C.R.P No. 5 to 9/2023 in CPLA 448-P/2017, 651-P, 655-P, 658-P & 666-P/2019

Additional Note

Muhammad Ali Mazhar-J. The judgment authored by one of us, which has been sought to be reviewed [Director Education Officer (Female) Charsadda and others v. Sonia Begum and others **(2023 SCMR 217)**] resonates that all the questions raised by the parties, both for and against, were properly discussed and answered *in extenso*. Since no plausible or reasonable ground, including any error apparent on the face of the record, was accentuated, therefore, all review petitions were dismissed with cost by means of the judgment authored by my learned brother, Justice Syed Mansoor Ali Shah. As the filing of review petitions has become an increasing trend, often resorted to as a matter of course rather than as a means to correct errors apparent on the face of the record as a legal necessity or propriety, I also feel it is my utmost responsibility to contribute an additional note on this crucial issue.

2. No doubt, this Court has been conferred the powers to review its judgment under Article 188 of the Constitution of the Islamic Republic of Pakistan ("Constitution"), but this is subject to the provisions of any Act of Parliament and of the rules made by this Court. In this background, Order XXVI of the Supreme Court Rules, 1980 ("Rules"), is also quite pertinent, wherein it is expounded that, subject to the law and practice, the Supreme Court may review its judgment or order on grounds similar to those mentioned in Order XLVII, Rule 1, of Code of Civil Procedure, 1908 ("CPC"), and in a criminal proceeding, on the ground of an error apparent on the face of the record. The precondition and yardstick for filing a review application is that the Advocate signing the application shall specify, in brief, the points upon which the prayer for review is based, and shall add a certificate in the form of a reasoned opinion that review would be justifiable in that particular case.

3. While recognizing the right to file a review petition within the framework and scope of review jurisdiction in the aforesaid rules, a penal clause is also embedded; that in case the Court concludes that the Review Application was vexatious or frivolous, the Advocate or the Advocate-On-Record drawing the application shall render himself liable to disciplinary action.

4. The survey of Order XLVII, Rule 1, CPC, divulges that an aggrieved person may file an application for review of the judgment or order on the ground of the discovery of new and important information or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason. So, for all intents and purposes, the review of judgment or order may be entreated only in instances of errors in the judgment or order floating on the surface of the record with a substantial impact on the final outcome of the *lis*. However, it does not connote or entail a right of rehearing of a decided case, especially where there has been a mindful and thoughtful decision on the point of law as well as fact. In my view, every judgment rendered by a court of law is presumed to be a solemn and conclusive determination of all points arising out of the *lis*. Irregularities, if any, which have no significant effect or impact on the outcome, would not be sufficient to warrant review. However, if the incongruity or ambiguity is of such a nature as to transmute the course of action from being one in aid of justice to a process of injustice, then, obviously, a review petition may be instituted for redressal, to demonstrate the error if it is found floating conspicuously on the surface of the record, but a mere desire for rehearing of the matter cannot constitute sufficient ground for the grant of review, which, by its very nature, cannot be equated with the right or remedy of appeal. The clemency afforded by review exists to nip in the bud an irreversible injustice, if any, done by a court, such as misconstruction of law, misreading of evidence, or non-consideration of pleas raised, which would amount to an error floating on the surface of the record. However, where the court has taken a conscious and deliberate decision on a point of fact or law, a review petition will not be competent. The review jurisdiction of the court is neither commensurate with a right of appeal nor an opportunity of rehearing, nor can a judgment or order be reviewed merely because a different view could have been taken.

5. At present, it has become a custom or routine practice to file review applications unwarily and injudiciously, based on certificates issued by advocates that merely imitate the grounds already urged and decided in the main petition or appeal, without specifying any genuine error in the judgment or order which merits its reversal. It is high time that this practice be denounced

and condemned, as it constitutes nothing but a waste and depletion of the precious time of the Court and places an unnecessary burden on its docket. Reiteration of the same arguments in a review application is not sufficient to prompt a different view. A review of a judgment or order is a substantial step and such a departure should only be resorted to when a patent mistake, inadvertence, or oversight appears on the record which cause a serious miscarriage of justice.

6. While adverting to the provision or construction of any law and/or the Constitution, some errors may be apparent on the face of the record which cause substantial injury which require some remedial measures to advance the cause of justice. This may include the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of, or could not be produced by, the party seeking review at the time when the decree was passed or order made; some mistake or error apparent on the face of the record; or any other sufficient reason. The ground of error apparent on the face of the record, is common to review in both civil and criminal proceedings. For such review to be entertained, the specific ground must not only be mentioned in the certificate of the advocate, but also be conspicuously spotted in the review petition, rather than relying on sweeping or irrational grounds having no nexus with the case. Undoubtedly, it is the duty of the Judges of the apex Court to correct their errors, because the principles of law enunciated in their judgments are binding on all other courts in the country under Article 189 of the Constitution. Orders based on an erroneous assumption of material facts, or those made without adverting to a provision of law, or reflecting a departure from the undisputed construction of law and the Constitution, may amount to an error apparent on the face of the record and can be rectified. Earlier also, in my judgment in the case of Commissioner Inland Revenue Z-III, Corporate Regional Tax Office, Tax House, Karachi versus M/s MSC Switzerland Geneva & others **(2023 SCMR 1011 = 2023 SCP 150)**, the review jurisdiction was discussed *in extenso*. With reference to the aforesaid judgment, the *rationes decidendi* deducible from a plethora of local and foreign dicta rendered time and again on the exercise of review jurisdiction are as under:

> "1. Mistakes or errors which are self-evident and found floating on the face of the record, or the production of new and important evidence which was not in the knowledge of the applicant after the

exercise of due diligence and which could not be produced at the time the order under review was made, which, if noticed earlier, would have material bearing on the final result of the case and, if not corrected, may perpetuate illegality and injustice

2. Orders based on an erroneous assumption of material facts, or without adverting to a provision of law, or a departure from undisputed construction of law and Constitution may amount to an error apparent on the face of the record. However, where there is a material irregularity but there is no substantial injury consequent thereon, the exercise of power to review to alter the judgment would not necessarily be required as the irregularity must be of such a nature as to convert the process from being one in the aid of justice to a process of gross injustice

3. Misconstruction of law, misreading of the evidence on record and non-consideration of pleas raised before a Court would amount to an error floating on the surface of record.

4. Where the Court has taken a conscious and deliberate decision on a point of fact or law, a review petition will not be competent.

5. Where two conclusions drawn simultaneously appear to be the outcome of banking upon a hyper technicality, with the consequence that both the views became destructive of each other, this by itself is a sufficient ground for review of the judgment

6. Where the judgment under review is found to have directed the doing of something which is in conflict with the Constitution or law, then it will be the duty of the Court to amend such error. However, it was observed on the scope of review that the incorrectness of a conclusion can never be a ground for review as it would amount to granting the Court a jurisdiction to hear appeals against its own judgments which is not permissible

7. If the conclusion is wrong because something manifest has been ignored by the Court or the Court has not considered an important aspect of the matter, a review petition would lie

8. A judgment cannot be reviewed merely because a different view could have been taken, rather a review petition would lie only when there is an alleged error in the judgment which is evident and can be established without elaborate arguments

9. The review petition would also be competent if some relevant evidence or question of fact or law has been overlooked which, had it been considered by the Court, might materially have affected the judgment of the Court.

10. Review jurisdiction does not allow the re-hearing of a decided case, more so when the Court has given a conscious and deliberate decision on the point of law as well as of fact while disposing of the

constitution petition before it. Moreover, the grounds not urged or raised at the time or hearing the constitution petition cannot be allowed to be raised in the review proceedings

11. If the error in the judgment/order is so manifest and is floating on the surface, which is so material that had the same been noticed prior to the rendering of the judgment the conclusion would have been different, in such a case a review petition would lie. The Constitution does not place any restriction on the power of the Supreme Court to review its earlier decisions or even to depart from them nor the doctrine *stare decisis* will come in its way so long as review is warranted in view of the significant impact on the fundamental rights of citizens or in the interest of public good and the Court is competent to review its judgment/order suo motu without any formal application.

12. Mere desire of re-hearing of the matter cannot constitute sufficient ground for the grant of review. It is well settled by now that where petitioner took up all material grounds taken by him during the course of hearing of appeal and dealt with and decided in judgment under review and thus sought rehearing of arguments addressed by him at time of hearing and disposal of appeal and wished a different decision from one already given without satisfying jurisdictional requirement necessary for maintaining review petition.

13. Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of, or could not be produced by the party seeking review at the time when the decree was passed or order made; some mistake or error apparent on the face of the record; or any other sufficient reason and error apparent on the face of the record, are common grounds for review in both civil and criminal proceedings.

14. The expression, "error apparent on the face of the record" cannot be defined with precision or exhaustiveness, and there would always remain an element of indefiniteness inherent in its very nature. It is to be determined in each case on the basis of its own peculiar facts, whenever Judges of these courts are pointed out, in review jurisdiction conferred by the Constitution or law, something in their judgment or order that is in conflict with the Constitution or any law of the land, it becomes their duty to unhesitatingly correct that error. Duty of the Judges of the apex Court of the country is more thoughtful and profound in this regard, as there is no other court which can correct their error, and the principles of law enunciated in their judgments are, under Article 189 of the Constitution, binding on all other courts in the country.

15. An application to review a judgment is not to be lightly entertained and the Court could exercise its review jurisdiction only

when grounds are made out as provided. A review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. A mere repetition, through different counsel, of old and overruled arguments, a second trip over ineffectually covered ground or minor mistakes of inconsequential import are obviously insufficient.

16. In a review petition, it is not open to the Court to reappreciate the evidence and reach a different conclusion, even if that is possible. Conclusion arrived at on appreciation of evidence cannot be assailed in a review petition unless it is shown that there is an error apparent on the face of the record or for some reason akin thereto. The power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court.

17. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error.

18. A review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. It is neither fairness to the Court which decided nor awareness of the precious public time lost what with a huge backlog of dockets waiting in the queue for disposal, for counsel to issue easy certificates for entertainment of review and fight over again the same battle which has been fought and lost. The Bench and the Bar, we are sure, are jointly concerned in the conservation of judicial time for maximum use.

19. The normal principle is that a judgment pronounced by the Court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so. The Court may also reopen its judgment if a manifest wrong has been done and it is necessary to pass an order to do full and effective justice.

20. Real distinction between a mere erroneous decision and a decision which could be characterized as vitiated by 'error apparent', and that a 'review' is by no means an 'appeal' in disguise. It has become almost an everyday experience that review applications are filed mechanically as a matter of routine and the grounds for review are a mere reproduction of the grounds of special leave. If parties file review petitions indiscriminately, the time of the court is unnecessarily wasted. Greater care, seriousness and restraint is needed in filing review applications".

7. In light of the foregoing discussion, it is manifest that the review petitions under consideration were devoid of any merit, failed to disclose any error apparent on the face of the record, and did not meet the exacting standards prescribed under the Constitution, the Rules of this Court, or the settled jurisprudence. They represented, at best, a misguided attempt at re-agitating decided issues under the garb of review. The Court, therefore, has rightly dismissed the review petitions with costs. It is imperative to underscore that the sanctity and finality of judicial determinations must not be compromised by the mere persistence of litigants or mechanical issuance of advocate certificates. The review jurisdiction is not a fallback for unsuccessful litigants to reopen a *lis*, but a narrowly confined judicial tool intended to correct palpable and consequential mistakes.

Judge

Islamabasd
Dated. 25.4.2025
Approved for reporting