Simrikhia

Vs

Dolley Mukherjee and Chhabi Mukherjee and Another

Criminal Appeal No. 128 of 1990

(A. M. Ahmadi, Smt. M. S. Fathima Beevi JJ)

02.03.1990

JUDGMENT

SMT. FATHIMA BEEVI, J. -

1. Special leave granted.

2. The legality of the order of the High Court dated August 19, 1989 passed on an application made under Section 482 CrPC is challenged in this appeal. In a case instituted on a private complaint by the appellant for offences under Sections 452 and 323 IPC, the Judicial Magistrate First Class, Patna, in exercise of power under Section 192(2) CrPC transferred the case for enquiry under Section 202 of the Code. The Court of the Second Class Magistrate, after examining witnesses, by order dated March 22, 1985 issued process to the two accused the respondents herein. The order of the Magistrate issuing process was challenged by the respondents under Section 482 before the High Court. The main ground urged before the High Court was that the First Class Magistrate had transferred the case without taking congnizance of the offence and the subsequent proceedings were, therefore, illegal. The High Court, by its order dated August 20, 1988, dismissed the petition. It was found that there was no such illegality. The respondents again made Crl. Misc. Petition No. 2314 of 1989 under Section 482 CrPC before the High Court alleging, inter alia, that the record of the proceedings on close scrutiny would indicate that the case had not been taken cognizance of before the transfer. The learned Single Judge accepted the case of the respondents and quashed the proceedings by the impugned order.

3. The learned counsel for the appellant contended before us that the second application under Section 482 CrPC was not entertainable, the exercise of power under Section 482, on a second application by the same party on the same ground virtually amounts to the review of the earlier order and is contrary to the spirit of Section 362 of the CrPC and the High Court was, therefore, clearly in error in having quashed the proceedings by adopting that course. We find considerable force in the contention of the learned counsel. The inherent power under Section 482 is intended to prevent the abuse of the process of the court and to secure ends of justice. Such power cannot be exercised to do something which is expressly barred under the Code. If any consideration of the facts by way of review is not permissible under the Code and is expressly barred, it is not for the court to exercise its inherent power to reconsider the matter and record a conflicting decision. If there had been change in the circumstances of the case, it would be in order for the High Court to exercise its inherent powers in the prevailing circumstances and pass appropriate orders to secure the ends of justice or to prevent the abuse of the process of the court. Where there is no such changed circumstances and the decision has to be arrived at on the facts that existed as on the date of the earlier order, the exercise of the power to reconsider the same materials to arrive at different

conclusion is in effect a review, which is expressly barred under Section 362.

4. In the present case, there had been a definite finding that the complaint was taken cognizance of by the Magistrate before he transferred the proceedings under Section 192(2) for enquiry under Section 202 CrPC. This finding has been arrived at after perusal of the record of the proceedings before the Magistrate and on a consideration of the report of the concerned Magistrate. A reappraisal of the facts on record to determine whether such cognizance had been taken of in a subsequent proceeding is not, therefore, warranted. The only ground on which relief was claimed is the alleged irregularity in the transfer of the proceedings. It was not open to the parties to reagitate the question by a fresh application nor was the court empowered under Section 482 to reconsider the matter.

5. Section 362 of the Code expressly provides 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 save as otherwise provided by the Code. Section 482 enables the High Court to make such order as may be 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. The inherent powers, however, as much are controlled by principle and precedent as are its express powers by statute. If a matter is covered by an express letter of law, the court cannot give a go-by to the statutory provisions and instead evolve a new provision in the garb of inherent jurisdiction.

6. In Superintendent & Remembrancer of Legal Affairs v. Mohan Singh ((1975) 3 SCC 706 : 1975 SCC (Cri) 156) this Court held that Section 561-A preserves the inherent power of the High Court to make such orders as it deems fit to prevent abuse of the process of the court or to secure the ends of justice and the High Court must therefore exercise its inherent powers having regard to the situation prevailing at the particular point of time when its inherent jurisdiction is sought to be invoked. In that case the facts and circumstances obtaining at the time of the subsequent application were clearly different from what they were at the time of the earlier application. The question as to the scope and ambit of the inherent power of the High Court vis-a-vis an earlier order made by it was, therefore, not concluded by this decision.

7. The inherent jurisdiction of the High Court cannot be invoked to override bar of review under Section 362. It is clearly stated in Sooraj Devi v. Pyare Lal ((1981) 1 SCC 500 : 1981 SCC (Cri) 188), that the inherent power of the court cannot be exercised for doing that which is specifically prohibited by the Code. The law is therefore clear that the inherent power cannot be exercised for doing that which cannot be done on account of the bar under other provisions of the Code. The court is not empowered to review its own decision under the purported exercise of inherent power. We find that the impugned order in this case is in effect one reviewing the earlier order on a reconsideration of the same materials. The High Court has grievously erred in doing so. Even on merits, we do not find any compelling reasons to quash the proceedings at that stage.

8. We allow the appeal and set aside the order of the High Court.

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