtain report of the probation*
G *officer concerned – Also, High Court had no jurisdiction to pass an order that the employee be retained in service, as it is settled that grant of probation under the Act does not have bearing so far as the service of such employee is concerned – The employee cannot*

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claim a right to continue in service on the ground he was released on probation – Thus, order of the High Court set aside – Probation of Offenders Act, 1958 – s.4. A

Allowing the appeal, the Court

HELD: 1. It is well-settled law that the High Court has no jurisdiction to review its order either under Section 362 or under Section 482 of CrPC. The inherent power under Section 482 CrPC cannot be used by the High Court to reopen or alter an order disposing of a petition decided on merits. After disposing of a case on merits, the Court becomes *functus officio* and Section 362 CrPC expressly bars review and specifically provides that no Court after it has signed its judgment shall alter or review the same except to correct a clerical or arithmetical error. Recall of judgment would amount to alteration or review of judgment which is not permissible under Section 362 CrPC. It cannot be validated by the High Court invoking its inherent powers. [Para 5] [574-E-F] B C D

2. There is no doubt that the High Court had no power to entertain the petition under Section 482 CrPC and alter the sentence imposed by it. Further, the manner in which the probation has been granted is not at all legal. The trial court had given reasons for not giving the benefit of probation. When the High Court was deciding the revision petition against the order of conviction, it could have, after calling for a report of the Probation Officer in terms of Section 4 of the Probation of Offenders Act, 1958 granted probation. Even in such a case, it had to give reasons why it disagreed with the trial court and the first appellate court on the issue of sentence. The High Court, in fact, reduced the sentence to the period already undergone meaning thereby that the conviction was upheld and the sentence was imposed. After sentence had been imposed and served and fine paid, there was no question of granting probation. [Para 6] [574-G; 575-A-B] E F G

3. Another error is that the order has been passed in violation of the provisions of Section 4 of the Act which mandates that before releasing any offender on probation of good conduct, the Court must obtain a report from the Probation Officer and can then order his release on his entering bonds with or without H

A sureties, to appear and receive sentence when called upon during such period, not exceeding three years, or as the Court may direct, and in the meantime to keep peace and good behaviour. [Para 7] [575-C-D]

B 4. In the present case, the accused obtained a job on the basis of forged documents. Even if he was to be given the benefit of the Act, then also he could not retain his job because the job was obtained on the basis of forged documents. This Court is constrained to observe that the High Court passed the order in a mechanical and pedantic manner without considering what are the legal issues involved. [Para 10] [576-D-E]

C *State Bank of India & Ors. v. P. Soupramaniane* AIR 2019 SC 2187 – relied on.

D *State of Kerala v. M.M. Manikantan Nair* (2001) 4 SCC 752 : [2001] 3 SCR 203 ; *State Rep. by D.S.P., S.B.C.I.D., Chennai v. K.V. Rajendran & Ors.* 2009 CriLJ 355 SC ; *Hari Singh Mann v. Harbhajan Singh Bajwa & Ors.* (2001) 1 SCC 169 : [2000] 4 Suppl. SCR 313 ; *Sooraj Devi v. Pyare Lal & Anr.* AIR 1981 SC 736 : [1981] 2 SCR 485 ; *M.C.D. v. State of Delhi & Anr.* AIR 2005 SC 2658 : [2005] 3 SCR 1010

E – referred to.

Case Law Reference

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| | [2001] 3 SCR 203 | referred to | Para 5 |
| | [2000] 4 Suppl. SCR 313 | referred to | Para 5 |
| F | [1981] 2 SCR 485 | referred to | Para 5 |
| | [2005] 3 SCR 1010 | referred to | Para 7 |
| | AIR 2019 SC 2187 | relied on | Para 9 |

G CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 410 of 2011.

From the Judgment and Order dated 26.09.2008 of the High Court of Madhya Pradesh, Bench at Indore in M. Cr.C. No. 5101 of 2008.

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Sunil Fernandes, AAG (M.P), Ms. Nupur Kumar, Ms. Priyansha A
Indra Sharma, Harsh Parashar, Advs. for the Appellant.

Mrs. Rani Chhabra, Adv. for the Respondent.

The Judgment of the Court was delivered by

DEEPAK GUPTA, J.

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1. Whether a Judge of the High Court can exercise powers under Section 482 of the Code of Criminal Procedure, 1973 (for short 'CrPC') to alter the sentence which has been passed by the High Court itself is the issue involved in this appeal.

2. The respondent, Man Singh was prosecuted for having committed offences punishable under Sections 468, 471 and 419 of Indian Penal Code, 1860 (for short 'IPC'). The allegation against him was that he had used a transfer certificate of one Kalu Singh and forged the certificate to show that it bore his name and date of birth. Using this certificate, he had procured appointment to the post of Buffalo Attendant in the Veterinary Department. The trial court convicted the accused for the offences punishable under Sections 468, 471 and 419 IPC. On the issue of sentence, it was specifically urged before the trial court that benefit of Probation of Offenders Act, 1958 (for short 'the Act') may be given to the respondent, Man Singh. The trial court came to the conclusion that the accused had got service on the basis of forged documents depriving a deserving unemployed person of getting such employment and, therefore, according to the trial court, this is not a fit case to grant probation. Accordingly, the trial court imposed punishment under various provisions of IPC for different offences but essentially the accused was to undergo rigorous imprisonment for one year and was to pay a total fine of Rs.2000/-.

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3. The accused-respondent, Man Singh filed an appeal. The Sessions Judge dismissed the appeal. On the issue of sentence he found that the accused had been dealt with leniently and refused to interfere with the sentence. A criminal revision was filed in the High Court. The High Court affirmed the conviction but reduced the substantive sentence from one year to the period already undergone and enhanced the fine to Rs.10,000/-.

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4. The accused-respondent, Man Singh deposited the fine and then filed a petition under Section 482 of CrPC praying that the fine had

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A been deposited and since he is in Government job, he may be granted benefit of the Act. The learned Judge, without giving any other reasons, directed as follows:-

B “After having heard learned counsel for the parties, prayer is allowed and the benefit of Probation of Offenders Act is extended to the petitioner for the purpose that the sentence, which has already undergone would not affect service career of the petitioner.

With the aforesaid observations petition stands disposed of C.C. today.”

C This order is challenged before us. At the outset, we note that the manner in which the learned Judge entertained the petition under Section 482 CrPC is highly improper and uncalled for. There is no power of review granted to the Courts under CrPC. As soon as the High Court had disposed of the original revision petition, upheld the conviction, reduced the sentence to the period already undergone and enhanced the fine, it became *functus officio* and, as such, it could not have entertained the petition under Section 482 CrPC for altering the sentence.

5. It is well settled law that the High Court has no jurisdiction to review its order either under Section 362 or under Section 482 of CrPC¹. The inherent power under Section 482 CrPC cannot be used by the High Court to reopen or alter an order disposing of a petition decided on merits². After disposing of a case on merits, the Court becomes *functus officio* and Section 362 CrPC expressly bars review and specifically provides that no Court after it has signed its judgment shall alter or review the same except to correct a clerical or arithmetical error³. Recall of judgment would amount to alteration or review of judgment which is not permissible under Section 362 CrPC. It cannot be validated by the High Court invoking its inherent powers⁴.

6. We have, therefore, no doubt in our mind that the High Court had no power to entertain the petition under Section 482 CrPC and alter the sentence imposed by it. We may also add that the manner in which

¹ State of Kerala v. M.M. Manikantan Nair, (2001) 4 SCC 752

² State Rep. by D.S.P., S.B.C.I.D., Chennai v. K.V. Rajendran & Ors., 2009 CriLJ 355 SC

³ Hari Singh Mann v. Harbhajan Singh Bajwa & Ors. (2001) 1 SCC 169

H ⁴ Sooraj Devi v. Pyare Lal & Anr., AIR 1981 SC 736

the probation has been granted is not at all legal. The trial court had given reasons for not giving benefit of probation. When the High Court was deciding the revision petition against the order of conviction, it could have, after calling for a report of the Probation Officer in terms of Section 4 of the Act, granted probation. Even in such a case it had to give reasons why it disagreed with the trial court and the first appellate court on the issue of sentence. The High Court, in fact, reduced the sentence to the period already undergone meaning thereby that the conviction was upheld and sentence was imposed. After sentence had been imposed and served and fine paid, there was no question of granting probation.

7. Another error is that the order quoted hereinabove has been passed in violation of the provisions of Section 4 of the Act which mandates that before releasing any offender on probation of good conduct, the Court must obtain a report from the Probation Officer and can then order his release on his entering bonds with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, or as the Court may direct, and in the meantime to keep peace and good behaviour. The proviso to sub-section (1) of Section 4 clearly provides that Court cannot order release of such an offender unless it is satisfied that the offender or his surety has a fixed place of abode or regular occupation in the place over which the Court can exercise jurisdiction. Sub-section (2) lays down that before making any order under sub-section (1), the Court shall take into consideration the report of the Probation Officer. This Court in a number of judgments has held that before passing an order of probation, it is essential to obtain the report of the Probation Officer concerned. Reference in this behalf may be made to *M.C.D. v. State of Delhi & Anr.*⁵

8. In the present case, on 03.01.2011, the counsel for the accused-respondent sought an adjournment on the ground that the accused proposes to file a special leave petition (SLP) against the order passed in criminal revision petition upholding his conviction. That SLP was filed but dismissed on 28.01.2011. Once that SLP has been dismissed, we cannot grant any relief to the accused-respondent.

9. We are also constrained to observe that the High Court in its order directed that the sentence which the accused has already undergone, would not affect his service career. We fail to understand

⁵ AIR 2005 SC 2658

A under what authority the High Court could have passed such an order. Even in a case where the High Court grants benefit of probation to the accused, the Court has no jurisdiction to pass an order that the employee be retained in service. This Court in *State Bank of India & Ors. v. P. Soupramaniane*⁶ clearly held that grant of benefit of probation under the Act does not have bearing so far as the service of such employee is concerned. This Court held that the employee cannot claim a right to continue in service on the ground that he was released on probation. It was observed:

C “The release under probation does not entitle an employee to claim a right to continue in service. In fact the employer is under an obligation to discontinue the services of an employee convicted of an offence involving moral turpitude. The observations made by a criminal court are not binding on the employer who has the liberty of dealing with his employees suitably.”

D 10. In the present case the accused obtained a job on the basis of forged documents. Even if he was to be given benefit of the Act, then also he could not retain his job because the job was obtained on the basis of forged documents. We are constrained to observe that the High Court passed the order in a mechanical and pedantic manner without considering what are the legal issues involved.

E 11. In view of the above discussion, the appeal is allowed and the order of the High Court is set aside. Pending application(s), if any, stand(s) disposed of.

Ankit Gyan

Appeal allowed.

⁶ AIR 2019 SC 2187