Parminder Mohan Alias Pammi vs Sate Of Haryana on 25 January, 2013

Author: A.N. Jindal

Bench: S.S. Saron, A.N. Jindal

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Misc. Nos. 72692-94 of 2012 in
Crl. Appeal No.D-234-DB of 2005

Date of decision: January 25, 2013.

Parminder Mohan alias Pammi

.. Applicant-Appellant

Vs.

Sate of Haryana.

.. Respondent

Coram: Hon'ble Mr. Justice S.S. Saron
Hon'ble Mr. Justice A.N. Jindal

Present: Mr. Anuj Kumar Garg, Advocate
for the applicant-appellant.

A.N. Jindal, J

The judgment and order dated 16.7.2007 (Annexure P-8), the review of which is sought has attained finality up to the Supreme Court. The applicant-appellant Parminder Mohan alias Pammi having failed to succeed in the special leave to appeal petition and the review petition before the Supreme Court, has now filed the present petition for re-calling and re- considering the judgment and order dated 16.7.2007 passed by this Court solely on the ground that one of the accused, namely, Lohit Kaushal, has been acquitted by the Supreme Court vide judgment and order dated 4.8.2009 (Annexure P-11).

Succinctly put, the facts in the background of the case are that seven accused, namely, Lovepreet Kaur, Parminder Mohan alias Pammi, Manjit Singh alias Mithu, Lohit Kaushal, Satnam Kaur, Nand Kishore alias Nitu and Sunil Kumar alias Rinku were tried by the Court of learned Additional Sessions Judge, Panchkula in Sessions Case No.4 of 22.11.2002. The said Court, vide judgment and order dated 21.2.2005 (Annexure P-7) Crl. Misc. Nos. 72692-94 of 2012 in held Lovepreet Kaur, Parminder Mohan alias Pammi, Manjit Singh alias Mithu and Lohit Kaushal guilty of the offences punishable under Sections 364-A, 342 read with Section 120-B Indian Penal Code (for short, 'IPC'). The accused Manjit Singh alias Mithu was further held guilty of the offence punishable under

Section 411 IPC. The remaining accused were acquitted as they were given the benefit of doubt. The said judgment and order was challenged before this court by way of an appeal. This Court vide judgment and order dated 16.7.2007 dismissed the same. The applicant-appellant preferred Special Leave to Appeal (Criminal), before the Supreme Court, which was dismissed vide order dated 5.4.2010 (Annexure P-9). The order dated 5.4.2010 passed by the Supreme Court reads as under :-

> "The Special Leave Petitions are dismissed."

The review petition filed by the applicant-appellant against the said order was also dismissed by the Supreme Court on 31.8.2010 (Annexure P-10) with the following order :-

> "We have gone through the review petitions and the relevant documents. In our opinion, no case for review is made out.
>
> Hence, the Review Petitions are dismissed."

It would be pertinent to mention here that Lohit Kaushal one of the accused who had been convicted and sentenced filed an independent Criminal Appeal No.837 of 2008 against the judgment of this Court in the Supreme Court, which was allowed vide judgment dated 4.8.2009 (Annexure P-11) and he was acquitted of the charges. On the basis of the aforesaid judgment, the applicant-appellant has filed the instant petition seeking review and reconsideration of the judgment and order dated Crl. Misc. Nos. 72692-94 of 2012 in 16.7.2007 passed by this Court.

Arguments heard. Record perused.

The main thrust of the argument raised by the learned counsel for the applicant-appellant is that since Lohit Kaushal, one of the appellants has been acquitted in the case by the Supreme Court on 4.8.2009, therefore, the remaining accused be also acquitted by treating them on parity with Lohit Kaushal.

We have given our thoughtful consideration to the matter. The brief facts of the case are that Harjit Singh, on 25.2.2002 came to Police Station Sector 19, Panchkula and informed Avtar Singh SI/SHO that his niece Arshdeep Kaur had been kidnapped by three young boys and a lady. On this, Avtar Singh SI/SHO, along with his police officials reached the spot of occurrence and recorded the statement of Mohinder Kaur. She inter alia stated that one of her daughter Saravjit Kaur was married to Sukhjit Singh Chawla. They had a daughter namely Arshdeep. Her daughter and her son in law were working and when they went for work, Arshdeep was left at Jamiz Play and Creche, Sector 12-A, Panchkula. The creche persons used to leave Arshdeep with her at about 1.30 p.m. After their work the daughter and son in law of the complainant Mohinder Kaur used to take their daughter from her. On 25.2.2002, at about 1.45 p.m. when the complainant along with Arshdeep were sitting on a cot in the courtyard of the first floor, a white colour Sumo vehicle stopped outside their house. A young boy and a fat dark complexion girl came out of the car. The boy was holding a box of sweets and it was represented that it was to be given to Sukhjit Singh who was his friend as he had been Crl. Misc. Nos. 72692-94 of 2012 in blessed with a son. The complainant went to get water

for them from the kitchen. In the meantime, two more young boys came inside and asked for water. When the complainant was again going to get water, one of the boys caught her from behind and closed her mouth. She was brought to the bedroom. Then the three boys dragged her to the another bedroom and tied her hands with a string which was tied to a bed. One of the boys was carrying a knife. After the complainant had freed herself, she found that her grand daughter Arshdeep was missing. A VCP lying under the television was also missing. The three boys and the girl had taken away Arshdeep.

The allegations against Lohit Kaushal, who has been acquitted, were that of co-conspirator and he was not present at the time when Arshdeep Kaur was abducted. The complainant specifically named Parminder Mohan alias Pammi (applicant-appellant) and Manjit Singh alias Mithu, who had come to the house of the complainant and abducted Arshdeep Kaur. Lovepreet Kaur was arrested with the child. The allegations against Lohit Kaushal were that when he was taken into custody, the Maruti car No.CH01-4565 which was used for kidnapping the child was recovered from him. As such, the case of the applicant-appellant who seeks review of the judgment passed by this Court is quite distinguishable from the case of Lohit Kaushal. As such the question of treating the present applicant-appellant at par with Lohit Kaushal does not arise.

In any case, four accused were convicted by the learned Additional Sessions Judge, Panchkula on 21.2.2005 and their appeals were also dismissed by this Court on 16.7.2007. During the pendency of the appeal, the appellants had absconded. However, they preferred Special Crl. Misc. Nos. 72692-94 of 2012 in Leave to Appeal (Criminal) No. 2635-36 of 2010 and leave to appeal was declined by the Supreme Court vide order dated 5.4.2010. The review petition filed by them was also dismissed on 31.8.2010. The judgment of the Supreme Court dated 4.8.2009 acquitting Lohit Kaushal was in existence at the time of filing the Special Leave to Appeal (Criminal) as well as the review petitions, which must have been referred to before the Supreme Court to press the view point of the applicant-appellant. Thus, it is apparent that the Supreme Court had after passing the judgment in the case of Lohit Kaushal dismissed the leave to appeal as well as review petitions qua the other accused. Now after the special leave to appeal and the review petition have been dismissed by the Supreme Court, the present review petition does not lie in this Court.

Learned counsel for the applicant-appellant has, however, contended that though the special leave petition and the review petitions have been dismissed by the Supreme Court, the review petition would be maintainable under the inherent powers and jurisdiction of this Court as well as under Section 362 of the Code of Criminal Procedure.

In order to appreciate the contention of the learned counsel, Section 362 of Cr.P.C. may be adverted to which reads as under :-

> "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 final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error."

Crl. Misc. Nos. 72692-94 of 2012 in Thus, from a reading of the above provision, it transpires that as soon as the court signs its judgment or final order, disposing of the case, it shall not alter or review it except to correct a clerical or arithmetical error. In the instant case, the applicant-appellant wants the judgment of conviction to be reviewed into that of acquittal thereby altering the judgment as a whole. It is well settled by now that a judgment of the criminal court is final as far as that court which passed it is concerned. On signing and pronouncing it, the said court becomes functus officio and as such has no power to alter, review, override or interfere with the same in any manner except for correcting any clerical or arithmetical mistake.

A Full Bench of this Court in the case, State vs. Mansha Singh Bhagwant Singh, AIR 1958 Punjab 233, set out the powers of the court to alter a judgment which has been passed after full hearing and with notice to both the parties. Their Lordships while considering the matter at length observed that an appeal against acquittal preferred by the State, cannot be entertained when an appeal preferred by an accused against his conviction has already been heard and decided after due notice to the State and after full hearing in the presence of the parties, in spite of the fact that the State appeal against acquittal was pending at the time of decision by the High Court.

The matter was also elaborately discussed by the Supreme Court in the case, State of Orissa vs. Ram Chander Agarwala etc. AIR 1979 Supreme Court 87 wherein the Supreme Court while referring to its earlier judgments passed in the case of Supdt. and Remembrancer of Legal Affairs W.B. v. Mohan Singh, AIR 1975 SC 1002 and U.J.S. Chopra Crl. Misc. Nos. 72692-94 of 2012 in vs. State of Bombay AIR 1955 SC 633 observed as under :-

> "..... This decision instead of supporting the respondent clearly lays down, following Chopra's case (AIR 1955 SC 633) (supra) that once a judgment has been pronounced by a High Court either in exercise of its appellate or its 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 S. 561A of the Code cannot be invoked for exercise of a power which is specifically prohibited by the Code."

Again, the Supreme Court had the occasion to consider these provisions in the case Naresh and others vs. State of U.P. AIR 1981 Supreme Court 1385 wherein it was observed as under :-

> "..... The High Court was wholly wrong in altering the judgment pronounced by them disposing of the Criminal Appeals. That was clearly in contravention of the provisions of Sec. 362 Code of Criminal Procedure. What was worse, the High Court acted in purported exercise of the power to correct Crl. Misc. Nos. 72692-94 of 2012 in clerical mistakes when in fact there was none. The conviction under Section 302 Indian Penal

> Code was perfectly correct and the conviction had been rightly affirmed by the High Court in the first instance. There was no occasion at all for the purported exercise of power to correct a clerical mistake and alter the conviction under Section 302 to one under S. 304 Indian Penal Code. We are greatly concerned that the High Court should have committed this grievous error. There is, however, nothing that we can do about it at this juncture as the State has not chosen to file any appeal against the order dated April 14, 1980."

Further, the Supreme Court in the case of Hari Singh Mann v. Harbhajan Singh Bajwa and others, AIR 2001 Supreme Court 43 (1), endorsed the aforesaid view with the following observations :-

> "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 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 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. Crl. Misc. Nos. 72692-94 of 2012 in 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 (AIR 1958 SC 376 :
>
> 1958 Cri LJ 701) (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 the instant case, the special leave to appeal petition and the review petition against judgment of conviction qua the accused were dismissed by the Supreme Court. The judgment of acquittal in respect of the accused Lohit Kaushal would not in any way affect the judgment passed against the applicant-appellant. The judgment of this Court was passed after hearing learned counsel for both the parties at length and after appreciation of evidence and material on record. The Supreme Court had also not interfered with the said judgment in so far as the present applicant- appellant is concerned. Even the inherent powers do not empower the High Crl. Misc. Nos. 72692-94 of 2012 in Court to interfere with the said judgment. In a recent judgment passed in the case State of Punjab v. Davinder Pal Singh Bhullar & Ors. AIR 2012

Supreme Court 364 it was observed as under :-

> "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 Cr.P.C. 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 & Ors., AIR 2001 SC 43; and Chhanni v. State of U.P., AIR 2006 SC 3051).
>
> Moreover, the prohibition contained in Section 362 Cr.P.C. is absolute; after the judgment is signed, even the High Court in exercise of its inherent power under Section 482 Cr.P.C. has no authority or jurisdiction to alter/review the same. (See: Moti Lal v. State of M.P., AIR 1994 SC 1544; Hari Crl. Misc. Nos. 72692-94 of 2012 in Singh Mann (supra); and State of Kerala v. M.M. Manikantan Nair, AIR 2001 SC 2145)."

The Supreme Court had some reservations qua the judgments which have been obtained by playing fraud or abuse of process of the court and the power of rehearing also was distinguished from recalling or review where the judgment passed by the court was a nullity and was contrary to the principles of audi alateram partem, but that situation is not applicable to the facts of the present case. Mere fact that one of the accused has been acquitted does not amount to change of circumstances and does not provide a new cause of action for enabling the court to make a different view than what was formed by the court and was not interfered with by the Supreme Court. As such, the judgment passed by the Supreme Court in the case of State of Punjab v. Davinder Pal Singh Bhullar & Ors. (supra) relied upon by the learned counsel for the applicant-appellant does not help his case. There is no change of circumstances as would warrant this Court to exercise its inherent powers under Section 482 of the Cr.P.C. It is not the case of the applicant-appellant that the judgment passed in appeal by this Court was without jurisdiction or obtained by fraud or abuse of process of law. Similarly, the judgment passed by a Full Bench of Allahabad High Court, in the case of Raj Narain and others vs. The State 1959 Cri. L. J. 543 does not help the the case of the petitioner as the said judgment mentioned that the High Court has power to revoke, review, recall or disown the earlier decision in a criminal revision and re-hear the same only if such a power can be included within its inherent powers. This judgment delineates the scope of inherent powers under Section 561-A of the Cr.P.C Crl. Misc. Nos. 72692-94 of 2012 in (Section 482 of the new Code) on the following three grounds :-

1. For the purpose of giving effect to any order passed under the Code of Criminal Procedure;

2. For the purpose of preventing abuse of the process of any Court;

3. for otherwise securing the ends of justice.

The present case does not fall in any of the aforesaid principles as laid down by the Full Bench of Allahabad High Court. Therefore, the ratio of the said judgment is not applicable to the facts of the present case.

As regards the judgment passed by a Single Judge of the Delhi High Court in the case of State (Delhi Administration), Delhi vs. Kumari Tukkanna and others 1984 Cri. L.J. 1866, is concerned, the same refers to the maintainability of a second revision before the High Court. The judgment passed in the case of Ramdeo Chauhan alias Rajnath Chauhan v. Bani Kant Das & Ors. AIR 2011 Supreme Court 615 also does not serve the cause of the applicant-appellant. The said judgment does not refer to the setting aside of the criminal judgment in a review petition. It has been observed by the Supreme Court in State of Punjab v. Davinder Pal Singh Bhullar & Ors. (supra) that the Supreme Court by virtue of Article 137 of the Constitution has been invested with an express power to review any judgment in criminal law while no such power has been conferred on the High Court.

Thus, we are constrained to hold that where the High Court has given express findings that the accused had committed the crime and confirmed the conviction and sentence as passed by the trial court, it Crl. Misc. Nos. 72692-94 of 2012 in subsequently cannot alter, override or change its decision while exercising its powers under Section 482 of the Cr.P.C. particularly when there is no specific provision governing review or recall of its own judgment and final order. The inherent jurisdiction of the High Court cannot be invoked to override the bar of review under Section 362 Cr.P.C. [Hari Singh Mann v. Harbhajan Singh Bajwa and others (supra)]. The mere fact that one of the accused, has been acquitted by the Supreme Court is on its own facts and evidence and it does not affect the judgment passed by this Court.

There is, therefore, no merit in the review application and the same is accordingly dismissed.

(S.S.Saron)
Judge

(A.N. Jindal)
Judge

January 25, 2013
deepak