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v.

THE STATE OF KERALA & ORS.

(Criminal Appeal No. 1444/2021)

NOVEMBER 22, 2021

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[VINEET SARAN AND ANIRUDDHA BOSE, JJ.]

Practice and Procedure – Recall of earlier order – By order dated 20.04.2021, FIR quashed by High Court by a detailed reasoned order – Thereafter, on 28.04.2021, High Court took up the matter suo moto and recalled the order dated 20.04.2021 – Propriety of – Held: Not proper – In view of s.362 CrPC, the Court does not have the power to alter the judgment and order once passed, except to correct the clerical or arithmetical error – There is no power, except u/s.362 CrPC, which only provides for correction of any clerical or arithmetical error – The same does not empower the court to recall the earlier order passed after contest and that too suo moto – Earlier order dated 20.04.2021 was wrongly recalled by the High Court – Order dated 28.04.2021 set aside – Code of Criminal Procedure, 1973 – s.362.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. E
1444 of 2021.

From the Judgment and Order dated 28.04.2021 of the High Court of Kerala at Ernakulam in Crl. MC No. 5866 of 2020.

Rajit, Vaibhav Niti, Abraham Mathan, Justine George, Ms. Madhavi Agrawal, Divyanshu Agrawal, Advs. for the Appellant. F

G. Prakash, Ms. Priyanka Prakash, Ms. Beena Prakash, Anand Kalyanakrishnan, Vedant Singh, Vishisht Singh, Advs. for the Respondents.

The following Order of the Court was passed : G

O R D E R

Leave granted.

An FIR was lodged by the respondent, which was challenged by the appellant by way of a petition filed before the High Court under H

- A Section 482 Cr.P.C. By a judgment and order dated 20.04.2021, the High Court allowed the petition and quashed the FIR. Thereafter on 28.04.2021, the High Court took up the matter suo moto and recalled the order dated 20.04.2021. Challenging the same, this appeal by way of special leave petition has been filed.
- B We have heard the learned counsel for the parties at length and perused the record.

Learned counsel for the parties do not dispute the fact that in view of Section 362 Cr.P.C. the Court does not have the power to alter the judgment and order once passed, except to correct the clerical or arithmetical error.

- C In the present case, by a judgment and order dated 20.04.2021 FIR had been quashed by the High Court by a detailed reasoned order, which has been recalled by the impugned order dated 28.04.2021. There is no power, except under Section 362 Cr.P.C., which only provides for correction of any clerical or arithmetical error. The same does not empower the court to recall the earlier order passed after contest and that too suo moto.

In view of the aforesaid, we are of the opinion that the impugned order dated 28.04.2021 could not have been passed and the earlier order dated 20.04.2021 has wrongly been recalled by the High Court. Accordingly, the appeal is allowed. The judgment and order dated

- E 28.04.2021 is set aside.

Bibhuti Bhushan Bose

Appeal allowed.