

Aparna Purohit vs State Of U.P. Thru. Prin. Secy. Home ... on 2 November, 2022

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

Court No. - 12

Case :- APPLICATION U/S 482 No. - 6022 of 2022

Applicant :- Aparna Purohit

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Deptt. Lko. And Another

Counsel for Applicant :- Anuuj Taandon, Purnendu Chakravarty

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

Heard Shri Jaideep Narain Mathur, learned Senior Counsel assisted by Shri Purnendu Chakravarty and Ms. Monika Datta, learned counsels for the applicant as well as learned AGA for the State and perused the record.

The instant application under Section 482 Cr.P.C. has been moved by the applicant for grant of following prayers:-

"That for the facts, circumstances and grounds mentioned in the accompanying affidavit in support of application for modification of the order dated 28.03.2022 under Section 482 Cr.P.C. preferred by the applicant, this Hon'ble Court may kindly be pleased to modify the order in the interest of justice.

Wherefore it is respectfully prayed that this Hon'ble Court may kindly be pleased to modify the anticipatory bail order dated 28.03.2022 in light of the facts and circumstances mentioned in the accompanying affidavit on such terms and conditions as may be deemed just and proper in the interest of justice in FIR No.

0031 dated 17.01.2021 under Section 153-A, 295, 505 (1) (b), 505 (2), 469 IPC and Sections 66, 66-F & 67 I.T. Act, 2008 (as amended) P.S. Hazratganj, District Lucknow."

Learned Senior Counsel while drawing the attention of this Court towards the order dated 28.3.2022 whereby anticipatory bail was granted to the applicant, submits that a Coordinate Bench of this Court while granting anticipatory bail to the applicant had imposed various conditions and one of such condition (D) is to the tune that the applicant shall not leave India without prior permission of the trial Court.

It is further submitted that the applicant since the grant of anticipatory bail to her including the interim order dated 22.2.2021 had sought permission to travel abroad from the Special Chief Judicial Magistrate (Customs) Lucknow on six times for professional and personal reasons.

It is also submitted that during the course of investigation the applicant had cooperated with the investigation and had complied all directions of the Investigating Officer including her presence before the Investigating Officer.

Learned Senior Counsel also submits that the instant applicant is the head of India Originals of Amazon Prime Video (ASSPL OTT Streaming Service) and having tremendous professional duties and responsibilities and is required to travel abroad frequently for discharge of her professional and personal obligations.

It is further submitted that the Hon'ble Supreme Court vide its order dated 5.3.2021 had granted interim protection to the applicant from arrest in connection with FIR No. 14/2021 of Rabupura, Police Station Greater NOIDA and did not impose any such condition as imposed by the coordinate bench.

It is also submitted that the applicant had gone to USA between 18th June, 2022 to 25th June, 2022 for a work summit where creative country heads of various countries had participated and the presence of the applicant was also required for additional two days by the applicant's employer but she was forced to leave U.S. because of the expiry of the days of travel permitted by the subordinate court and the non participation of the applicant in the summit had resulted in difficulties to her employer.

It is further submitted that in January and February, 2022 mother of the applicant also became severely ill and the presence of applicant was immediately required at Dubai (UAE), where her mother was residing but she could not schedule her emergency visit, immediately because of the impugned condition imposed by the Court while granting anticipatory bail to the applicant and the non presence of the applicant before her mother has caused tremendous emotional distress and mental trauma to her.

It is further submitted that the job of the applicant is such that she needs frequent traveling abroad, sometimes at a very short notice and this is also crucial for the business of her employer and the

process of obtaining prior permission from the trial Court consumes a lot of time and also do not allow the applicant to travel abroad in case of any emergency.

It is further submitted that till now the charge sheet against the applicant has not been filed by the Investigating Officer.

Learned Senior Counsel further submits that by virtue of provision contained under Section 362 of the Cr.P.C. any application for modification of impugned condition could not be moved before the same Bench who had granted anticipatory bail to the applicant and this Court while exercising its inherent powers enshrined under Section 482 of the Cr.P.C. is empowered to modify/ delete condition no. (D) of the anticipatory bail order dated 28.3.2022. Learned Senior Counsel in support of his contention has relied upon a Full Bench decision of this Court dated 28.7.2015 passed in Crl. Appeal No. 4922/ 2006, Amar Singh Vs. State of U.P., a judgment of High Court of Madhya Pradesh dated 31.3.2022 passed in MCRC No. 4923/2022, Sumit Mehta Vs. State (MCT of Delhi) (2013) 15 SCC 570 as well as a single bench judgment of Jharkhand High Court Ranchi dated 10.2.2021 passed in Crl. M.P. No. 3094 of 2019 in order to show that while granting bail or anticipatory bail, as the case may be, reasonable condition should be imposed and also that the instant application under Section 482 Cr.P.C. is maintainable before this Court for the purpose of grant of relief claimed by the applicant by invoking inherent powers of this Court under Section 482 Cr.P.C.

Learned AGA on the other hand submits that the order of the Coordinate Bench of this Court dated 28.3.2022 passed in Criminal Misc. Anticipatory Bail Application under Section 438 Cr.P.C. No. 1794 of 2021 is a final order and the same could not be modified, altered by any other Bench except the same bench which has passed the order.

It is further submitted that the instant application moved under Section 482 Cr.P.C. is also not maintainable by virtue of bar contained under Section 362 Cr.P.C. as the modification sought for is not in the nature of "arithmetical" or "clerical" error and the request made by the applicant to modify the condition no. (D) of the order dated 28.3.2022 is nothing but a request to review the order dated 28.3.2022 passed by the Coordinate Bench and the same is not maintainable by virtue of bar contained under Section 362 of the Cr.P.C.

It is further submitted that the Coordinate Bench had imposed condition no. (D) having regard to all the facts and circumstances of the case including the fact that during early stages of the investigation the applicant was not appearing before the Investigating Officer.

It is also submitted that the applicant is occupying a top position in a reputed company and since the investigation is not completed yet, the applicant is a fly-risk and thus the application is liable to be dismissed.

This Court by passing an order dated 23.9.2022 had directed the Joint Registrar(Listing) to submit a report in the background of the fact that the bail order, condition of which is being requested to be modified/waived, has been passed by Coordinate Bench which at present is sitting at Allahabad and whether the instant application under Section 482 Cr.P.C. requesting for modification of the said

order may be considered by this Bench or the same is required to be placed before the same Hon'ble Judge who had passed the earlier order. The Registrar (J) Listing vide its report dated 23.9.2022 has reported as under:-

"In compliance of Hon'ble court's order the undersigned has sought report from the Stamp Reporting Section. The Stamp reporting section in its report submitted that a defect was already raised for filing through application of modification of order dated 28.3.2022 through application section. However, learned Counsel endorsed a note that the instant petition is maintainable under Section 482 Cr.P.C. and further appended that legal question will be addressed before the Hon'ble Court at the time of hearing.

In this regard it is submitted that as per point (e) of administrative order dated 13.11.2018 of Hon'ble the Acting Chief Justice (Flag 'A') "if the matter pertains to the Single Judge that passed the order, list before the same Bench and on his/ her being transferred permanently or till further orders/ retired, list before the regular Bench dealing with the matter.' It is further submitted that if the learned counsel had filed an application for modification of order dated 28.03.2022 passed in Anticipatory Bail Application No. 1794 of 2021 then the same would have been treated as 'Tied Up' in the light of the order dated 13.11.2018 and would have been placed before Hon'ble Judge whose order was to be modified, but the learned counsel preferred an Application under Section 482 Cr.P.C. Hence, the same has been placed before the Hon'ble Court having the roster of Application under Section 482 Cr.P.C."

It is in this scenario the instant application/ petition has been placed before this Court by the registry.

Having heard learned counsel for the parties and having perused the record, it is transpired that the issue which is involved in this case at its first sight appears to be insignificant and trivial but is having far reaching consequences. Before entering into the merits and demerits of the case it appears in the interest of justice that at first the maintainability of the instant application moved under Section 482 Cr.P.C. by the applicant for invoking inherent power of this Court under Section 482 Cr.P.C. be considered.

The admitted facts are to the tune that on account of registration of an FIR bearing case crime No. 0031 /2021 under Section 153-A, 295, 505(1(b), 505(2) 469 IPC and Sections 66, 66-F and 67 of Information Technology Act 2008 at Police Station Hazratganj, District Lucknow the applicant had approached this Court by filing criminal Misc. Anticipatory Bail Application No. 1794 of 2021 and vide order dated 11.2.2021 she was granted interim protection from arrest and by passing the final order dated 28.3.2022 the applicant was granted anticipatory bail subject to following conditions.

"(A) In the event of arrest of the applicant involved in aforesaid case shall be released on anticipatory bail till the submission of police report, if any, under Section 173(2) Cr.P.C. before the competent Court on his/ her furnishing a personal bond of Rs.

50,000/- with two sureties each of the like amount to the satisfaction of the Station House Officer of the Police Station concerned.

(B) The applicant shall cooperate with the Investigating Officer during investigation and shall report to the Investigating Officer as and when required for the purpose of conducting investigation;

(C) The applicant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the Court or to any police officer; and (D) The applicant shall not leave India without the previous permission of the Court."

It is with regard to the above mentioned condition (D) the applicant has approached this Court for invoking of inherent powers for modification/ deletion of the same for the reasons that applicant is the head of the Amazon Prime Video Company and having regard to the nature of her employment she is required to go abroad frequently to attend various meetings etc. and all the time she is forced to take permission from the trial court and on account of the permission granted for a limited period she is not having liberty to over stay in case of any exigency of urgent nature. The applicant had also cited few examples which had caused inconvenience as well as mental trauma to her as she could not overstay in United States of America and could also not visit her ailing mother in UAE while her presence was immediately required on both the occasions. The nature of the employment of the applicant is also explained in order to highlight that the condition no. (D) of the bail order 28.3.2022 placed above is required to be modified.

So far as the issue with regard to the maintainability of the instant application moved under Section 482 Cr.P.C. in the background of the bar contained under Section 362 Cr.P.C. is concerned learned Senior Counsel has submitted that by virtue of the bar contained under Section 362 of the Cr.P.C. any application for modification of the bail order could not be moved before the same Bench who had granted anticipatory bail to the applicant and therefore the instant application has been moved for invoking inherent powers of this Court under Section 482 Cr.P.C.

The pivot question before this Court is, as to whether in the background of bar contained under Section 362 Cr.P.C., the instant application under Section 482 Cr.P.C. for invoking inherent powers to modify a condition of bail order which has attained finality, is maintainable before this Bench.

For convenience Section 439, 482 and 362 Cr.P.C. are reproduced as under:-

Section 439 The Code Of Criminal Procedure, 1973 Special powers of High Court or Court of Session regarding bail.

" (1) A High Court or Court of Session may direct-

(a) that any person accused of an offence and in custody be released on bail, and if the offence is of the nature specified in subsection (3) of section 437, may impose any

condition which it considers necessary for the purposes mentioned in that sub-section;

(b) that any condition imposed by a Magistrate when releasing a person on bail be set aside or modified: Provided that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence which is triable exclusively by the Court of Session or which, though not so triable, is punishable with imprisonment for life, give notice of the application for bail to the Public Prosecutor unless it is, for reasons to be recorded in writing, of opinion that it is not practicable to give such notice.

(2) A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody."

Section 482 The Code Of Criminal Procedure, 1973 "482. Saving of inherent powers of High Court. Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

Section 362 The Code Of Criminal Procedure, 1973 "362. Court not to alter judgement. Save as otherwise provided by this Code or by any other law for the time being in force, 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."

The inherent jurisdiction of the Court may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all the cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle *quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest* (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone the courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent same. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. The powers possessed by the High Court Under Section 482 of the Code are

very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles and should be exercised sparingly and with great care and caution. The Court would be justified in exercising the power when it is imperative to exercise the power in order to prevent injustice.

In order to understand the nature and scope of power under Section 482 Code of Criminal Procedure vis a vis Section 362 Crpc, it has become necessary to recapitulate the ratio of some of the decided cases.

In Sooraj Devi Vs. Pyare Lal and Ors. MANU/SC/0228/1981, (1981)SCC(Cri)188, while considering the similar issue Honble Supreme Court held as under :-

"4. The sole question before us is whether the High Court was right in refusing to entertain Criminal Miscellaneous Application No. 5127 of 1978 on the ground that it had no power to review its order dated 1st September, 1970. Section 362 of the CrPC declares :

Save as otherwise provided by this Code or by any other law for the time being in force, 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.

5. It is apparent that what the appellant seeks by the application is not the correction of a clerical or arithmetical error. What she desires is a declaration that the High Court order dated 1st September, 1970 does not affect her rights in the house property and that the direction to restore possession to Pyare Lal is confined to that portion only of the house property respecting which the offence of trespass was committed so that she is not evicted from the portion in her possession. The appellant, in fact, asks for an adjudication that the right to possession alleged by her remains unaffected by the order dated 1st September, 1970. Pyare Lal disputes that the order is not binding on her and that she is entitled to the right in the property claimed by her. Having considered the matter, we are not satisfied that the controversy can be brought within the description "clerical or arithmetical error". A clerical or arithmetical error is an error occasioned by an accidental slip or omission of the court. It represents that which the court never intended to say. It is an error apparent on the face of the record and does not depend for its discovery on argument or disputation. An arithmetical error is a mistake of calculation, and a clerical error is a mistake in writing or typing. (Master Construction Co. (P) Ltd. v. State of Orissa and Anr. MANU/SC/0304/1965 : [1966]3SCR99) .

6. The appellant points out that he invoked the inherent power of the High Court saved by Section 482 of the Code and that notwithstanding the prohibition imposed by Section 362 the High Court had power to grant relief.

Now it is well settled that the inherent power of the court cannot be exercised for doing that which is specifically prohibited by the Code. (Sankatha Singh v. State of U.P. MANU/SC/0142/1962 : AIR1962SC1208). 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."

In Simrikhia Vs. Dolley Mukherjee and Chhabi Mukherjee and Ors., MANU/SC/0440/1990 the issue before the Supreme Court was whether inherent jurisdiction of Court be invoked to override bar of review contained under Section 362 Crpc, it is held as under :-

"5. 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 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.

6. In Superintendent & Remembrancer of Legal Affairs v. Mohan Singh MANU/SC/0223/1974 : 1975CriLJ812, this Court held that Section 561A preserves the inherent power of the High Court to make such orders as it deems 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.

7. 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 MANU/SC/0228/1981 : 1981CriLJ296 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."

Hon'ble Supreme Court again in Hari Singh Mann Vs. Harbhajan Singh Bajwa and Ors., MANU/SC/0665/2000 has deprecated the practice of moving an application under 482 Crpc after final disposal of the proceedings in following words :-

"8. We have noted with disgust that the impugned orders were passed completely ignoring the basic principles of criminal law. No review of an order is contemplated under the CrPC. After the disposal of the main petition on 7-1-1999, there was no lis pending in the High Court wherein the respondent could have filed any miscellaneous petition. The filing of a miscellaneous petition not referable to any provision of CrPC or the rules of the Court, cannot be resorted to as a substitute of fresh litigation. The record of the proceedings produced before us shows that directions in the case filed by the respondents were issued apparently without notice to any of the respondents in the petition. Merely because the respondent No. 1 was an Advocate, did not justify the issuance of directions at his request without notice of the other side. The impugned orders dated 30th April, 1999 and 21st July, 1999 could not have been passed by the High Court under its inherent power under Section 482 of the CrPC. The practice of filing miscellaneous petitions after the disposal of the main case and issuance of fresh directions in such miscellaneous petitions by the High Court are unwarranted, not referable to any statutory provision and in substance the abuse of the process of the court.

9. There is no provision in the CrPC authorising 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.

This Court in State of Orissa v. Ram Chander Agarwala MANU/SC/0179/1978 : 1979CriLJ33 held:

"Before concluding we will very briefly refer to cases of this Court cited by counsel on both sides MANU/SC/0028/1958 : 1958CriLJ701 relates to the power of the High Court to cancel bail. The High Court took the view that under Section 561A of the Code, it had inherent power to cancel the bail, and finding that on the material produced before the Court it would not be safe to permit the appellant to be at large cancelled the bail, distinguishing the decision in MANU/PR/0005/1945 (supra) and stated that the Privy Council was not called upon to consider the question about the inherent power of the High Court to cancel bail under Section 561A. In Sankatha Singh v. State of U.P. MANU/SC/0142/1962 : AIR1962SC1208 this Court held that Section 369 read with Section 424 of the CrPC specifically prohibits the altering or reviewing of its order by a court. The accused applied before a succeeding Sessions

Judge for rehearing of an appeal. The learned Judge was of the view that the appellate court had no power to review or restore an appeal which has been disposed of. The Supreme Court agreed with the view that the appellate court had no power to review or restore an appeal. This Court, expressing its opinion that the Sessions Court had no power to review or restore an appeal observed that a judgment, which does not comply with the requirements of Section 367 of the Code, may be liable to be set aside by a superior court, but will not give the appellate court any power to set it aside itself and re-hear the appeal observing that "Sec. 369 read with Section 424 of the Code makes it clear that the appellate court is not to alter or review the judgment once signed, except for the purpose of correcting a clerical error. Reliance was placed on a decision of this Court in *Suppt. and Remembrancer of Legal Affairs W.B. v. Mohan Singh* MANU/SC/0223/1974 : 1975CriLJ812 by Mr. Patel, learned Counsel for the respondent wherein it was held that rejection of a prior application for quashing is no bar for the High Court entertaining a subsequent application as quashing does not amount to review or revision. This decision instead of supporting the respondent clearly lays down, following *Chopra's case* AIR 1955 SC 683 (supra) that once a judgment has been pronounced by a High Court either in exercise of its appellate or revisional jurisdiction, no review or revision can be entertained against that judgment as there is no provision in the Criminal Procedure Code which would enable the High Court to review the same or to exercise revisional jurisdiction. This Court entertained the application for quashing the proceedings on the ground that a subsequent application to quash would not amount to review or revise an order made by the Court. The decision clearly lays down that a judgment of the High Court on appeal or revision cannot be reviewed or revised except in accordance with the provisions of the Criminal Procedure Code. The provisions of Section 561A of the Code cannot be invoked for exercise of a power which is specifically prohibited by the Code."

10. Section 362 of the Code mandates 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. The Section is based on an acknowledge principle of law that once a matter is finally disposed of by a Court, the said Court in the absence of a specific statutory provision become *functus officio* and disentitled to entertain a fresh prayer for the same relief unless the former order of final disposal is set aside by a court of 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 arithmetical error. The reliance of the respondent on *Talab Haji Hussain's case* (supra) is misconceived. Even in that case it was pointed that inherent powers conferred on High Courts under Section 561A (Section 482 of the new Code) has to be exercised sparingly, carefully and with caution and only where such exercise is justified by the tests specifically laid down in the section itself. It is not disputed that the petition filed under Section 482 of the Code had been finally disposed of by the High Court on 7-1-1999. The new Section 362 of the Code which was drafted keeping in view the recommendations of the 41st Report of the law Commission and the Joint Select Committees appointed for the purpose, has extended the bar of review not only to the judgment but also to the final orders other than the judgment."

In MANU/SC/3909/2008, (2008)8SCC673 , State rep. by D.S.P., S.B.C.I.D., Chennai Vs. K.V. Rajendran and Ors. wherein the issues before the Court were (I) Whether the High Court had become functus officio with the disposal of the criminal petition by the judgment and order dated 01 st 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?

Hon'ble Supreme Court after considering the law laid down in Hari Singh Mannn v. Harbhajan Singh Bajwa and Ors. MANU/SC/0665/2000 and Simrikha v. Dolley Mukherjee and Chhabi Mukherjee and Anr. : 1990CriLJ1599 opined as under:-

"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 saved 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.

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 expressed prohibition in the Code itself in the form of Section 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."

In Sunita Jain Vs. Pawan Kumar Jain and Ors., MANU/SC/7012/2008, it is stated as under :-

"18. To us, the learned Counsel for the appellant is right that in substance and in reality, the High Court has exercised power of review not conferred by the Code on a Criminal Court. Section 362 of the Code does not empower a Criminal Court to alter its judgment. It reads thus:

362. Court not to alter judgment: Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error.

19. The section makes it clear that a Court cannot alter or review its judgment or final order after it is signed except to correct clerical or arithmetical error. The scheme of the Code, in our judgment, is clear that as a general rule, as soon as the judgment is pronounced or order is made by a Court, it becomes functus officio (ceases to have control over the case) and has no power to review, override, alter or interfere with it.

20. No doubt, the section starts with the words "Save as otherwise provided by this Code". Thus, if the Code provides for alteration, such power can be exercised. For instance, Sub-section (2) of Section 127. But in absence of express power, alteration or modification of judgment or order is not permissible.

21. It is also well settled that power of review is not an inherent power and must be conferred on a Court by a specific or express provision to that effect. [Vide Patel Narshi Thakershi and Ors. v. Shri Pradyumansinghji Arjunsinghji MANU/SC/0433/1970 : AIR1970SC1273] No power of review has been conferred by the Code on a Criminal Court and it cannot review an order passed or judgment pronounced."

The law cited herein before would reveal that under Section 438 and 439 Cr.P.C. the Sessions Court or the High Court may grant anticipatory bail or regular bail to the accused persons in appropriate cases. Both under Section 438 (U.P. Amendment) as well as under Section 439 Cr.P.C. reasonable conditions may be imposed in order to secure fair trial. The Judge or in the case of the High Court, the Bench after final disposal of the bail or anticipatory bail as the case may be becomes Functus Officio and nothing remained pending before the Bench as the rights have been finally adjudicated. Section 439 (2) Cr.P.C. provides that a person released on bail by the High Court or by the Court of Sessions may be committed to custody. However, this power of High Court or the Sessions Court is conferred on account of the happening of subsequent events like the accused not obeying the conditions of Bail, etc. However, if any person is aggrieved by the order of grant of bail, he or she will have to approach the superior court for cancellation of that order and the same could not be moved or cancelled by the same court by virtue of bar contained under Section 362 Cr.P.C.

This aspect may be viewed with another angle if in a case where the bail application of the accused has been finally disposed of by the Bench of the High Court and if the State is not satisfied by this order , if there is no change of circumstance like disobeying the conditions of bail order, the State will have to approach the higher forum for cancellation of such order and certainly the State or even the victim could not move an application under Section 482 Cr.P.C. for recall or modification of the order by which the bail has been granted by virtue of bar contained under Section 362 Cr.P.C. However, in case of non-compliance of the conditions of bail and in order to secure the presence of the accused, it would always be open for the Court to cancel the bail already granted as provided under Section 439 (2) Cr.P.C., but if any person is aggrieved by the order of bail or even by any condition of the same, which has assigned finality and there is no additional material available subsequently the order could only be challenged at any higher forum and the same could not be modified, recalled by the same Court or Bench, as the case may be.

In State of Punjab Vs. Davinder Pal Singh Bhullar and Ors., MANU/SC/1476/2011, Hon'ble Supreme Court has dealt the issue in depth and made a distinction between order of recall and judicial review of an earlier order and opined as under :-

"III. BAR TO REVIEW/ALTER- JUDGMENT

26. There is no power of review with the Criminal Court after judgment has been rendered. The High Court can alter or review its judgment before it is signed. When an order is passed, it cannot be reviewed. Section 362 Code of Criminal Procedure is based on an acknowledged principle of law that once a matter is finally disposed of by a Court, the said Court in the absence of a specific statutory provision becomes *functus officio* and is disentitled to entertain a fresh prayer for any relief unless the former order of final disposal is set aside by a Court of competent jurisdiction in a manner prescribed by law. The Court becomes *functus officio* the moment the order for disposing of a case is signed. Such an order cannot be altered except to the extent of correcting a clerical or arithmetical error. There is also no provision for modification of the judgment. (See: Hari Singh Mann v. Harbhajan Singh Bajwa and Ors. AIR 2001 SC 43; and Chhanni v. State of U.P. MANU/SC/8838/2006 : AIR 2006 SC 3051) Moreover, the prohibition contained in Section 362 Code of Criminal Procedure is absolute; after the judgment is signed, even the High Court in exercise of its inherent power under Section 482 Code of Criminal Procedure has no authority or jurisdiction to alter/review the same. (See: Moti Lal v. State of M.P. MANU/SC/0362/1994 : AIR 1994 SC 1544; Hari Singh Mann (supra); and State of Kerala v. M.M. Manikantan Nair MANU/SC/0307/2001 : AIR 2001 SC 2145).

27. If a judgment has been pronounced without jurisdiction or in violation of principles of natural justice or where the order has been pronounced without giving an opportunity of being heard to a party affected by it or where an order was obtained by abuse of the process of court which would really amount to its being without jurisdiction, inherent powers can be exercised to recall such order for the reason that in such an eventuality the order becomes a nullity and the provisions of Section 362 Code of Criminal Procedure would not operate. In such eventuality, the judgment is manifestly contrary to the *audi alteram partem* rule of natural justice. The power of recall is different from the power of altering/reviewing the judgment. However, the party seeking recall/alteration has to establish that it was not at fault. (Vide: Chitawan and Ors. v. Mahboob Ilahi MANU/UP/0178/1968 : 1970 Cri.L.J. 378; Deepak Thanwardas Balwani v. State of Maharashtra and Anr. 1985 Cri.L.J. 23; Habu v. State of Rajasthan MANU/RH/0023/1987 : AIR 1987 Raj. 83 (F.B.); Swarth Mahto and Anr. v. Dharmdeo Narain Singh MANU/SC/0272/1972 : AIR 1972 SC 1300; Makkapati Nagaswara Sastri v. S.S. Satyanarayan MANU/SC/0156/1980 : AIR 1981 SC 1156; Asit Kumar Kar v. State of West Bengal and Ors. MANU/SC/0062/2009 : (2009) 2 SCC 703; and Vishnu Agarwal v. State of U.P. and Anr. MANU/SC/0147/2011 : AIR 2011 SC 1232).

28. This Court by virtue of Article 137 of the Constitution has been invested with an express power to review any judgment in Criminal Law and while no such power has been conferred on the High Court, inherent power of the court cannot be exercised for doing that which is specifically prohibited by the Code itself. (Vide: State Represented by D.S.P., S.B.C.I.D., Chennai v. K.V. Rajendran and Ors. MANU/SC/3909/2008 : AIR 2009 SC 46).29. In Smt. Sooraj Devi v. Pyare Lal and Anr. MANU/SC/0228/1981 : AIR 1981 SC 736, this Court held that the prohibition in Section 362 Code of Criminal Procedure 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 Code of Criminal Procedure and, therefore, the attempt to invoke that power can be of no avail.

30. Thus, the law on the issue can be summarised to the effect that the criminal justice delivery system does not clothe the court to add or delete any words, except to correct the clerical or arithmetical error as specifically been provided under the statute itself after pronouncement of the judgment as the Judge becomes *functus officio*. Any mistake or glaring omission is left to be corrected only by the appropriate forum in accordance with law.

40. It is evident from the above that inherent powers can be exercised only to prevent the abuse of the process of the court and to secure the ends of justice. However, powers can be used provided there is no prohibition for passing such an order under the provisions of Code of Criminal Procedure and there is no provision under which the party can seek redressal of its grievance. Under the garb of exercising inherent powers, the Criminal Court cannot review its judgment. Such powers are analogous to the provisions of Section 151 Code of Civil Procedure and can be exercised only to do real and substantial justice. The rule of inherent powers has its source in the maxim '*Quod lex alicui concedit, concedere videtur id sine quo ipsa, esse non potest*' which means that when the law gives anything to anyone, it gives also all those things without which the thing itself could not exist. The order cannot be passed by-passing the procedure prescribed by law.

Application under Section 482 Code of Criminal Procedure lies before the High Court against an order passed by the court subordinate to it in a pending case/proceedings. Generally, such powers are used for quashing criminal proceedings in appropriate cases. Such an application does not lie to initiate criminal proceedings or set the criminal law in motion. Inherent jurisdiction can be exercised if the order of the Subordinate Court results in the abuse of the 'process' of the court and/or calls for interference to secure the ends of justice. The use of word 'process' implies that the proceedings are pending before the Subordinate Court. When reference is made to the phrase 'to secure the ends of justice', it is in fact in relation to the order passed by

the Subordinate Court and it cannot be understood in a general connotation of the phrase. More so, while entertaining such application the proceedings should be pending in the Subordinate Court. In case it attained finality, the inherent powers cannot be exercised. Party aggrieved may approach the appellate/revisional forum. Inherent jurisdiction can be exercised if injustice done to a party, e.g., a clear mandatory provision of law is overlooked or where different accused in the same case are being treated differently by the Subordinate Court.

An inherent power is not an omnibus for opening a pandorabox, that too for issues that are foreign to the main context. The invoking of the power has to be for a purpose that is connected to a proceeding and not for sprouting an altogether new issue. A power cannot exceed its own authority beyond its own creation. It is not that a person is remediless. On the contrary, the constitutional remedy of writs are available. Here, the High Court enjoys wide powers of prerogative writs as compared to that under Section 482 Code of Criminal Procedure. To secure the corpus of an individual, remedy by way of habeas corpus is available. For that the High Court should not resort to inherent powers under Section 482 Code of Criminal Procedure as the Legislature has conferred separate powers for the same."

Another case where a distinction has been made by the Supreme Court between recall and review of the order is Vishnu Agarwal Vs. State of U.P. and Ors., MANU/SC/0147/2011 in following words ;-

"11. Apart from the above, we are of the opinion that the application filed by the Respondent was an application for recall of the Order dated 2.9.2003 and not for review. In *Asit Kumar v. State of West Bengal and Ors.* MANU/SC/0062/2009 : 2009 (1) SCR 469, this Court made a distinction between recall and review which is as under:

There is a distinction between...a review petition and a recall petition. While in a review petition, the Court considers on merits whether there is an error apparent on the face of the record, in a recall petition the Court does not go into the merits but simply recalls an order which was passed without giving an opportunity of hearing to an affected party."

In *Abdul Basit Vs. Abdul Kadir Choudhary*, MANU/SC/0886/2014, (2014)10SCC754 wherein the High Court earlier granted the bail under section 439 Crpc to accused and thereafter cancelled the same by invoking powers under section 439(2) Crpc without there being any change in circumstances on the same material and the issue before the Court was that the High Court could not have entertained an application for cancellation of bail on grounds of misrepresentation as such objection could only be raised in an appeal by the informant-Respondent and the judgment and order cancelling the bail passed by the High Court tantamounts to review of the earlier order of the High Court whereby it had granted bail to the Petitioners and such review being barred by Section 362 of the Code renders the impugned judgment and order perverse and liable to be set aside., it is held that :-

" 21. In this context, it is profitable to render reliance upon the decision of this Court in *Puran v. Rambilas and Anr.* MANU/SC/0326/2001 : (2001) 6 SCC 318. In the said case, this Court held that the concept of setting aside an unjustified, illegal or perverse order is absolutely different from the cancelling an order of bail on the ground that the accused has misconducted himself or because of some supervening circumstances warranting such cancellation. In *Dr. Narendra K. Amin v. State of Gujarat and Anr.* MANU/SC/7525/2008 : (2008) 13 SCC 584, the three-Judge Bench of this Court has reiterated the aforesaid principle and further drawn the distinction between the two in respect of relief available in review or appeal. In this case, the High Court had cancelled the bail granted to the Appellant in exercise of power Under Section 439(2) of the Code. In appeal, it was contended before this Court that the High Court had erred by not appreciating the distinction between the parameters for grant of bail and cancellation of bail. The Bench while affirming the principle laid down in *Puran* case (*supra*) has observed that when irrelevant materials have been taken into consideration by the Court granting order of bail, the same makes the said order vulnerable and subject to scrutiny by the appellate Court and that no review would lie Under Section 362 of the Code. In essence, this Court has opined that if the order of grant of bail is perverse, the same can be set at naught only by the superior court and has left no room for a review by the same Court.

22. Reverberating the aforesaid principle, this Court in the recent decision in *Ranjit Singh v. State of M.P. and Ors.* MANU/SC/0990/2013 : 2013 (12) SCALE 190 has observed that:

20...There is also a distinction between the concept of setting aside an unjustified, illegal or perverse order and cancellation of an order of bail on the ground that the accused has misconducted himself or certain supervening circumstances warrant such cancellation. If the order granting bail is a perverse one or passed on irrelevant materials, it can be annulled by the superior court.

23. Therefore, the concept of setting aside an unjustified, illegal or perverse order is different from the concept of cancellation of a bail on the ground of accused's misconduct or new adverse facts having surfaced after the grant of bail which require such cancellation and a perusal of the aforesaid decisions would present before us that an order granting bail can only be set aside on grounds of being illegal or contrary to law by the Court superior to the Court which granted the bail and not by the same Court.

25. It is an accepted principle of law that when a matter has been finally disposed of by a Court, the Court is, in the absence of a direct statutory provision, *functus officio* and cannot entertain a fresh prayer for relief in the matter unless and until the previous order of final disposal has been set aside or modified to that extent. It is also settled law that the judgment and order granting bail cannot be reviewed by the Court passing such judgment and order in absence of any express provision in the

Code for the same. Section 362 of the Code operates as bar to any alteration or review of the cases disposed of by the Court. The singular exception to the said statutory bar is correction of clerical or arithmetical error by the Court.

29. It is a well settled proposition of law what cannot be done directly, cannot be done indirectly. While exercising a statutory power a Court is bound to act within the four corners of the Statute. The statutory exercise of the power stands on a different pedestal than the power of judicial review vested in a Court. The same has been upheld by this Court in *Bay Berry Apartments (P) Ltd.. and Anr. v. Shobha and Ors.* MANU/SC/8566/2006 : (2006) 13 SCC 737, *U.P. State Brass-ware Corporation Ltd.. and Anr. v. Uday Narain Pandey* (2006) 1 SCC 479 and *Rashmi Rekha Thatoi and Anr. v. State of Orissa and Ors.* MANU/SC/0410/2012 : (2012) 5 SCC 690. It is the duty of the superior courts to follow the command of the statutory provisions and be guided by the precedents and issue directions which are permissible in law.

30. In the instant case, the order for bail in the bail application preferred by the accused-Petitioners herein finally disposes of the issue in consideration and grants relief of bail to the applicants therein. Since, no express provision for review of order granting bail exists under the Code, the High Court becomes functus officio and Section 362 of the Code applies herein barring the review of judgment and order of the Court granting bail to the accused-Petitioners. Even though the cancellation of bail rides on the satisfaction and discretion of the Court Under Section 439(2) of the Code, it does not vest the power of review in the Court which granted bail. Even in the light of fact of misrepresentation by the accused-Petitioners during the grant of bail, the High Court could not have entertained the Respondent/informant's prayer by sitting in review of its judgment by entertaining miscellaneous petition.

31. Herein, the High Court has assigned an erroneous interpretation to the well settled position of law, assumed expanded jurisdiction onto itself and passed an order in contravention of Section 362 of the Code cancelling the bail granted to the Petitioners herein. Therefore, in our considered opinion, the High Court is not justified in reviewing its earlier order of grant of bail and thus, the impugned judgment and order requires to be set aside."

Hon'ble Supreme Court in *State of Madhya Pradesh Vs. Man Singh*, MANU/SC/1505/2019, in a case wherein the criminal appeal moved by the convict was disposed of by the High Court and benefit of first offender Act was denied , but on an application filed by the convict under Section 482 of Code of Criminal Procedure praying that since he is in Government job, he may be granted benefit of the Act, the High Court without giving any other reasons extended the benefit of Probation of Offenders Act to the Petitioner for the purpose that the sentence, which has already undergone would not affect service career of the Petitioner, has opined as under ;-

"At the outset, we note that the manner in which the learned Judge entertained the petition Under Section 482 Code of Criminal Procedure is highly improper and

uncalled for. There is no power of review granted to the Courts under Code of Criminal Procedure. 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 Code of Criminal Procedure 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 Code of Criminal Procedure (State of Kerala v. M.M. Manikantan Nair, MANU/SC/0307/2001 : (2001) 4 SCC 752) . The inherent power Under Section 482 Code of Criminal Procedure cannot be used by the High Court to reopen or alter an order disposing of a petition decided on merits (State Rep. by D.S.P., S.B.C.I.D., Chennai v. K.V. Rajendran and Ors., MANU/SC/3909/2008 : 2009 CriLJ 355 SC) . After disposing of a case on merits, the Court becomes functus officio and Section 362 Code of Criminal Procedure 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 (Hari Singh Mann v. Harbhajan Singh Bajwa and Ors. MANU/SC/0665/2000 : (2001) 1 SCC 169) . Recall of judgment would amount to alteration or review of judgment which is not permissible Under Section 362 Code of Criminal Procedure. It cannot be validated by the High Court invoking its inherent powers (Sooraj Devi v. Pyare Lal and Anr. MANU/SC/0228/1981 : AIR 1981 SC 736) .

6. We have, therefore, no doubt in our mind that the High Court had no power to entertain the petition Under Section 482 Code of Criminal Procedure and alter the sentence imposed by it....."

In MANU/SC/0034/2020, AIR2020 SC 514 , State Vs. M. Murugesan and Ors. wherein the High Court after disposal of the main issue had issued certain directions for reforms , it is held in the light of the law laid down in Davinder Pal Singh Bhullar and Simrikhia (supra) that the High Court has committed grave illegality in retaining the file after grant of bail to the Accused as the jurisdiction of the High Court came to an end when an application for grant of bail Under Section 439 of the Code was finally decided. The power Under Section 482 Code of Criminal Procedure cannot be resorted to if there is a specific provision in Code of Criminal Procedure for the redressal of the grievance of the aggrieved party or where alternative remedy is available. Such powers cannot be exercised as against the express bar of the law engrafted in any other provision of Code of Criminal Procedure. Such powers can be exercised to secure the ends of justice and to prevent the abuse of the process of court. However, such expressions do not confer unlimited/unfettered jurisdiction on the High Court as the "ends of justice" and "abuse of the process of the court" have to be dealt with in accordance with law including the procedural law and not otherwise. Such powers can be exercised ex debito justitiae to do real and substantial justice as the courts have been conferred such inherent jurisdiction, in absence of any express provision, as inherent in their constitution, or such powers as are necessary to do the right and to undo a wrong in the course of administration of justice as provided in the legal maxim quando lex aliquid alicui concedit, concedere videtur id sine quo res

ipsa esse non potest. However, the High Court has not been given nor does it possess any inherent power to make any order, which in the opinion of the court, could be in the interest of justice as the statutory provision is not intended to by-pass the procedure prescribed.

Above placed law reports also reveals that there is distinction between the concept of setting aside an unjustified, illegal or perverse order and cancellation of an order of bail on the ground that the accused has misconducted himself or certain supervening circumstances warrant such cancellation and if the order granting bail is a perverse one or passed on irrelevant materials, it can only be annulled by the superior court. Thus in the considered opinion of this Court the concept of setting aside an unjustified, illegal or perverse order is different from the concept of cancellation of a bail on the ground of accused's misconduct or adverse facts having surfaced after the grant of bail which require such cancellation and a perusal of the aforesaid decisions would establish that an order granting bail can only be set aside on grounds of being illegal or contrary to law by the Court superior to the Court which granted the bail and not by the same Court. It is an accepted principle of law that when a matter has been finally disposed of by a Court, the Court is, in the absence of a direct statutory provision has become *functus officio* and cannot entertain a fresh prayer for relief in the matter unless and until the previous order of final disposal has been set aside or modified to that extent by any superior Court. It is also settled by the law reports cited above that the judgment and order granting bail cannot be reviewed by the Court passing such judgment and order in absence of any express provision in the Code for the same. Section 362 of the Code operates as bar to any alteration or review of the cases disposed of by the Court. The singular exception to the said statutory bar is correction of clerical or arithmetical error by the Court and inherent powers can only be exercised only to prevent the abuse of the process of the court and to secure the ends of justice provided there is no prohibition for passing such an order under the provisions of Code of Criminal Procedure and there is no provision under which the party can seek redressal of its grievance. Under the garb of exercising inherent powers, the Criminal Court cannot review its judgment in view of section 362 of Crpc. As laid down in State rep. by D.S.P., S.B.C.I.D., Chennai Vs. K.V. Rajendran and Ors., Hari Singh Mann v. Harbhajan Singh Bajwa and Ors. and Simrikha v. Dolley Mukherjee and Chhabi Mukherjee and Anr (supra) 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 and 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. Section 362 of the Code prohibits reopening of a final order except in the cases of clerical or arithmetical errors. Such being the position of law and in view of the expressed prohibition in the Code itself in the form of Section 362, exercise of power, in the considered opinion of this Court under Section 482 of the Code cannot be exercised to reopen or alter an order disposing of a petition decided on merits.

Perusal of the law relied on by Ld. senior Counsel i.e. 'Jagdish Arora and another vs. Union of India (supra)' would reveal that one of the condition of the bail order passed by a co-ordinate Bench was challenged by filing an application under Section 482 Cr.P.C., seeking modification of the final order and the same was considered by a Division Bench of the Madhya Pradesh High Court, which is of the view that there is no express provision for deletion or amendment of any condition of the bail

order and the only course available is of filing application under Section 482 Cr.P.C. and also that the ends of justice can only be secured in absence of any express provision by invoking the inherent powers provided under Section 482 Cr.P.C. for modification of the condition of bail order and, thus, proceeded to modify one of the condition imposed by the co-ordinate Bench, while enlarging the accused on bail. The law laid down by the Hon'ble Madhya Pradesh High Court, does not appear to be in consonance with the legal principles enunciated by the Hon'ble Supreme Court in the reports mentioned herein-before and in the considered opinion of this Court, the applicant could not take any benefit of the same. A three-Judge Bench of Hon'ble Supreme Court in *Madhu Limaye v. The State of Maharashtra* MANU/SC/0103/1977 : (1977) 4 SCC 551, dealt with the invocation of inherent power Under Section 482 for quashing interlocutory order and noticed the principles in relation to the exercise of the inherent power of the High Court in para No. 9 and held that barring some exceptions the same should not be exercised as against the express bar of law engrafted in any other provision of the Code.

Thus in the background of proposition of law and reasons mentioned herein before I do not find any merit in the application filed by the applicant and the same is dismissed as such.

Order Date :- 02.11.2022 Muk