

## Ramautar Thakur And Ors. vs State Of Bihar on 9 April, 1956

**Equivalent citations: AIR1957PAT33, 1957CRILJ82, AIR 1957 PATNA 33, 1956 BLJR 351**

### JUDGMENT

Raj Kishore Prasad J.

1. This application under Section 561A, Criminal P. C., for restoration of Cri. Revu. No.

2. The petitioners filed a criminal revision application in this Court, challenging their

On the 10th February, one week's peremptory time was allowed for filing a certified copy

On 20-2-1956, that is, four days after the expiry of the peremptory date for filing the

3. Mr. Ashwini Kumar Sinha in support of the rule has contended that as the criminal rev

The cases relied upon are : Cri Revn. No. 531 of 1941 Bishundhari Gope v. Emperor, decid

The ratio decidendi of these cases is that Section 369 of the Code is no bar to the rest

4. Mr. Shyamnandan Prasad Singh, the learned Standing Counsel, appearing for the State,

5. The question for our determination, therefore, is, whether this Court has the power to restore a criminal revision application, which has been dismissed for default.

6. There is no statutory provision for such a restoration. The power to restore a case d

7. A long line of decisions has established that as provided by Section 369, Criminal P.

The High Court, therefore, cannot review such an order, passed by itself in exercise of

Consequently, it cannot be said that Section 661A either modifies the provisions of Sec

8. The Supreme Court decision in U. J. S. Chopra (J), above mentioned, has no application

Notice having been issued to the appellant under Section 439 (2), Criminal P. C., the ap

The question for consideration before the Supreme Court was, whether the summary dismiss

If was held by the Supreme Court that the right which is conferred on the accused of sho

The appeal of the appellant was, accordingly, allowed, and, the order of the High Court

9. In the present case, no notice under Section 439(2) was at all issued, because the ca

10. The question, therefore, for our consideration is, does Section 369, or Section 430.

11. Section 369 runs thus:

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

Section 369 was amended by Act 18 of 1923 by which the words:

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

12. In the Supreme Court case of U. S. J. Chopra (J), referred to before, his Lordship D

"the finality of Section 369 attaches to the judgments pronounced by all trial Courts in

Again, the rule of finality embodied in Section 369 cannot, in terms, apply to the order

13. Section 369, therefore, does not apply to any order passed by the High Court in the

14. Section 430, Criminal P. C., runs thus: "Judgments and orders passed by an Appellate

" The finality of appellate Court's Judgments is, therefore, specifically provided by

15. It follows, therefore, that Section 430 of the Code, also does not apply to decision

16. When, therefore, Sections 369 and 430 of the Code do not apply to decisions or order

17. There is another reason also, as has been held in some cases, why Section 369 of the
18. The Criminal Procedure Code, unlike the Civil Procedure Code, does not define 'Judgment'.  
Their Lordships mentioned that the observations of the Madras High Court in its Full Bench
19. The question, therefore, for our consideration is, is the order of dismissal for default
20. In the case of AIR 1928 Rang 238 (G), it has been held that an order of dismissal for default
21. In this connection the observation of Sulaiman J., in 'Dr. Hori Ram Singh (T)', above, is  
"It will be seen that an order under Section 435 can with difficulty be called a 'judgment'.
22. His Lordship Bhagwati J. in the Supreme court case in delivering his own 'judgment' said  
"The order dismissing the appeal or criminal revision summarily or in limine would not be a judgment.
23. When, therefore, a criminal revision application has been heard on the question of its maintainability
- I do not understand how it can be said that an order of dismissal for default of a criminal case is a judgment.
24. I would, therefore, hold that an order of dismissal for default, or a criminal revision order, is not a judgment.
- 24a. The above question has been considered at length and fully if I may say so with respect to the criminal case.
- This view was accepted by Das J., as he then was, in the case of Ganpat Kaiyar v. Emperor of India.
25. A Division Bench of the Calcutta High Court in Bibuty Mohun Roy v. Dasi Moni Dasi (E) held  
"that the proposition that there is no inherent power of the Court to re-open a Rule, 369, is not correct.
- They, therefore, concluded:  
"We hold, therefore, that we have jurisdiction to hear, to determine and to give a judgment on the question.
- The revision petition which had been dismissed for default was, therefore, restored, and the case was remanded to the Magistrate for trial.
26. That this represents the correct view of the law as opined by another Bench of the Calcutta High Court in Bibuty Mohun Roy v. Dasi Moni Dasi (E)  
"where a case is disposed of merely for default of appearance or where an order is passed on the merits of the case.

27. In re Tadi Soma Naidu (L), referred to above, a Division Bench of the Madras High Co

28. I, therefore, hold that there is nothing in the Criminal Procedure Code which "in an

29. In this connection, Sections 440 and 439 (2) of the Code, have also to be considered

30. Section 440, Criminal P. C. runs thus:

"No party has any right to be heard either personally, or by pleader before any Court w

Provided that the Court may, if it thinks fit, when exercising such powers, hear any par

"No order under this section shall be made to the prejudice of the accused unless he has

31. In a criminal revision the High Court acts at its own discretion, and its order dism

32. The Special Bench of the Lahore High Court in Emperor v. Atta Mohd. ILR (1944) 25 La

"In the case of an application for revision also the same may be dismissed summarily a

33. In the case of Tadi Somu Naidu (L), a Division Bench of the Madras High Court held:

"An order to the prejudice of an accused without affording him an opportunity of being

34. The above observations apply only when  
notice has been issued under Section 439 (2). In the  
present case, however, the facts are different. At  
the request of the petitioners Advocate the petitioners were granted time to file a cert  
of the trial Court's judgment within a certain  
time.

The petitioners having failed to comply with this order within the time given, the perem

35. In the case of Lalla Ram (B), referred to  
before, which was decided by Reuben J. the criminal revision was admitted but subsequent  
was dismissed for default. His Lordship, there  
fore, observed:

"Presumably, therefore, they have an arguable case. The order dismissing their petitio  
day fixed for hearing, so it cannot be said that the petitioners had an opportunity of b

On this ground as well as on the ground that the High Court possessed the power to resto

36. For the reasons given above, I hold that this Court has got powers to restore Cri. R.

37. The next question for our consideration is, if on the merits of the present applicat

38. In the affidavit, it has been mentioned by the petitioners that their lawyer on 11-2

Immediately after taking the copy it was filed in this Court on 20-2-1956 along with the

Sahai, J.

39. I agree.