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**IN THE HIGH COURT OF BOMBAY AT GOA**

**CRIMINAL REVIEW APPLICATION NO.1 OF 2022  
IN  
CRIMINAL APPLICATION (MAIN) NO.52 OF 2022(F)  
AND  
WRIT PETITION NOS.261 AND 354 OF 2021**

**JOSEPH B. BRAGANZA, REP. BY  
POA AND ANR. ...APPLICANTS**

***Versus***

**THE STATE OF GOA, THR.  
OFFICE OF THE AG AND 14 ORS. ... RESPONDENTS**

Applicant No.2 in person through V.C.  
Mr Pravin Faldessai, Additional Public Prosecutor for the State.  
Mr J.E. Coelho Pereira, Senior Advocate with Mr Sagar Rivankar,  
Advocate for Respondent Nos.5 and 6.

**CORAM: M. S. SONAK, J.**

**DATE : 2<sup>nd</sup> FEBRUARY 2024**

**P.C. :**

1. Heard Mrs Aldila Braganza, who appears on behalf of herself and also as duly constituted Power of Attorney for Mr Joseph Baptista Braganza (applicants). Mr Pravin Faldessai, learned Additional Public Prosecutor, appears for the State, and Mr J.E. Coelho Pereira appears with Mr Sagar Rivankar for respondent nos.5 and 6.

- 2.** By this Criminal Review Application, the applicants seek a review of the order dated 03.10.2022 made by the coordinate Bench comprising G.S. Kulkarni, J. in Criminal Misc. Application (Main) No.52 of 2022(F).
- 3.** The order dated 03.10.2022 is on Exhibit A-2 (page 46 of the paper book), as confirmed by Mrs Aldila Braganza. She also confirms that this is the order the applicants seek to review.
- 4.** The order dated 03.10.2022, of which review is applied reads as follows:

***"IN THE HIGH COURT OF BOMBAY AT GOA***

***CRIMINAL MISC. APPLICATION (MAIN) NO. 52 OF 2022  
AND  
WRIT PETITION NOS.261 AND 354 OF 2021***

<i>Joseph Braganza Rep. By POA and anr</i>	<i>... Applicant</i>
<i>Versus</i>	
<i>The State of Goa Thr. Chief Secretary &amp; 5 Ors.</i>	<i>... Respondents</i>

*Applicant no. 2 in person*

*Mr. J. E. Coelho Pereira, Senior Advocate with Mr. S. Karpe,  
Advocate for the Respondents in CRMAM 52/2022 and WP  
No. 261/2021 & Petitioners in WP No. 354/2021.*

*Mr. S. P. Munj, Additional Government Advocate for the  
Respondent nos. 9 to 11 in Writ Petition No. 261/2021.*

*Mr. G. Shetye, Advocate for the Respondent nos. 9 to 11 in  
WP No. 354/2021.*

*Ms. Cidalia Lobo, Advocate for the Respondent no. 7 in WP  
No. 261/2021.*

**CORAM: G. S. KULKARNI, J.**  
**DATED: 3 October 2022**

**P.C.:**

1. Mr. J. E. Coelho Pereira, learned Senior Counsel for the private respondents, states that respondent no.5, who is to file an affidavit, has been recently operated. It was not possible earlier for respondent no. 5 for such reason to file a reply affidavit. He submitted that as a matter of last chance, the proceedings be adjourned for three weeks to enable private respondents to file a reply affidavit.
2. Accordingly, at his request, stand over to 14 November, 2022. Let reply/affidavit be served on the petitioner who appears in person on or before the next date of hearing.

*Sd/-*  
**G. S. KULKARNI, J.”**

**5.** Mr Faldessai and Mr Pereira objected to the entertainment of the Review Petition by submitting that there is no power of review. They referred to the provisions of Section 362 of CrPC and relied on the following decisions: -

- (a) ***Abdul Basit alias Raju and Ors. V/s. Mohd. Abdul Kadir Chaudhary and Anr.***<sup>1</sup>,
- (b) ***State of Madhya Pradesh V/s. Man Singh***<sup>2</sup>,
- (c) ***State of Orissa V/s. Ram Chander Agarwala and Ors.***<sup>3</sup>,
- (d) ***Hari Singh Mann V/s. Harbhajan Singh Bajwa and Ors.***<sup>4</sup>

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<sup>1</sup> (2014) 10 SCC 754

<sup>2</sup> (2019) 10 SCC 161

<sup>3</sup> (1979) 2 SCC 305

<sup>4</sup> (2001) 1 SCC 169

**6.** Mrs Aldila Braganza submitted that this Review should be entertained because in terms of the law laid down by the Hon'ble Supreme Court in the case of *State of Punjab V/s. Jasbir Singh*<sup>5</sup>, there is no question of giving an opportunity of hearing to the would-be accused in proceedings under Section 340 of the CrPC before a complaint is made under Section 195 of the CrPC. She submitted that the order dated 03.10.2022 by which an opportunity was being granted to the would-be accused persons was, therefore, reviewable.

**7.** Mrs Aldila Braganza, on the issue of maintainability of the Review Petition, relied on *Jaswinder Singh (dead) through Legal Representative V/s. Navjot Singh Sidhu & Ors.*<sup>6</sup> and the decision of the Full Bench of the Allahabad High Court in the case of *Raj Narain and Others V/s. The State ...Opp. Party*<sup>7</sup>. She also relied upon a speech delivered by Hon'ble Mr Justice P. Sathasivam, Judge, Supreme Court of India, at the South Zone Regional Judicial Conference.

**8.** I have heard the rival contentions, and the first question to be decided is whether this Criminal Review Application No.1/2022 is at all maintainable.

**9.** Section 362 of CrPC provides that save as otherwise provided by the Code or by any other law for the time being in force, no court, when

<sup>5</sup> 2022 SCC OnLine SC 1240

<sup>6</sup> (2022) 7 SCC 628

<sup>7</sup> AIR 1959 All 315(FB)

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.

**10.** In the case of *Abdul Basit alias Rajua and Ors.* (supra), the Hon'ble Supreme Court has held at paragraph 21 that it is an accepted principle of law that when a court has finally disposed of a matter, 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 the absence of any express provision in the Code for the same. Section 362 of the Code operates as a bar to any alteration or review of the cases disposed of by the court. The singular exception to the said statutory bar is the correction of clerical or arithmetical errors by the court.

**11.** In *Man Singh* (supra), the Hon'ble Supreme Court, at paragraph 7, has held that it is well settled law that the High Court has no jurisdiction to review its order either under Section 362 or under Section 482 CrPC. The inherent power under Section 482 CrPC cannot be used by the High Court to reopen or alter an order disposing of a petition decided on merits. After disposing of a case on merits, the Court becomes functus officio. Section 362 CrPC 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. Recall of judgment would amount to alteration or review of judgment, which is not permissible under Section 362 CrPC. It cannot be validated by the High Court invoking its inherent powers.

**12.** In *Hari Singh Mann* (*supra*), the Hon'ble Supreme Court has held at para 9 that there is no provision in the Code of Criminal Procedure authorising the High Court to review its judgment passed either in the 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.

**13.** The Hon'ble Supreme Court in *State of Orissa V/s. Ram Chander Agarwala* (*supra*) held:

"20. Before concluding we will very briefly refer to cases of this Court cited by counsel on both sides. **Talab Haji Hussain V/s. Madhukar Purshottam Mondkar**<sup>8</sup> relates to the power of the High Court to cancel bail. The High Court took the view that under Section 561-A 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 **Lala Jairam Das V/s. King-Emperor**<sup>9</sup> 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 561-A. In **Sankatha Singh V/s. State of U.P.**<sup>10</sup> this Court held that Section 369 read with Section 424 of the Code of Criminal Procedure specifically prohibits the

<sup>8</sup> AIR 1958 SC 376

<sup>9</sup> AIR 1945 PC 94

<sup>10</sup> AIR 1962 SC 1208

altering or reviewing of its order by a court. The accused applied before a succeeding Sessions Judge for re-hearing 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 'Section 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 **Supdt. and Remembrancer of Legal Affairs, W.B. V/s. Mohan Singh<sup>11</sup>**, 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 **U.J.S. Chopra V/s. State of Bombay<sup>12</sup>** 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**

<sup>11</sup> (1975) 3 SCC 706

<sup>12</sup> 1955 SC 633

*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 561-A of the Code cannot be invoked for exercise of a power which is specifically prohibited by the Code."*

14. In *State of Kerala V/s. M.M. Manikantan Nair*<sup>13</sup>, the Hon'ble Supreme Court, has held that the High Court cannot review its own judgment except to correct the error. Further, by way of clarification, it cannot reverse its own judgment and order.
15. Admittedly, the Applicants do not seek mere correction of any clerical or arithmetical errors. The Applicants seek a substantive review.
16. The decision in the case of *Navjot Singh Sindhu* (supra) was in a matter concerning the exercise of review jurisdiction by the Hon'ble Supreme Court under Article 137 of the Constitution, which specifically confers such powers on the Hon'ble Supreme Court. Therefore, the said decision cannot be said to be an authority for the broad proposition that all Courts have review jurisdiction notwithstanding the provisions of Section 362 of CrPC.
17. The decision in *Raj Narain & Ors.* (supra) rendered by the Full Bench of the Allahabad High Court does suggest that limited powers of review can be exercised by invoking the provisions of Section 561-A of CrPC 1898 (now corresponding to Section 482 of CrPC, 1973).

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<sup>13</sup> (2001) 4 SCC 752

However, the Hon'ble Supreme Court, in the case of *Ram Chander Agarwala* (supra), after specific reference to the Full Bench decision in *Raj Narain* (supra), has held in paragraph 20 that the provisions of Section 561-A of the Code cannot be invoked in the exercise of power which is specifically prohibited by the Code. As a result, the Hon'ble Supreme Court accepted the contention on behalf of the State of Orissa and held that the High Court has no power to revive its own order.

**18.** The speech relied on by Mrs Braganza, when read in its entirety, does not speak of any proposition of law contrary to what is held by the Hon'ble Supreme Court.

**19.** Considering the precedents relied upon by the learned Additional Public Prosecutor and Mr Pereira, I will have to hold that this Criminal Review Application is not maintainable.

**20.** Since I am holding that this Criminal Review Application is not maintainable, I do not think it would be appropriate for me to go into the question as to whether and otherwise any case is made out for review of the order dated 03.10.2022, transcribed above.

**21.** Only on the grounds of maintainability this Criminal Review Application No.1/2022 is dismissed. There shall be no order for costs, even though Mr Pereira presses for costs.

**22.** For some reason, this Criminal Review Application was tagged with Writ Petition Nos.261 and 354 of 2021. Ms Aldila Braganza and

Mr Pereira submit that these two petitions and the Misc. Civil Applications therein will have to be de-tagged, particularly now that this Criminal Review Application No.1/2022 is disposed of. Accordingly, the two Writ Petitions and the Misc. Civil Applications therein are ordered to be de-tagged from the matter just disposed of and placed before the appropriate Bench for consideration.

**M. S. SONAK, J.**