Roshanlal Poddar vs State And Anr. on 9 October, 1974

Equivalent citations: 1975CRILJ1583

JUDGMENT

Ajay K. Basu, J.

1. I had the opportunity of perusing the judgment of my learned brother Bhattacharya, J. and I agree with the same. But I would like to add a few words.

2. Section 561A of the old Criminal Procedure Code i. e. the inherent jurisdiction of the High Court cannot be invoked for the purpose of merely reviewing or rehearing of an appeal on alleged fresh grounds or fresh materials as in civil matters. Apart from the provisions of appeal to Supreme Court in certain cases, every order and judgment of this Hon'ble Court is deemed to be final. True, only for giving effect or for securing ends of justice or to prevent the abuse of the process of Court, the High Court can invoke this extraordinary jurisdiction to correct its order and judgment which is 'shocking to the conscience' but certainly not as has been suggested here merely for the purpose of reviewing or reconsidering its own judgment for the alleged omissions or laches of the learned advocate who argued the appeal or on fresh grounds of appeal not argued at the beginning,

3. In this particular application Mr. R. C. Deb wanted to bring in certain other points which, according to him, were not urged by the learned advocate for the appellant who argued this appeal before us at the time of hearing. Of course as we are rejecting his prayer on preliminary point of maintainability we need not go in details about them nor we allowed him to elaborate this ground. I would like to point out that true, we mainly considered and discussed in our judgment the arguments of the learned senior advocate, Mr. Nalin Chandra Banerjee, who appeared for the appellant but in coining to our decision in the criminal appeal we also considered and were satisfied about all possible aspects of the case specially the facts of possession and other matters which are necessary ingredients to prove the offence charged, and to come to the finding we considered the entire evidence, the records and documents of the appeal and did not base our judgment on only the arguments of the learned advocates.

R. Bhattacharya, J.

4. This is an application submitted by the petitioner Roshanlal Poddar for review of the judgment passed in Criminal Appeal No. 623 of 1967 or in the words of the petitioner for reopening and rehearing of the appeal filed by him against his conviction by a Presidency Magistrate, Calcutta under rules 126P (2) (ii) and 126P (1) (i) of the Defence of India Rules. The accused petitioner was sentenced to suffer simple imprisonment for 6 months and to pay a fine of Rs. 500/- in default to suffer imprisonment for 3 months more for the first offence committed and to pay a fine of Rs. 500/- in default to suffer simple imprisonment for 3 months for the other offence committed.

Although the appeal was dismissed on merit, the sentence was reduced to a sentence of simple imprisonment of six months with a fine of rupees two hundred only. The appeal had been disposed of on 5-4-1974 and the present application was filed on or about 12-6-1974. In the present application the petitioner invoked the inherent power of the High Court contained in the Code of Criminal Procedure 1898 now incorporated in the Code of 1973.

5. Mr. R. C. Deb assisted by Mr. S. S. Pal appears for the accused petitioner, Mr. D. N. Das with Mrs. Archaua Sen Gupta appears for the Assistant Collector of Customs for Preventive No. I, the complainant with the permission of the Court and Mr. Manas Chakravarty for the State of West Bengal.

6. When the matter was taken up for hearing, Mr. Das raised a preliminary point of law about the maintainability of the application for reivew or fresh hearing of the appeal in view of the provisions of the Code of Criminal Procedure. We have, therefore, heard the learned Counsel of the parties on the point. Mr. Das's contention is that as soon as the judgment in the appeal was delivered and signed, the Court ceased to have seisin in the matter and became functus officio and the Court has no jurisdiction to reopen the appeal and rehear the same after setting aside the judgment. For this purpose Mr. Das has relied upon the provisions of Sections 369 and 430 of the Criminal Procedure Code 1898 appearing though not exactly in the same form respectively in Sections 362 and 393 of the Code of Criminal Procedure. 1973. He has also referred to some decisions to support his argument to show that the inherent power of the High Court is not applicable in the present case. Mr. Chakravarty for the State has adopted the argument of Mr. Das.

7. Mr. Deb's contention is that under the inherent power, the High Court can, in spite of any provision of the Criminal Procedure Code, review the judgment of an appeal or reopen and rehear an appeal for proper decision or if the ends of justice so require. It is also submitted that the finality of the judgment in a criminal appeal does not mean that the appellate court is not entitled to rehear the appeal after disposal and then to vary the decision if it is found necessary. Mr. Deb has also referred to some decisions.

7A. Before launching upon any discourse relating to the contentions of the learned Counsel, it is necessary to know on what ground the accused petitioner wants to reopen the appeal for hearing afresh. Of course while considering the question of maintainability of the petition with reference to the reason why the petitioner wants to get the appeal heard again on merits, we need not apply our mind to the merits of the appeal or the materials which the petitioner wishes to press at the proposed rehearing. At the time of argument in the appeal, one of the front rank lawyers of this Court took up the cause of the appellant duly assisted by the filing advocate. Several grounds including the one touching the question of possession of the offending articles of gold, alleged to have been recovered from the possession of the accused were taken in the memorandum of appeal but at the time of hearing of the appeal only three points were canvassed before the Court for its consideration without pressing any other point mentioned in the petition of appeal. The three points urged during argument have been indicated in the judgment of the appeal and ultimately those points were not accepted and the conviction was maintained, In the present petition, a prayer for reopening and rehearing of the appeal has been made on the ground that at the time of hearing of

the appeal only three points of law were urged to challenge the conviction of the petitioner and that the attention of the Court was not drawn to the fact that the recovery of gold from the possession of the petitioner had not been proved. It has been further alleged that the attention of the Court was not also drawn to some relevant provisions of law at the time of hearing. The petitioner now wants to reopen the hearing of the appeal so that he may now get a chance to argue in the appeal on the points which were omitted to be placed before the court.

8. At the very outset, it must be mentioned that when Mr. Das was arguing on the point that no review of the judgment was permissible under the law after the disposal of the appeal and placing some rulings, Mr. Deb pointed out that his client did not pray for review but for rehearing of the appeal, Mr. Deb wanted to distinguish "review' from "reopening and rehearing' of the appeal. The word 'review' has not been de-fined in the Code of Criminal Procedure; neither is there any provision for review of any judgment after the disposal of the appeal. According to the Chambers's Twentieth Century Dictionary 'review' is reconsideration and as verb it means to see or examine again. From the perusal of the Webster's Seventh New Collegiate Dictionary we find that 'review' means renewed study of material previously studied, There is some provision for review of the decision of the court in the Code of Civil Procedure and there the word 'review' certainly implies reconsideration. We have no doubt to hold that there is no substantial difference in meanings of the two different terminologies in 'review' and 'reopening and rehearing'. In the present case both the terms denote practically the same thing. In the case of Chandrika v. Rex AIR 1949 All 176 : (1949) 50 Cri LJ 228, an appeal was heard before the date of hearing already fixed but without the knowledge of the appellant inadvertently and the appeal was dismissed. An application was heard for rehearing of the appeal, as the appellant did not get any opportunity to make his submission. There it was held, "An application for review of a judgment means an application praying that that judgment be reconsidered. An application for the alteration of a judgment means that changes be made in that judgment. This is not what the applicant prays for in this case. His prayer, in substance, is that entire proceedings be set aside, that the appeal be reheard and then a fresh judgment delivered". The application was allowed as the court did wrong not to give the appellant an opportunity to be heard. The application for rehearing was allowed under Section 561-A. In the case before us there were no laches on the part of the court which could be stated to have prevented the petitioner from being heard.

9. Mr. Das has first argued that Section 369, Criminal Procedure Code 1898, the provision of which has been embodied in Section 362 of the Code of 1973 does not allow any court to alter or review the judgment except to correct a clerical error when the said judgment has been signed. This section when read with Section 424 of the Code of 1973 makes it clear that Section 369 relied on by Mr. Das does not relate to the judgment of the High Court passed in an appeal.

10. Mr. Das has next referred to Section 430 of the old Code of 1898 which says:

> 430. Finality of orders on appeal.- Judgment and orders passed by an Appellate Court upon appeal shall be final, except in the cases provided for in Section 417 and Chapter XXXII.

In this case we are not concerned with Section 417 or Chap. XXXII. It has been argued that as soon as the judgment of the present appeal was delivered and signed, it became complete and final and that thereafter this Court cannot reopen or reconsider the appeal or review the judgment. Mr. Deb for the petitioner has, however, contended that the word 'final' in Section 480 implies that the judgment referred to in that section shall not be subject to any further appeal. In this connexion he has relied on Matangini Debi v. Girish Chunder Chongdar reported in ILR (1903) 30 Cal 619. In that case a question arose whether the Certificate Officer had jurisdiction to review his order which according to provision of Public Demands Recovery Act of 1895 was final. At one place it was said that the said finality implied that the order should not be open to appeal and that the intention was not to make the order absolutely final so as to make it not open to review but at the end of the judgment it is stated, it becomes unnecessary to consider the further question whether it was open to a Certificate Officer himself to review the order when no power of review is conferred on him by the Act - a question upon which the case of Lala Prayag Lal v. Jainarayan Singh may lend some support to the appellant's contention.

Here the appellants challenged the jurisdiction of the Certificate Officer to review. Lala Pryag Lal's case is reported in ILR (1895) 22 Cal 419. That was also a decision of a Division Bench of this Court. In that case a question was raised if under the Public Demands Recovery Act of 1880 the Commissioner's order could be reviewed. It was held-

There is no provision made for an application for review of a judgment passed on appeal by a Commissioner under the powers conferred by Section 2 of that Act. The Acts of 1868 or 1880 are both of them silent in this respect.

However, it is quite clear that the Division Bench in the case of Matangini Debi did not decide the question of jurisdiction and, therefore, a view earlier expressed regarding the meaning of the word 'final' was obiter dictum and was not necessary to express the view for the decision of the case.

11. The next case relied on by Mr. Deb to give the meaning of finality in Section 430 of the old Cr. Procedure Code is In Re : Biyamma AIR 1963 Mys 826 : (1963) 2 Cri LJ 656. In that case the question arose whether the Bench of the High Court in the appellate jurisdiction could review a judgment passed in a criminal appeal. Sections 561-A and 430 of the old Code were considered. There it has beep held following a decision in the case of Chandrika v. Rex AIR 1949 All 176 : (1949) 50 Cri LJ 228 (supra) that the expression "Judgment shall be final" in Section 430 means that the judgment shall not be open to further appeal. It has been held that powers of interference otherwise than in appeal are not taken away. This Bench has further held following the Full Bench decision of the Allahabad High Court in Raj Narayan v. The State that under Section 561-A of the old Cr. Procedure Code the High Court has power to review a judgment passed in an appeal. Reading the plain language of Section 430 Cr. Procedure Code (old) we do pot find any reason to hold that finality in the judgment referred to in the said section simply implies in any manner that "the judgment shall not be open to any farther appeal", as the words under quotation first preceding cannot be Imported when they are absent in the section. Even the dictionary meaning or popular sense of the term 'final' does not support Mr. Deb. According to Pocket Oxford Dictionary the word final' means 'conclusive, made once for all'. The meaning of the word in Chambers's Twentieth

Century Dictionary is 'decisive, conclusive'. la Webster's Seventh New Collegiate Dictionary the meaning of the word is given as 'not to be altered or undone : conclusive'. Soule's Dictionary of English Synonyms says that "final" means amongst other things 'irrevocable'. The simple plain and ordinary meaning of the word 'final' in the section means unalterable or irrevocable in respect of the court which has passed the judgment. With great respect we cannot accept the interpretation given in cases viz. Chandrika v. Rex and In re : Biyamma mentioned above. In the latter case due to some misapprehension of facts not based on reality the court passed an order without going into the merits of the decision of the lower court and subsequently the court felt that the court has a right to recall an order to undo a wrong done to any party. In that case the Court did not decide the appeal on merits and, therefore, reviewed the order passed to decide the appeal on merits. The facts of the case relied on by Mr. Deb do not help him in the present case.

12. Mr. Deb has relied much on the Full Bench Decision in Raj Narayan v. The State . That Bench was constituted by O. H. Mootham, C. J., Raghubar Dayal and M. L. Chaturvedi, if. The majority view of the Bench was that the High Court has power to review, recall or alter its own earlier decision in a criminal revision and rehear the same only in cases falling under one or the other of the three conditions mentioned in Section 561-A, viz.

> (1) for giving effect to an order passed under Criminal P. Code, (2) for preventing abuse of the process of the court.
>
> (3) for otherwise securing the ends of justice.

Mootham, C. J., however, dissented and his view is that as soon as the judgment in a criminal revision has been signed and sealed, the court becomes functus officio and has no power to revoke, review, recall or alter the Order it has already made, but if for any reason the court makes an order without jurisdiction that order or judgment is a nullity and the application in which it was made must be reheard. Chaturvedi, J. of the Majority view has made it clear at the end of his judgment in the following terms:

> Generally it may be stated that powers under Section 561-A to rehear a case can only be exercised where the facts of the case are shocking to the conscience. Section 561-A thus would not authorise this Court to rehear a case where the applicant or appellant was not heard due to some fault of his or his counsel.
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> If the above view just quoted is taken, then certainly the petitioner before us can get no relief, as at the time of hearing of the appeal no attempt was made to argue on the question of possession of the gold or any other points except the three grounds urged as mentioned in our judgment.

13. Mr. Das, on the other hand, has referred us to the Full Bench decision of the Andhra Pradesh High Court in the case of Public Prosecutor v. Devireddi Nagi Reddi AIR 1962 Andh Pra 479 : (1962) 2 Cri LJ 727 (FB). Umamaheswaram J. relying on the Supreme Court decision in Chopra v. State of Bombay , "It is, therefore, clear from the terms of Section 430 of the Criminal Procedure Code that

the judgment pronounced in the criminal appeal is final and is not liable to be reviewed". Krishna Rao, J. shared the opinion of Umamaheswaram J. as to the scope of Section 561-A Criminal P. Code, On the question of review Chandrasekhara Sastry, J. has held in this Bench that the power to review its own judgment is not in any Court and, therefore, such a power can be exercised only if it is conferred by a statute and he is unable to accept the suggestion that, because the Criminal Procedure Code does not specifically confer on the Court power to review its judgment or order, it must be held that the Court has inherent power to review its judgment or order, It appears that the decision of the Allahabad Full Bench in Rajnarayan's case was considered and Chandra Sekhara Sastry, J. says regarding that case, ".... I express my respectful dissent from this view which, in my opinion, is too broadly stated".

14. Let us now consider some of the decisions, of the Privy Council and our Supreme Court on the inherent power of the High Courts in India particularly with reference to Section 561-A of the Criminal Procedure Code 1898. In the case of Emperor v. Nazir Ahmed AIR 1945 P. C. 18 : (1945) 46 Cri LJ 413 the Judicial Committee speaking on the object and scope of Section 561-A, Criminal P. Code has said,-

It has been sometimes thought that Section 561-A has given increased powers to the Court which it did not possess before that section was enacted. But this is not so. The section gives no new powers, it only provides that those which the Court already inherently possess shall be preserved and is inserted, as their Lordships think, lest it should be considered that the only powers possessed by the Court are those expressly conferred by the Criminal Procedure Code, and that no inherent power had survived the passing of the Act.

15. In Lala Jayram Das v. Emperor AIR 1945 PC 94 : (1945) 46 Cri LJ 662 the Privy Council says about Section 561-A of the Criminal Procedure Code,-

Section 561A of the Code confers powers. It merely safeguards all existing inherent powers possessed by a High Court necessary (along with other purposes) to secure the ends of justice.

In this case a question arose whether the High Courts in India could grant bail to a person convicted and sentenced to imprisonment and to whom His Majesty in Council had given special leave to appeal against conviction and sentence. The Board made a review of some cases decided by some of the High Courts in India, In a case reported in ILR (1923) 50 Cal 585 : (1923) 24 Cri LJ 362 Richardson, J. of the Calcutta High Court was of the opinion that the Court had no jurisdiction under Section 498 Criminal Procedure Code to grant bail pending an application for special leave to appeal as after the judgment of the appeal the Court was functus officio and had no seisin of the case nor had the Court any inherent jurisdiction, In another case in ILR (1937) 1 Cal 464 : AIR 1936 Cal 809 it was held that after disposal of a criminal appeal the High Court is functus officio and has no seisin of the case and cannot grant bail to a convicted person before leave to appeal has been granted. In another case, Hasiruddin v. Emperor of the High Court of Nagpur in ILR (1937) Nag 236 : (1937) 38 Cri LJ 384 it was held that after signing judgment in the appeal the High Court was functus officio and had thereafter no power to release him on bail unless special leave was granted. The judgment was delivered by Bose, J. Their Lordships of the Privy Council found themselves in

agreement with the views expressed by Richardson, J., Henderson J. and Bose J. in the three cases just referred to above,

16. In the case of U.J.S. Chopra v. State of Bombay , Supreme Court dealt with the question of finality of the judgment in appeal as contemplated in Section 430 of the Code of Criminal Procedure, 1898, S.R. Das, J. held:

> The acceptance by the High Court of the appeal or revision on notice to the respondent and after a full hearing is, therefore, nothing less than a judgment of acquittal or a judgment for reduction of sentence. On the other hand, the dismissal by the High Court of an appeal or revision after such a full hearing amounts to a judgment of conviction.
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> In both cases the judgment is final as regards both the accused and the respondent as regards the conviction as well as the sentence in all its aspects, namely, reduction or enhancement. In that situation no further question of revision can arise at the instance of either party. There can be no further application by the accused challenging his conviction or sentence.
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> In the judgment delivered by Bhagwati, J. we also get discourse about the finality of judgment or order both in appeals and revisions. He says,-
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> Once a judgment has been pronounced by the High Court either in the exercise of its appellate or its revisional jurisdiction no review or revision can be entertained against that judgment and there is no provision in the Criminal Procedure Code which would enable even the High Court to review the same or to exercise revisional jurisdiction over the same.
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> We get further in his judgment in paragraph 28 as follows:
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> the order dismissing the appeal or criminal revision summarily or 'in limine' would no doubt be a final order of the High Court not subject to review or revision even by the High Court itself....

17. The Supreme Court while speaking about Section 561-A of the Code of Criminal Procedure, 1898 in the case of R.P. Kapur v. State of Punjab says-

The said section saves the inherent power 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 process of any court or otherwise to secure the ends of justice. There is no doubt that this inherent power cannot be exercised in regard to matters specifically covered by the other provisions of the Code.

For proper appreciation of the nature and scope of Section 561A, the language of the section introduced in the Code in 1923 is reproduced below:

> 561A. Saving of inherent power of High Court - Nothing in the Code shall be deemed to limit or affect the inherent power 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.

18. Mr. Das drew our attention to the case of Patel Narshi Thakurshi v. Shri Pradyumansinghi Arjunshinghji published in (1971) 3 SCC 844 : decided by the Supreme Court. In that case Hegde, J. delivered the judgment of the Court. The question arose if in the absence of the provision for review in Saurashtra Land Reforms Act 1951, any order can be passed by way of review of an order already passed. The following portion of the judgment will be relevant;-

The order passed by Mr. Mankodi, in law amounted to a review of the order made by Saurashtra Government. It is well settled that the power to review is not an inherent power, It must be conferred by law either specifically or by necessary implication. No provision in the Act was brought to notice from which it could be gathered that the Government had power to review its own order.

Ultimately the order of Mr. Mankodi was set aside as void. The principle enunciated in this case supports the view that in the absence of any provision in the Criminal Procedure Code for review of the order or judgment of the appellate court, either High Court or any subordinate Court, no such review is permissible in law.

19. Before we come to consider the case of the petitioner in the instant case, we should refer to the case In re Gibbons, ILR (1887) 14 Cal 42 (FB) wherein the Full Bench of this Court considered whether any review of the judgment of the Division Bench of the High Court lay, Regarding the constitution of the Full Bench, Petheram, C. J. said, "... I was all the more led to do so by the fact that I was told that a Division Bench of this Court had expressed a doubt as to whether there was not a power inherent in the Court itself to review a judgment of a Division Bench in a criminal case ..." In that case the accused was found not guilty by the jury in a sessions trial but the Sessions Judge referred the case to the High Court in disagreement with the jury in their finding. The Division Bench found the accused guilty and sentenced him. Thereafter a review application was filed by the accused. The matter being of very grave importance the Full Bench was formed to consider the question. In his judgment Petheram, C. I., who was one of the five Judges of the Full Bench was of the view that the verdict and judgment of a Division Bench coupled with the sentence are absolutely final. He says,-

As soon as they have been pronounced and signed by the judges, this Court is functus officio and neither the Court itself nor any Bench of it, has any power to revise that decision or interfere with it in any way.

The other four Judges, Mitter. Wilson, Maopherson and Grant, JJ. concurred with the Chief Justice. Of course the case was decided when the Criminal Procedure Code of 1882 was in force.

20. Considering the position of law, as it stands in view of the relevant provisions of the Code of Criminal Procedure, 1898 which are not different in substance from the corresponding provisions in

the Code of 1973 on the questions of law involved in the present case before us and relevant decisions, we have no doubt to hold that as soon as the judgment of the High Court in its appellate side is delivered and signed, it becomes final in respect of this Court passing the same and the courts subordinate to it and that the Court becomes functus officio ceasing to have any seisin of the case. Section 430 of the Criminal P. Code 1898 is clear. The absence of the provision for review of the judgment shows that the legislature did not intend to have the judgment reviewed whereas in the Code of Civil Procedure there is provision for review under certain circumstances. The High Court in his appellate jurisdiction cannot review its own judgment passed in an appeal.

21. With regard to Section 561-A of the Code of 1898, it only records that the High Court has always been possessing inherent power to make orders as would be found 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 if the circumstances so demand. The section does not give any new powers to the Court. This power cannot be exercised in disobedience to the provisions of the Code. This power should, however, be used sparingly and in very exceptional cases when the conscience of the Court prompts' it to take such action. There may be cases where the Court does not hesitate or pause to hold that it has passed an order or judgment which is on the very face of it without jurisdiction and at the same time causes injustice, and there the court may for proper justice recall the said order and act according to law.

22. In the present case Mr. Deb wants us to set aside or recall the judgment, reopen the appeal and rehear the appellant as the judgment already passed is wrong, for in his view, had the appellant's lawyers placed some facts and points of law at the time of hearing, the judgment would have been in favour of the accused. The appellant or his lawyer is entitled to take up as many grounds as he likes and again he is at liberty not to press some of them and to urge, some at the time of hearing. The court must pay due consideration to the points canvassed by the parties at the time of hearing. We do not think that there is any bounden duty on the part of the Court to consider points not argued at the time of hearing either by the learned lawyers of the parties or parties themselves if heard personally. Of course, in some cases where appeals or applications are sent by the accused from the jail and where they are not personally present or represented by lawyers, the responsibility of the court becomes heavy and in those cases the duty of the court should be to go through the grounds of appeal or the application and consider the materials to see if the appellant or the petitioner, as the case may be, may get any relief. If the lawyer or party does not urge any point at the time of hearing and the appeal fails in spite of the grounds taken at the time of hearing, the appellant cannot subsequently pray for review of the judgment or reopening of the appeal and rehearing on the grounds not relied upon at the time of the previous hearing. This ground does not come under any of the reasons given in Section 561-A for which the inherent power of the High Court can be exercised. This is not a ground for which order for review of the judgment or rehearing of the appeal would be necessary for giving effect to any order under the Code. We do not find any case of preventing abuse of the process of any court. Neither do we feel that rehearing of the appeal is necessary to secure the ends of justice in any manner. Our conscience does not say that we should reopen the appeal. We hold that no review or the prayer for reopening of the appeal and rehearing lies invoking me inherent power of this Court. There is, there-fore, no necessity to hear the parties on the merits of the grounds taken in the petition to be urged at me time of rehearing of the appeal.

23. In the result, the application for reopening the appeal and rehearing of the same is rejected as not maintainable.