**ALLAHABAD HIGH COURT**

Raj Narain

Vs.

State (Allahabad)

Criminal Misc. Case No. 1668 of 1958

(O.H. Mootham, C.J., Raghubar Dayal and M.L. Chaturvedi, JJ.)

29.10.1958

**JUDGMENT**

**O.H. Mootham, C.J.**

1. The question which has been referred to this Bench is "whether this Court has power to revoke, review, recall or alter its own earlier decision in a Criminal Revision and rehear the same ? If so, in what circumstances ?"

2. It is common ground that there is no section of the Code of Criminal Procedure which specifically confers such power on this Court, but it is contended that the Court has an inherent power to review a judgment or order previously made by it on a criminal revision application if it considers it expedient to do so in order to secure the ends of justice, and that that power has been preserved by Section 561-A. There is authority which supports this view but, with great respect, I do not think that the argument is well founded.

3. Section 561-A was introduced into the Code by the Criminal Procedure Code (Amendment) Act, 1923, and it provides that

> "nothing in this Code 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."

4. At first sight this section commencing as it does with the words "notwithstanding anything in the Code" might be construed as empowering a High Court, irrespective of the provisions of the Code, to make such order which it considers necessary to secure one or more of the objectives specified in the section. This view however is erroneous. The section confers no new powers on the Court; it only provides that those which the Court already inherently possessed shall be

preserved and was inserted as said by the Privy Council in *Emperor v. K. Nazir Ahmad*[1], lest it should be considered that the only powers possessed by the Court are those expressly conferred by the Code or as pointed out by the Supreme Court in *Talab Haji Hussain v.*

[1]1945 All LJ 47 : (AIR 1945 PC 18)

*Madhukar Purshottam*[2], for the purpose of removing judicial doubts as to whether the High Courts prior to 1923 retained their inherent powers. The inherent powers of the Court are powers which can be exercised by the Court in addition to the specific powers conferred on it by the Code; but they do not authorize the Court to disregard what is provided by the Code either expressly or by necessary implication. There can be no conflict between the specific powers and the inherent powers of the Court, for the latter operate only in the field not covered by the former.

5. The scope and nature of the inherent powers of a High Court have recently been summarized by the Supreme Court in AIR 1958 Supreme Court 376, Gajemdragadkar, J., delivering the judgment of the Court in that case said, at p. 378 :

> "It is obvious that this inherent power can be exercised only for either of the three purposes specifically mentioned in the section. This inherent power naturally cannot be invoked in respect of any matter covered by the specific provisions of the Code. It cannot also be invoked if its exercise would be inconsistent with any of the specific provision of the Code. It is only if the matter in question is not covered by any specific provisions of the Code that Section 561-A can come into operation, subject further to the requirement that the exercise of such power must serve either of the throe purposes mentioned in the said section..... .. It is only where the High Court is satisfied either that an order passed under the Code would be rendered ineffective or that, the process of any Court would be abused or that the ends of justice would not be secured that the High Court can and must exercise its inherent power under Section 561-A."

6. The High Court could not therefore in 1945 grant bail in the case of a convicted person who desired to appeal to the Privy Council as the law with regard to bail was covered by Section 426 and Chap XX-XIX of the Code as then in force (sea *Jairam Das v. Emperor*[3], nor can it in exercise of its inherent power quash a commitment otherwise than on a point of law, *Khushi Ram v. Hashim, Supreme Court*[4]

7. The first question therefore is whether the inherent power which the applicant asserts that this Court possesses to review its own order or judgment dismissing an application in revision is in respect of any matter covered by a provision of the Code, or if its exercise would be inconsistent with any provision therein.

8. The sections which require consideration are Sections 369, 424 and 430. Section 369 provides that, subject to certain qualifications or exceptions, not new material, no Court "when it has signed its judgment, shall alter Or review the same, except to correct a clerical error." It has commonly been assumed even, it would appear, by the Privy Council in Jairam Das's case, 1945

All LJ 340 : (AIR 1945 PC 94), that this section applies also to the judgments of an appellate Court, but it is clear that that is not so : *U.J.S. Chopra v. State of Bombay*[5], The purpose of Section 369 is only to prescribe finality for the judgments of the trial Court so far as that court is concerned. Section 424 makes the rules

[2] AIR 1958 SC 376 [4] Criminal Appeal No. 154 of 1957 (SC).

[3]1945 All LJ 340 : (AIR 1945 PC 94) [5]1955-2 SCR 94 : AIR 1955 SC 633

contained in Chapter XXVI of the Code (which includes Section 369) applicable as far as may be practicable to the judgments of an appellate court, other than a High Court. The finality of orders on appeal is the subject of Section 430 which provides that all judgments and orders passed by an appellate Court on appeal be final, except in the cases provided for in Section 417 and Chapter XXXII; that is to say except in the case of an application by the State Government against an order of acquittal or in a case in which the Court exercises its powers of reference or revision. It follows therefore that Section 430 does not in terms give finality to the judgments of a High Court passed in the exercise of its revisional jurisdiction.

9. It cannot, therefore, be said that the inherent power which the Court is said to possess to review a judgment made in the exercise of its revisional jurisdiction, relates either to a matter covered by a specific provision of the Code or that its exercise would be inconsistent with any specific provision. That does not however conclude the matter. A judgment of a High Court passed on an appeal (as distinguished from a judgment passed on a reference or revision) is final and cannot in my opinion be reviewed by the Court in the exercise of its inherent powers, for the exercise of such powers would be inconsistent with the principle of finality embodied in Section 430. The principle of finality applies, however, as the Supreme Court has pointed out in Chopra's case, 1955-2 SCR 94 : AIR 1955 Supreme Court 633, no less to a judgment or order made by a court in the exercise of its revisional powers. Das, J. says at p. 119 (of SCR) : (at p. 643 of AIR) :

> "It is also true that although the revisional power is not expressly or in terms controlled either by Section 369 or Section 430, the general principle of finality of judgments attaches to the decision or order of the High Court passed in exercise of its revisional powers."

and Bhagwati and Imam, JJ. say at p. 130 (of SCR) : (at p 648 of AIR)

> "Section 430 does not in terms give finality to the judgment of the High Court passed in exercise of its revisional jurisdiction, but the same principle would apply whether the High Court is exercising its appellate jurisdiction or its revisional jurisdiction."

It accordingly appears to me impossible to urge that the High Court has an inherent power to review a judgment or order passed by it in the exercise of its revisional jurisdiction, although it has no such power to review a judgment passed by it in its purely appellate jurisdiction. Both cases stand on the same footing; in both the bar to the exercise of a power to review is the principle of finality. High authority for this view is to be found in the majority judgment in

Chopra's case. 1955-2 SCR 94 : AIR 1955 Supreme Court 633, at p. 130 (of SCR) : (at p. 648 of AIR), it is observed :

> "This principle of finality of criminal judgments therefore would equally apply when the High Court is exercising its revisional jurisdiction. Once such 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 exorcise revisional jurisdiction over the same."

and at page 136 (of SCR) : (at p. 650 of AIR) :

> "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 ..... ..."

10. It is true that in Chopra's case, 1955-2 SCR 94 : AIR 1955 Supreme Court 633, the question before the Court was whether an appellant whose appeal had been summarily dismissed by the High Court was entitled to show cause against his conviction under Section 439 (6) of the Code in the event of the State Government filing an application for enhancement of sentence, and that Section 561-A was not considered, but I apprehend that the dicta of their Lordships are nonetheless binding on the Court.

11. The view that a High Court has no inherent power to review its decision in a criminal case was, I think, accepted by all the High Courts prior to 1923 : (see *Queen Empress v. Durga Charan*[6], *Govind Sahai v. Emperor*[7], *Queen Empress v. C.P. Fox*[8] In the matter of the Petition of F. W. Gibbons, ILR 14 Calcutta 42 (FB); *Rajjab Ali v. Emperor*[9], *Kunhammad Haji v. Emperor*[10], and this Court has taken the same view in a number of cases alter the Amending Act came into force in that year (see *Kale v. Emperor*[11], *Kunji Lal v. Emperor*[12], *Banwari Lal v. Emperor*[13], *Debi Bux Singh v. Rex*[14], *Mehendra Pal Singh v. State of U.P*[15]. In *Raju v. Emperor*[16], the Lahore High Court was of opinion that it never had an inherent power to alter or review its judgment in a criminal case except (it would seem) in cases where the judgment was passed without jurisdiction or in default of appearance without an adjudication on the merits. In In re. Somu Naidu, ILR 47 Madras 428 : AIR 1924 Madras 640, it was held by the Madras High Court that the judgment of a High Court in a criminal matter is final as soon as it is signed and thereafter the Court is functus officio and has no power to revise or alter its decision. More recently the Andhra Pradesh High Court in *Venkatarayudu v. The State*[17], and the Orissa High Court in *Namdeo Sindhi v. The State*[18], have held that the principle of finality constitutes a bar to the purported exercise by a High Court of its inherent power to review its judgment passed, in the first case, in an appeal, and, in the second, in a revision application.

12. This Court has however in four reported cases exercised its inherent powers under Section 561-A. In *Sri Ram v. Emperor*[19], the appellant Moti Lal had been convicted by a magistrate for a breach of the Hoarding and Profiteering Prevention Ordinance, 1943, and sentenced to eighteen months' rigorous imprisonment and to pay a fine. An application in revision to this Court by Moti Lal
was dismissed. The magistrate had tried the accused in the ordinary way, but after the application in

[6] ILR 7 All 672 [8] ILR 10 Bom 176 [10] ILR 46 Mad 382 : ( AIR 1923 Mad426)
[7] ILR 38 All 134 : ( AIR 1916 All183), [9] ILR 46 Cal 60 : (AIR 1919 Call 409) [11] AIR 1923 All 473
[12] AIR 1935 All 60 [14] AIR 1950 All 299 [16] AIR 1928 Lah 462
[13] AIR 1935 All466 [15]1958 All LJ 518 : ( AIR 1959 All 313) [17] AIR 1957 And Pra 943
[18] AIR 1958 Ori 20 [19] AIR 1948 All 106

revision had been dismissed it was discovered that as a consequence of an amendment of the ordinance the Magistrate had power only to try an offence under the Ordinance in a summary way unless the District Magistrate otherwise directed; and that no such direction, had been given in the case of Moti Lal. The trying magistrate had therefore no power to impose a sentence of imprisonment for a term exceeding three months. On an application made to it under Section 561-A this Court held that as a mandatory provision of law had been overlooked it had power to correct what it described as an obvious error. The Court said at p. 107 :

> "Section 369 begins with the words "save as otherwise provided by this Code," and we consider that Section 561-A, where this Court is satisfied that it is necessary, to secure the ends of justice, that it should interfere under its inherent powers, it ought to do so. We do not want to encourage successive revisions. Where a revision has been decided, we are not of the opinion that a second revision would lie or that a party has a right to have the matter reheard or reargued, but where, as in this case, a mandatory provision of law has been overlooked, we think this Court has power to correct an obvious error."

13. In *Chandrika v. Rex*[20], an application was made for the rehearing of an appeal which had been dismissed by this Court. The Court had directed that the appeal be heard on 5-7-1948, but by a mistake of the office it was placed in the list for hearing on the preceding 25th June, and learned counsel, being unaware of this fact, did not appear and the appellant was not heard. The Court accepted the proposition that it had no power to review its judgment passed on appeal, but it took the view that the application before it was neither an application for the review of the Court's earlier judgment nor that that judgment be altered, but was an application that the proceedings before the Court on 25-6-1948, be set aside and the appeal reheard; and such an order, it was of opinion, the Court had power to make under Section 561-A.

14. In *Muhammad Wasi v. The State*[21], the two accused had been convicted of house trespass and theft and in view of their previous convictions each was sentenced to seven years' rigorous imprisonment. Jail appeals were filed by the two accused which came before Agarwala, J., who dismissed the appeal of the second accused but admitted that of Mohammad Wasi. The appeal of Mohammad Wasi was later heard by another learned Judge who found that there was no evidence which would justify the application of the provisions of Section 75 of the Indian Penal Code. In the result he dismissed the appeal but reduced the sentence to one of four years' rigorous imprisonment and recommended that the record of the case of the second accused be placed again before Agarwala, J., for further consideration. Upon this being done, Agarwala, J., came to the conclusion that he had power under Section 561-A to modify his previous order dismissing the appeal and he reduced the sentence of

[20] AIR 1949 All 176

[21] AIR 1951 All 441

Shubrati to four years' rigorous imprisonment. The learned Judge in the course of his judgment said : Where a Court discovers that an order has been passed which upon the face of it is erroneous or unjust and the defect is of such a glaring nature that it could be said that having regard to the materials on the record the Court had no jurisdiction to pass it or that it failed to exercise a jurisdiction vested in it by law, the Court may, and indeed is bound to, review its own order and modify or set it aside in order to "secure the ends of justice."

15. In *Ram Dass v. The State*[22], the applicant had been sentenced to a term of imprisonment and to pay a fine. He filed an application in revision in this Court, but at the time of doing so he had not surrendered and he was said to be suffering from tuberculosis and was bedridden. The Court directed a medical certificate to be filed. When the application came on for hearing on a subsequent date the applicant was not represented. It was not however brought to the notice of the Court that the applicant's counsel was ill or that the requisite medical certificate with regard to the applicant's own illness had been filed pursuant to the Court's earlier order, and this Court dismissed the application. Thereafter an application was filed under Section 561A which came before Bind Bansi Prasad, J. That learned Judge was of opinion on the authority of AIR 1948 Allahabad 106 that where the High Court is satisfied that in order to secure the ends of justice it is necessary that it should interfere under its inherent powers it ought to do so; and that where an order has been passed by the Court under a misapprehension as to the facts the provisions of Section 561A can be applied and the order revised.

16. In all these cases there is, I think, an assumption, express or implied, that the provisions of the Code are subject to Section 561A. That assumption, for reasons which I have endeavored to state, I think to be unfounded. In my opinion this Court, as soon as its judgment in a criminal revision case has been signed and sealed, becomes functus officio and has no power to revoke, review, recall or alter the order it has already made. I assume of course that that order was made in the exercise of its jurisdiction : 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.

17. I would answer the question referred to us accordingly.

**R. Dayal, J.**

18. The question which has been referred to this Bench is :

> "Whether this Court has power to revoke, review, recall or alter its own earlier decision in a criminal revision and rehear the same ? If so, in what circumstances ?"

19. There is no specific provision in the Criminal Procedure Code (hereinafter referred to as the Code) which empowers this Court to review or bars it from reviewing its judgments or orders passed in criminal appeals and revisions, Section

[22] AIR 1952 Alla 926

369 applies to judgments delivered by this Court in the exercise of its original jurisdiction. This section is :

> "Save as otherwise provided by this Code or by any other law for the time being in force or, in the case of a High Court, by the Letters Patent or other instrument constituting such High Court, no Court, when it has signed its judgment, shall alter or review the same, except to correct a clerical error."

This section is in Chapter XXVI of the Code which consists of Sections 366 to 369. Section 366 deals with the pronouncement of judgment in every trial in any criminal court of original jurisdiction. Section 367 deals with the language of such judgment. Section 868 deals with a particular type of sentence - a sentence to death. Lastly, Section 369 provides in general that a Court, after it has signed its judgment, shall not alter or review the same except to correct a clerical error. A judgment can be altered or reviewed by a Court in certain circumstances mentioned in this section. The section must, however, in the context in which it is placed, refer to the alteration or the reviewing of a judgment which is delivered by a criminal court of original jurisdiction in any trial and cannot refer to a judgment delivered by a Court in its appellate or revisional jurisdiction. This matter is made clear by the provisions of Section 424 of the Code which is :

> "The rules contained in Chapter XXVI as to the judgment of a Criminal Court of original jurisdiction shall apply, so far as may be practicable, to the judgment of any Appellate Court other than a High Court;
> Provided that, unless the Appellate Court otherwise directs, the accused shall not be brought up, or required to attend, to hear judgment delivered."

This section makes it clear, if any clarification was needed, that the rules contained in Chapter XXVI of the Code relate to the judgment of a criminal Court of original jurisdiction. It also makes it clear that those rules will apply to the judgment of an appellate court other than a High Court. There is nothing in Chapter XXXII of the Code dealing with reference and revision which makes the provisions of Section 369 of the Code applicable to the orders passed by the courts of revision. Reference may be made to the observations of Das, J., (as he then was) in the case of 1955-2 SCR 94 at p. 107 : ( AIR 1955 Supreme Court 633 at p. 639) :

> "In view of the scheme summarized above there can be no manner of doubt that the provisions of the Sections collected in Chapter XXVI are concerned with judgments pronounced by the trial Court. This conclusion is certainly reinforced by the language of some of these sections."

20. In 72 Ind App 120 : (AIR 1945 PC 94), it is said at page 132 (of Ind App) : (at p. 93 of AIR) :

> "Moreover, in the same event it would result in an alteration by the High Court of its judgment which is prohibited by Section 369 of the Code."

The case before their Lordships was one in which the High Court had refused to grant bail to a person whose appeal had been dismissed by it and who had filed an appeal before the Privy Council by special leave. I do not, in the circumstances, take this observation to be a declaration of the law to the effect that Section 369 applied to the judgments of this Court in appeal.

21. The High Court can have a power to revoke, review, recall or alter its own earlier decision in a criminal revision and rehear the same only if such a power can be included within its inherent powers which are saved to it in spite of the various provisions of the Code by Section 561-A which is :

> "Nothing in this 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."

If such a power is so included it can be exercised for the purposes mentioned in that section. It would be a matter for determination by the court in each individual case whether the circumstances of the case make out that purpose and make it incumbent on the court to exercise that power to achieve it. This section does not confer any inherent power on the High Court. It only saves such inherent power which the High Court possessed from before. An inherent power implies by its very nature a power which cannot be expressed in terms but which must reside in a court for achieving the higher and the main purpose of a court, namely the purpose of doing

justice in a cause before it and for seeing that the act of the court does no injury to any of the suitors. In *Rodger v. Comptoir D'Escompte De Paris*[23], Lord Cairns said :

> "Now, their Lordships are of opinion, that one of the first and highest duties of all Courts is to take care that the act of the Court does no injury to any of the suitors, and when the expression 'the act of the Court' is used, it does not mean merely the act of the Primary Court, or of any intermediate Court of appeal, but the act of the Court as a whole, from the lowest Court which entertains jurisdiction over the matter up to the highest Court which finally disposes of the case. It is the duty of the aggregate of those Tribunals, if I may use the expression, to take care that no act of the Court in the course of the whole of the proceedings does an injury to the suitors in the Court."

Circumstances requiring the use of such a power cannot be foreseen. The Legislature enacts provisions to meet such circumstances which can be foreseen, and once provision has been made in the statute about a certain circumstance the occasion to invoke inherent power in that circumstance practically vanishes. An occasion to invoke the inherent power will not then arise for the simple reason that when the Code has provided for that contingency, that provided method must be considered to be the just method to meet that contingency and any other method thought of by the court cannot then be said to be a method which would advance the interest of justice. It is in this sense that no occasion for the exercise of any inherent power arises when the statute expressly or by necessary implication provides for what is to be done in

[23](1871) 3 PC 465 at p. 475

that situation.

22. In *Rajunder Narain Rae v. Bijai Govind Singh*[24], the Judicial Committee of the Privy Council entertained and allowed a petition to have its order for dismissing the appeal and affirming the judgment of the court below recalled and for leave also to prosecute the original petition of appeal. This was in a civil matter; but the observations of their Lordships have a significant bearing on the question of the inherent powers of the High Court - practically the last court of appeal in criminal matters. Lord Brougham said at page 126 :

> "It is unquestionably the strict rule, and ought to be distinctly understood as such, that no cause in this Court can be reheard, and that an order once made, that is, a report submitted to His Majesty and adopted, by being made an Order in Council, is final, and cannot be altered. The same is the case of the judgments of the House of Lords, that is, of the Court of Parliament, or of the King in Parliament as it is sometimes expressed, the only supreme tribunal in this country. Whatever, therefore, has been really determined in these Courts must stand, there being no power of rehearing for the purpose of changing the judgment pronounced; nevertheless, if by misprision in embodying the judgments, errors have been introduced, these Courts possess, by common law, the same power which the Courts of Record and Statute have of rectifying the mistakes which have crept in."

His Lordship said later at page 126 :

> "The House of Lords exercises a similar power of rectifying mistakes made in drawing up its own judgments, and this Court must possess the same authority. The Lords have, however, gone a step further, and have corrected mistakes introduced through inadvertence in the details of judgment; or have supplied manifest defects in order to enable the decrees to be enforced, or have added explanatory matter, or have reconciled inconsistencies. But with the exception of one case in 1669, of doubtful authority, here, and another in Parliament of still less weight in 1642 (which was an appeal from the Privy Council to Parliament, and at a time when the Government was in an unsettled state), no instance, it is believed, can be produced of a rehearing upon the whole cause, and an entire alteration of the judgment once pronounced."

His Lordship further said at page 130 :

> "Their Lordships (of the House of Lords) have carried their discretionary power of alteration no further than to rectify errors of a subordinate kind, and, in very peculiar circumstances, to indulge parties by keeping partial questions open, which the decree had concluded, without their having been any distinct intention of that kind on the part of the House."

His Lordship also said at page 134 :

[24](1836) 1 Moo PC 117

> "It is impossible to doubt that the indulgence extended in such cases, is mainly owing to the natural desire prevailing to prevent irremediable injustice being done by a Court of the last resort, where by some accident, without any blame, the party has not been heard, and an order has been inadvertently made as if the party had been heard".

The reported judgment prints at page 127 an abstract of the case alluded to by Lord Brougham in delivering his judgment extracted from the records in the Council office. The abstract refers at page 128 to a criminal case thus :

> "There is another case, in the books of the Council Office, which has been referred to as an instance of the Council permitting a rehearing; but that was before the order made on the first hearing had been confirmed by the King, and was also, in a criminal matter from Minorca, being a petition for the remission of the sentence passed upon conviction of perjury. The Council having, upon the first hearing, remitted the whole sentence, afterwards reheard the case at the instance of the Governor, when a partial remission was substituted. Re. Martin Fonaris, 29th July 1719".

23. It is clear from this case that there remains a certain power, referred to as the discretionary power, in the last court of appeal at least for rehearing of a decided matter in the extraordinary circumstances justifying it and that such a power must naturally be used very sparingly.

24. In this connection reference may also be made to the case of Owners of the Vessel "Singapore" and owners of the Vessel "Hebe", (1866) 1 PC 378. In that case a petition was presented for a rehearing of an appeal before the report of the Judicial Committee had been confirmed by Her Majesty in Council on the ground that evidence had been received at the hearing of the appeal which was not called for or produced in the court below and which contradicted the case made by the pleadings on both sides. Sir William Erie delivering the judgment of the Judicial Committee said at page 388 :

> "We do not affirm that there is no competency in this Court to grant a rehearing in any case."

He further said later :

> "This, however, is a Supreme Court of final appeal, and it is inconsistent with the purposes for which such a Tribunal was instituted, that in any case, at the option of the parties who are dissatisfied with the conclusion which the Court has arrived at they should be at liberty to apply for a reconsideration of the judgment upon the point decided thereby. Although it is within the competency of the Court to grant a rehearing, according to the authorities cited above, still it must be a very strong case indeed, and coming within the class of cases there collected, that would induce this Court so to interfere."

25. In 71 Ind App 203 : (AIR 1945 PC 18), their Lordships of the Judicial Committee said at page 213 (of Ind App) : (at p. 22 of AIR) :

> "It has sometimes been thought that Section 561A 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 power; it only provided that those which the court already inherently possesses shall be preserved and is inserted, as their Lordships think, lest it should foe 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 that Act."

26. In 72 Ind App 120 : (AIR 1945 PC 94), their Lordships of the Judicial Committee said all page 151 (of Ind App) : (at p. 97 of AIR) :

> "If such a power exists in a High Court it can only be as a power inherent in a High Court, because it is a power which is necessary to secure the ends of justice"

and again at page 132 (of Ind App) : (at p. 98 of AIR) :

> "Section 561A of the Code confers no powers. It merely safeguards all existing inherent powers possessed by a High Court, necessary (among other purposes) to secure the ends of justice."

This means that all powers which be necessary to secure the ends of justice existed in the High Court land their existence is recognized by Section 561A of the Code. As mentioned earlier, there can be no list of such powers, and the existence or non-existence of such a power to do a certain thing cannot be dependent on the Court having exercised such a power at an earlier date or not.

27. In AIR 1958 Supreme Court 376, it was held that the High Court has inherent power under Section 561-A to cancel the bail granted to a person accused of a bailable offence. It was observed at page 378 :

> "It is only if the matter in question is not covered by any specific provisions of the Code that Section 561-A can come into operation, subject further to the requirement that the exercise of such power must serve either of the three purposes mentioned in the said section. ..... .... .... .... .... ....."

In prescribing rules of procedure legislature undoubtedly attempts to provide for all cases that are likely to arise; but it is not possible that any legislative enactment dealing with procedure, however, carefully it may be drafted, would succeed in providing for all cases that may possibly arise in future. Lacunae are sometimes discovered in procedural law and it is to cover such, lacunae and to deal with cases where such lacunae are discovered that procedural law invariably recognises the existence of inherent power in Courts. ..... It would he noticed that it is only the High Courts whose inherent power is recognized by Section 561; find even in regard to the High Courts' inherent power definite salutary safeguards have been laid down as to its exercise. It is only where the High Court is satisfied either that an order passed under the Code would be rendered ineffective or that the process of any Court would be abused or that the ends of justice would not be secured that the High Court can and must exercise its inherent power under Section 561-A. There can thus be no dispute about the scope and nature of the inherent power of the High Courts and the extent of its exercise." Nothing can be a more clear enunciation of the scope and nature of the inherent power of the High Court. Whenever the High Court is satisfied that for these aforesaid purposes it should exercise its inherent power it is its duty to exercise it and secure completion of those purposes. I do not therefore consider this case in any way to support the contention that the High Court cannot review its previous order in the exercise of its inherent power.

28. In view of the aforesaid, I am inclined to hold that in the exercise of its inherent powers this

Court can review its judgments and orders if it is necessary to exercise them to achieve either of the purposes mentioned in Section 561-A, that is, 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. There is no direct declaration to the contrary in any pronouncement of the Privy Council or the Supreme Court. This High Court has expressed different views on the point and the other High Courts have generally held against the existence of such a power but have reviewed cases in certain circumstances. I shall therefore now consider the case law on the point.

29. Prior to the introduction of Section 561A of the Code of Criminal Procedure in 1923 there was no corresponding provision in any of the Criminal Procedure Codes which were in force at the time. The entire case law on the question of the power of the High Court to review its judgments or orders was really based on a very early case - *Queen v. Godai Raout*[25]*,*
In that case a criminal appeal by a person convicted on jury trial was dismissed by the High Court. Thereafter an application for the review of that judgment on the ground that it was wrong in law was filed. It was held that the High Court could not entertain an application to review a judgment passed by it on appeal in a criminal case. The ratio decidendi of this case was that Section 38 of the Charter of the High Court ordained :

> "that the proceedings in all criminal cases which shall be brought before the said High Court of Judicature in Bengal, in the exercise of its ordinary criminal jurisdiction, and also in all other criminal cases over which the said Supreme Court now has jurisdiction, shall be regulated by the procedure and practice now in use in the said Supreme Court, and that the proceedings in all other criminal cases shall be regulated by the Code of Criminal Procedure prescribed by an Act passed by the Governor-General-in-Council, and being Act XXV of 1861, or by such further or other enactments of the Governor-General in relation to Criminal Procedure as are now in force."

and that the Criminal Procedure Code then in force, i.e., Act XXV of 1861, contained no provision for the review of a judgment.

30. It was also considered relevant that though the Code of Civil Procedure contained a section expressly authorising a review of judgment the Code of Criminal Procedure

[25]5 Suth WR Cr 61

passed subsequently had contained no corresponding section. This fact led to the inference that the Legislature did not intend to confer in criminal cases a power similar to that which they bad given in civil cases.
31. It was further observed at page 64 :

> "There would be no end to cases of this kind, if, after the Court has duly recorded its judgment, the matter is to be reopened on the ground that the Court has come to an erroneous conclusion."

32. The following observation at page 64 makes clear what this decision really covered :

> "We do not mean to say that if before a judgment has been recorded the attention o? the Court be called to any matter showing that there is an error or mistake in the judgment pronounced the Court has not the power of correcting such error or mistake. Nor do we mean that the Court has no power to correct clerical errors in its judgments after they are recorded. But we are speaking of cases where the judgment has been recorded, and the Court is called upon to grant a review of its judgment for the purpose of showing that it ought to have come to a different conclusion either upon the facts or upon the law."

33. The following observations on page 63 show that there had been cases in which judgments had been reviewed :

> "There were certainly one or two cases cited in which the Nizamut Adawlut did grant a review, not simply under the Regulation of 1810, but generally upon the merits of the case. The cases, now ever, were not too numerous as to show that there was a uniform uninterrupted practice of granting reviews upon the general merits of the case. There are only three or four cases to which our attention has been called."

34. It was also observed at page 65 :

> "We understand that, since the High Court has been in existence, there has been one case of a review by a Division Bench. But that case was never argued, and one of the Judges who granted the review (Mr. Justice Kemp), when he declared that he did not wish to prevent the case from being re-heard, expressly stated that he had doubts as to the power of granting a review. That, therefore, is no precedent; but even if it were, it does not preclude the Court from considering the question in Full Bench."

This case was later followed in the case of ILR 7 Allahabad 672, ILR 10 Bombay 176 and ILR 14 Calcutta 42 (FB) all of which were cases where the High Court had decided criminal revisions or references on merits.

35. In none of these cases the Courts considered whether the High Court had an inherent power to pass any orders of review in the interest of justice. In these cases the orders of the High Court sought to be reviewed had been passed on merits and they were sought to be reviewed on the ground that the conclusion arrived at by the Court earlier was wrong. Such a rehearing of the appeal or revision is hardly a matter for the exercise of inherent jurisdiction of the Court in the interest of justice. It is well-high impossible to satisfy an unsuccessful party that the order of the Court is a correct one. The interest of justice therefore required that such applications for review be not entertained.

36. In the Allahabad case - ILR 7 Allahabad 672 - it was submitted that Section 369 of the Code of Criminal Procedure gave the High Court power to review its judgments. The contention was repelled, Brodhurst, J. observing :

> "And, in my opinion, the provisions of Section 369 of the Criminal Procedure Code, so far as they affect a High Court, apply merely to questions of law arising in its original criminal jurisdiction, and which are reserved and are subsequently disposed of under the provisions of Section 434 of the Criminal Procedure Code and the corresponding sections of Letters Patent, which, for the North-Western Provinces, are Sections 18 and 19."

This did not mean that the High Court did not possess the power to review its judgment on appeal or revision on account of the provisions of Section 369 of the Criminal Procedure Code.

37. In subsequent cases the correctness of the view expressed in 5 Suth WR Cr. 61 was not challenged, but the High Courts reviewed their orders in several circumstances basing their orders on certain considerations which though justified do not appear to me to be in accordance with the express provisions of the Code of Criminal Procedure in force at the time. Those orders can be justified by the consideration that the interest of justice required that the earlier orders be reviewed. However, the cases do not purport to have been decided in the exercise of the inherent powers of the Court to which no specific reference was made in the Criminal Procedure Codes.
38. In the Appellate Side Proceedings, 7th November 1873 7 Mad HCR XXIX it was held :

> "When a criminal appeal has been rejected without hearing the appellant's pleader, and it is afterwards proved to the satisfaction of the Appellate Court that an adequate excuse has been made for the pleader's non-appearance, it is open to the Appellate Court to rehear the appeal on its merits."

In this case the appeal was rejected by the Acting District Magistrate. The order was passed because Section 278 of the Code of Criminal Procedure of 1872 required the appellate court to give a reasonable time1 for the appearance of the appellant or his counsel or authorized agent, and if one of them appeared, to hear him before rejecting the appeal. Such an order can be justified only on the ground of the Court's exercising its inherent power when the interest of justice demanded it and it became necessary in this case because the Court ignored the mandatory provisions of Section 278 of the Criminal Procedure Code. It is to be noticed that the appeal was to be reheard by the Acting District Magistrate and not the High Court.

39. This case was approved in *Ranga Row v. Emperor*[26], wherein it was said :

> "We have no doubt that this is correct, for the language of Section 421 requires a reasonable opportunity to be given and if such reasonable opportunity is not given the

Court has no jurisdiction to dismiss the appeal. "

40. I do not think, with respect, that any question of jurisdiction arose in the circumstances. The Court had jurisdiction to dismiss the appeal. The contention that the Court had an inherent power, to rehear a petition once dismissed was raised in this case and was repelled by the observation :

> "We asked Mr. Srinivasa Aiyangar to produce any authority to show that such a power to review or alter its judgment has ever been exercised by the High Court in England and he has been unable to do so. The proposition is accepted both in Halsbury's Laws of England and in Archbold's Criminal Practice that where a judgment is once complete the High Court has no power to alter it."

I am not aware of any provision of the Criminal Procedure Code which allows a criminal appeal rejected summarily without hearing counsel to be restored.

41. In *Queen Empress v. Lalit Tiwari*[27], a revision decided on merits was reheard on the ground that the judgment pronounced and signed by the High Court had not been scaled. This case was followed by the Calcutta High Court in *Amodini Dasee v. Darson Ghose*[28] and by the Patna High Court in *Mohan Singh v. Emperor*[29], No provision of the Criminal Procedure Code required the judgment to be sealed. It was required to be sealed under the rules of the Court. In *Pragraadho Singh v. Emperor*[30], it was held that a judgment pronounced by a Judge of the High Court is a good judgment and does not require for its validity that it fee signed by the Judge or should bear the seal of the Court.

42. In *Bibhuty Mohun Roy v. Dasi Moni Dasi*[31], the rehearing of a revision dismissed for default was not considered justified on the ground that the original order had not been sealed. But the reheating was considered justified on the following ground, in spite of the Court's acknowledging the correctness of the view expressed in the cases of ILR 14 Calcutta 42 (FB) and ILR 10 Bombay 176 :

> "We are however unable to find in this country any authority for the proposition that there is no jurisdiction to hear and determine a criminal case which has not been heard and determined on the merits. The two cases to which we have referred were heard and determined and the Court had given a judgment in each. On this ground these cases are distinguishable from the present case which has not been heard and determined and in which no judgment has been given. The English cases dealing with the practice as

[26] 23 Mad LJ 371 [28] ILR 38 Cal 828 [30] ILR 55 All 132 : ( AIR 1933 All 40)
[27] ILR 21 All 177 [29] AIR 1944 Pat 209 [31] 10 Cal LJ 80

> regards Rules and Motions are to the effect that the Court will not reopen a Rule when it has been disposed of after hearing. See *Phillips v. Weyman*[32], but notwithstanding that rule there is one case at least in which a rule discharged under a misapprehension of fact was allowed to be reopened on a fresh motion; see *Cooper v. Fogger*[33],

These and the two cases to which we have last referred lead us to the view that the proposition that there is no inherent power of the Court to reopen a Rule, which has not been disposed of on a consideration of the grounds of the Rule, cannot be sustained, and we have been able to find no case decided cither in this country or in England which lays down the proposition that the Court is precluded from hearing, determining and giving a judgment in a case merely because it has made an order disposing of it in default of appearance."

43. The Court, I may say with respect, must have based its view on the existence of inherent power to which I may repeat no reference had been made in the Criminal Procedure Code of 1898.

44. The views of the various High Courts are divided on the question of rehearing a revision dismissed for default. The Madras High Court in 23 Mad LJ 371 held that it had no power to review its order dismissing a revision for default. The Lahore High Court in *Kishan Singh v. Girdhari Lal*[34], followed the Calcutta view and so did the Patna High Court in *Ramautar Thakur v. State of Bihar*[35], holding that an order dismissing a revision in default was not a judgment and therefore Section 369, Criminal Procedure. Code, did not bar the rehearing of a revision so disposed of. They also justified the order on the ground that it was necessary to secure the ends of justice. The Orissa High Court however in AIR 1958 Orissa 20 held that criminal revision dismissed summarily could not be reheard on the principle of finality in view of the observations of their Lordships of the Supreme Court in 1955-2 SCR 94 AIR 1955 Supreme Court 633.

45. In *Emperor v. Romesh Chandra Gupta*[36] a reference was decided on merits and it was reheard as no notice had been issued to tine accused whose sentence had been enhanced. The judgment in the case does not mention on what provision of law the rehearing was held justified.

46. In ILR 47 Madras 428 ( AIR 1924 Madras 640) the Court considered an order in revision enhancing the sentence of the accused to be null and void as no opportunity had been afforded to the accused to show cause against the enhancement of the sentence and reheard the matter.

47. In ILR 46 Calcutta 60 : ( AIR 1919 Calcutta 409) an order dismissing an appeal summarily was not reviewed with respect to the quantum of sentence even though the sentences of the other co-accused had been reduced in appeals subsequently preferred and decided. The position in the Calcutta High Court with respect to the reviewing of orders in criminal cases was summed up thus:

[32]2 Chit 265 [34] AIR 1924 Lah 310 [36]22 Cal WN 168: ( AIR 1918 Cal 169)
[33]1 Chit 445 [35] AIR 1957 Pat 33

> "The result of the decisions of this Court subsequent to the Full Bench case seems to be this that where a case is disposed of merely for default of appearance or where an older is passed to the prejudice of an accused person and by mistake or inadvertence no opportunity has been given to him to be heard in his defense such an order is not one to

which the ruling in the Full Bench case applies."

48. In ILR 46 Madras 382 : ( AIR 1923 Madras 426) a jail appeal was summarily rejected as time barred. Later an appeal was filed through counsel. The rehearing was not allowed. In connection with the inherent power of the Court to review its previous order it was said at page 390 (of ILR Mad) : (at p. 428 of AIR) :

> "For a fact conclusive in the nature of the case against the existence of an inherent power, no instance of its exercise has been produced and it is negatived in the case last referred to, ILR 46 Calcutta 60 : ( AIR 1919 Calcutta 409) and 7 Mad H.C.R. XXIX and in ILR 14 Calcutta 42 (FB), ILR 7 Allahabad 672, ILR 10 Bombay 176 and 23 Mad LJ 371. The accused's claim must therefore fail if it is regarded as a review."

49. In AIR 1923 Allahabad 473 (2) Stuart, J. observed at page 474 :

> "This is not a matter which I can possibly take up in revision. Even if I myself had passed the order dismissing the appeal I could not revise it and I certainly cannot revise the order of another Judge of this Court. There can be no revision in the matter."

This was consistent with the view then prevailing before the amendment of the Criminal Procedure Code in 1923.

50. It appears from the above that before the Criminal Procedure Code was amended in 1923, the High Courts reviewed their orders dismissing revisions on merits or otherwise or rejecting appeals summarily when some statutory provision of law had been ignored and justified it on the ground that orders passed in such circumstances were null and void, having been passed without jurisdiction. It was only in a few cases that it was contended that the Court could review its judgment and order passed on merits in the exercise of its inherent powers and the contention was repelled as no case in which the Court exercised its inherent power had been brought to the notice of the Court.

51. In 1923 Section 561A found a place in the Criminal Procedure Code and thereafter the Courts used their inherent powers in certain cases.

52. In *Muhammad Sadiq v. Emperor*[37] an appeal had been dismissed without the appellant or his pleader being given a reasonable opportunity of being heard in accordance with the proviso to Section 421 (1) of the Criminal Procedure Code. The Court held on the basis of the earlier cases that the order had been passed without jurisdiction and then observed at page 356 :

[37] AIR 1925 Lah 355

> "Without holding chat the Court under Section 561-A, Criminal Procedure Code, has inherent power to review its own order, we think that this is certainly a case where the

> Court has inherent power to make an order that the appeal of Muhammad Sadiq, son of Muhammad Yusaf, should be reheard after giving him or his counsel a reasonable opportunity of being heard in support of the same, and we order accordantly.

The rehearing was justified on the existence of the inherent power and the Court left it open whether under Section 561A it had inherent power to review its own order.

53. In *Mathra Das v. Emperor*[38], a revision decided on merits was reheard in the exercise of inherent power in view of Section 561-A. This case was not approved in AIR 1928 Lahore 462 where a revision rejected presumably after hearing was sought to be reviewed in view of another Bench taking a different view about the sentences on the other co-accused. The Bench held that Section 369 of the Criminal Procedure Code did not affect the inherent power of the Court and that the High Court never had an inherent power to alter or review its own judgment except in cases where it was passed without jurisdiction or in default of appearance without an adjudication on merits.

54. In *Enmesh Pada Mandal v. Kadambini Das*[39], a reference was decided on merits. The judgment was reviewed as the accused had not been heard, It was said at page 703 :

> "But be that as it may, we axe concerned really, on the question of jurisdiction, with the provisions such as are contained in the Criminal Procedure Code, as at present amended. We think under the present Code, we have ample powers in a case of this description and having record to the facts involved to vacate our order of 5-5-1927 and to re-hear the reference."

55. Similar view was expressed in *Emperor v. Shiva Datta*[40]

56. In *Dahu Raut v. Emperor*[41], the Court held against the existence of in current power to review an order passed by it in appeal or revision.

57. In *Sripat Narain Singh v. Gahbar Rai*[42], worth, J. said at page 726 in connection with an attempt to review an order in a revision passed without hearing counsel :

> "I am not prepared to say that a Judge of this Court cannot review his judgment or decision. But it appears to me very clear that the application for review must come before the Judge who passed the decision which is to be reviewed. ..... But the case once having been decided the mere fact that I did not exercise a discretion to hear counsel is no ground for a review."

58. In AIR 1935 Allahabad 60 Bennet, J. in considering an application asking for

[38] AIR 1927 Lah 139 [40] AIR 1928 Oudh 402. [42] AIR : 1927 All 724
[39] AIR 1927 Cal 702 [41] ILR 61 Cal 155 : AIR 1933 Cal 870

review of an order dismissing an application in revision which had been signed and sealed dealt with the question of the maintainability of such an application under Section 561-A of the Criminal Procedure Code. He held that the Court could not review its earlier order. He said at page 61 : "It is to be noted that in Section 369 there is no reference to review being allowed by Section 561-A. .....
Learned counsel however argued that Section 561-A. could also come under these words 'Save as otherwise provided by this Code,' but in Section 561-A there is no definite provision for a review of judgment. I am of opinion that review is a definite method of procedure and that if the Legislature intended by the Amending Act, (Act 18 of 1923), to make a provision in the Code for a review there would have been a definite section dealing with a right of review and laying down the conditions under which that right could be exercised."

59. The omission of a particular provision in the Code for a review can only mean that the Legislature did not wish to give a general right to an aggrieved person to ask the Court to review its earlier order. The absence of such a provision does not mean that the Court cannot review its earlier order in the exercise of its inherent powers.
60. In AIR 1935 Allahabad 466 Kendall and Bajpai, JJ. confirmed tills view of Bennet, J. Three applications for revision received from jail were disposed of on merits by this Court. A counsel thereafter filed fresh applications in revision. The question arose whether the learned Judge had jurisdiction to review his own orders. It was said at page 467 :

> "It follows therefore that when the section was amended in 1923 in such a way as to show that the High Court had no power of altering or reviewing a judgment, except to correct a clerical error, the Legislature did not attempt or intend to deprive the High Court of any inherent power which it had hitherto possessed. This point is of importance when we consider the application of Section 561A which was also introduced into the Code in 1923. That section does not in terms invest the Court with any powers which it did not possess before. But it does refer to an inherent power of which the High Court is already in possession. We have given above the authority for holding that the High Court possessed no inherent power to review its judgment before the amendments of 1923. Consequently it cannot be said that Section 561A either modifies the provisions of Section 369 or clothes the Court with any fresh power." I have already stated in connection with the earlier cases that they, except a few, did not consider whether the High Court had inherent power to review its orders. They simply considered that the Criminal Procedure Code contained no provision empowering the High Court to review its orders and that the procedure of the High Court was to be regulated by the provisions of the Criminal Procedure Code in view of the language of the Charter or the Letters Patent.

61. This view was modified in 1948 in the case of AIR 1948 Allahabad 106. In this case the mandatory provision of law contained in the amended Section 14-A. Hoarding and Profiteering

Prevention Ordinance (1943) had been overlooked in a trial in respect of an offence under the Ordinance and was not brought to the notice of the Court dismissing the revision. The accused subsequently applied for the review of the order. In repelling the contention advanced by the learned Government Advocate that this Court had no power to review and could not alter its judgment except to correct a clerical error it was said at page 107 :

> "We are not prepared to accept his submission. Section 369 begins with the words 'Save as otherwise provided by this Code," and we consider that under Section 561A, where this Court is satisfied that it is necessary, to secure the ends of justice, that it should interefere under its inherent powers, it ought to do so."

It was pointed out that there was no right in a party to have a matter reheard or re-argued, and it was said :

> "Where a revision has been decided, we are not of the opinion that a second revision would lie or that a party has a right to have the matter reheard or re-argued, but where, as in this case, a mandatory provision of law has been overlooked, we think this Court has power to correct an obvious error."

It seems to me to amount to a denial of justice if an order of the Court admittedly against law be allowed to stand and be not corrected even when the Court had inherent power to pass any order to secure the ends of justice and when such power has been specifically recognized by Section 561A Criminal Procedure Code expressing in clear terms that nothing in the Code affects such inherent power and when there is no specific provision in the Code that such orders cannot be reviewed.
Section 369, as already stated, does not apply to judgments and orders in appeal or revision and even if it does Section 561A can be taken to be a Particular provision which saves the power of review the High Court in such cases where it has to be exercised for the purposes mentioned in that section.

62. In AIR 1949 Allahabad 176 an appeal happened to be decided on a date earlier than the date for which the hearing was fixed on the application of the appellant. The appellant then applied for the rehearing of the appeal. Seth, J. said at page 176 :

> "There cannot be the least doubt that these facts constitute a sufficient cause for setting aside the proceedings, starting with the hearing of the appeal and terminating with judgment, inasmuch as by a mistake on the part of some clerks of this Court great injustice has been done to the appellant, as he was deprived of an opportunity of being heard. The hearing of the appeal, under the circumstances indicated above, amounted to an abuse of the process of the Court, although it was not deliberate and only inadvertent."

He repelled the contention for the State that the Court had no jurisdiction to grant a rehearing in view of the provision of Section 430 Criminal Procedure Code thus :

> "The expression 'judgment shall be final' for expressions to the similar effect are also to be found in statutes other than the Criminal Procedure Code and they have came up for interpretation before this Court in several cases. It has been consistently held by this Court that all that such expressions mean, is that the judgment shall not be open to any further appeal and that the powers of High Court to interfere with it otherwise than in appeal are not taken away :"

I, with respect, agree with these observations.

63-66. In AIR 1950 Allahabad 299 a revision was decided on merits in the absence of the applicant's counsel. An application was then presented for the restoration of the revision application. Harish Chandra, J. rejected this application saying :

> "The revision application was rejected by me on the merits after looking carefully through the judgment of the learned Sessions Judge. In the circumstances, my view is that this Court has no power to set aside that order acting under Section 561A, Criminal Procedure Code, and to direct that the application be reheard."

He did not express any opinion about the Court having no inherent power to review its earlier orders in certain circumstances when the interest or justice demanded it. This case does not therefore question the correctness of the 1948 bench decision.

67. In AIR 1951 Allahabad 441 jail appeals were preferred by Mohammad Wasi and Shubrati against their conviction under Section 451 and 380 read with Section 75 Indian Penal Code. Shubrati's appeal was dismissed and Mohammad Wasi's appeal was admitted, Mohammad Wasi's appeal came up for hearing before a learned Judge who found that there was no evidence on the record to bring Section 75 Indian Penal Code into operation and accordingly his sentence of seven years rigorous imprisonment was reduced to four years.

The learned Judge recommended that the record be put up before Hon'ble Agarwala, J. who had dismissed the appeal of Shubrati for his examination. Agarwala, J. examined the case of Shubrati and came to the conclusion that there was no evidence to bring the case under Section 75 Indian Penal Code. In these circumstances he reviewed his previous order observing :

> "I think I have power to do so under the provisions of Section 561A. This is a case in which upon the record, as it stands, the accused could not be punished with reference to Section 75 Indian Penal Code at all. Where a Court discovers that an order has been passed which upon the face of the record is erroneous and unjust, and the defect is of such a glaring nature that it could be said that having regard to the materials on the record, the

> Court had no jurisdiction to pass it or that it failed to exercise a jurisdiction vested in it by law, the Court may, and, indeed is bound to, review its own order and modify or set it aside, in order to 'secure the ends of justice'."

I do not, with respect, agree with the view that the Court had no jurisdiction to pass the earlier order or that it failed to exercise a jurisdiction vested in it by law. The ends of justice however required that the previous order be reviewed.

68. In AIR 1952 Allahabad 926 Bind Basni Prasadi, J. followed the case of AIR 1948 Allahabad 106 and ordered the rehearing of a revision which had been dismissed for the default of the applicant, the Court being not aware of the submission of an illness slip of the applicant's counsel and of the applicants filing a medical certificate as required by the Court. Bind Basni Prasad, J. ordered the rehearing of the revision as the earlier order had been passed on a misapprehension of facts.

69. In *Jagannath Singh v. Ridheshi*[43], James, J. said at page 712 :

> "After a careful examination of these rulings and also of the decisions mentioned at page 2183 of B.B. Mitra's Code of Criminal Procedure (12th Edn.) my view is that in normal circumstances the High Court has no power to review its previous decision in a criminal case but that where a mandatory provision of law has been contravened resulting in abuse of the process of the Court it is entitled to correct an obvious error.'

This, again, is not at variance with what was held in the case of AIR 1948 Allahabad 106.

70. In 1958 All LJ 518 : ( AIR 1959 Allahabad 313) a revision application was rejected after hearing the applicants counsel at some length. The applicants applied for a review of that order on the ground that at the time when the application in revision was argued the learned counsel who argued it inadvertently omitted to urge certain points of law which arose in the case and which deserved the consideration of the Court. Srivastava, J. said at page 519 :

> "Even apart from the" provisions of Section 369, Criminal Procedure Code there appears to be high authority for the view that finality attaches to orders passed by a High Court in appeals and criminal revisions once they are decided, and it is not open to the same High Court to alter or review the same. Any one feeling aggrieved by the orders can seek his remedy before the Supreme Court alone.

He referred to certain observations of the Supreme Court in AIR 1955 Supreme Court 633 and said at page 520 :

> "It is true that these observations were in the nature of obiter dicta, because the real question which their Lordships were considering in that case was whether an appellant whose appeal had been dismissed summarily could insist on his case being heard on merits once again under Sub-Section (6) of Section 439 Criminal Procedure Code if the State filed an application for enhancement of sentence. But even the obiter dicta of their Lordships of the Supreme Court is entitled to the highest respect and is binding on all the Courts of the country."

He then referred to certain earlier cases of this Court and to the case of AIR 1958 Orissa 20 as holding that the Court possessed no power of review. He also referred to the cases of AIR 1948 Allahabad 106 and *State of U.P. v. Bati*[44], and, without going

[43] AIR 1955 All 712

[44] AIR 1950 All 625

into the question of their being affected by the pronouncement
of their Lordships of the Supreme Court in AIR 1955 Supreme Court 633 and conceding for the moment that the ratio of these decisions was correct, said :

> ".....they cannot obviously be of any help to the applicants because in the present case their learned counsel has not been able to bring to my notice any obvious error or mistake in the order by which the applicants' application in revision was dismissed."

This is the first case after 1948 which on the basis of Chopra's case AIR 1955 Supreme Court 633, throws doubt) on the correctness of the view expressed in Shri Ram's case AIR 1948 Allahabad 106.

71. I shall now refer to the Supreme Court cases which have been referred to at the bar in connection with the point under determination. The first case is that of 1955-2 SCR 94 : AIR 1955 Supreme Court 633. The point for decision before the Supreme Court was whether the convicted person had a right to challenge the correctness of his conviction when a notice for enhancement was issued to him on an application by the State filed subsequent to the summary dismissal of his appeal. The Court had not to consider and the judgments express no views with respect to the power of the High Court to review or recall its earlier order in an appeal or revision when such a review or recall be considered necessary for any of the purposes justifying the exercise of inherent power according to the provisions of Section 561-A, Criminal Procedure Code. I therefore do not consider that the judgment in this case can be taken to declare Jaw with respect to the content and the exercise of the inherent power of the High Court which is preserved by Section 561-A. Certain observations have been made in the course of the judgments with respect to the competence of the High Court to revise or recall the orders passed; but these observations are to be taken in the context of the point for determination and the consideration urged for consideration before the Supreme Court. I do not consider these observations to refer to

the inherent power of the High Court to pass suitable orders to secure the ends of justice even if those orders amount to the reviewing or recalling of an earlier order.

72. The next Supreme Court case is Criminal Appeal No. 154 of 1957 (SC). It was said in the course of the judgment :

> "It is unnecessary to emphasize that the inherent power of the High Court under Section 561-A cannot be invoked in regard to matters which are directly covered by the specific provisions of the Code; and the matter with which the learned Judge was concerned in the present proceedings is directly covered by Section 215. Therefore, in our opinion the learned Judge was clearly in error in allowing his inherent power to be invoked under Section 561A and in setting aside the order of commitment."

This case does not help in the determination of the question before us.

73. Lastly I may refer to the effect of the general principle of finality on the exercise of the inherent power for reviewing the earlier order. The orders which are made final under the statute are final only vis-a-vis the right of a party to appeal; that is to say, such orders are not open to appeal. Such orders of the subordinate courts can be revised by this Court in revision; and such orders of this Court can be reviewed in the exercise of inherent powers which are undoubtedly to be exercised in very exceptional circumstances when there be no doubt that interference with such orders would promote the ends of justice. The general principle of finality also operates in the same way. It bars a party to reopen the matter by way of appeal. A specific provision like that of Section 561-A must prevail over the general provision of statute law or of natural justice. The law about the exercise of inherent power of the Court in this light must be looked at as a special law, for special circumstances, and therefore overrides any general law, be it of the finality of judgments or any other. I further think that the application of the general principle of finality of a judgment or order of this Court is itself based on the inherent power of the Court to make orders which secure the ends of justice; and therefore cannot be taken to bar the Court from rehearing the matter already decided if that course is considered justified to secure the ends of justice.

74. My answer to the question referred is therefore, that the Court has an inherent power to revoke, review, recall or alter its own earlier decision in a criminal revision and to rehear the same, that naturally, the circumstances in which this power can be exercised would be exceptional and would be the circumstances which lead the Court to the view that the exercise of that power is necessary to give effect to any order under the Code or to prevent the abuse of the process of any Court or otherwise to secure the ends of justice, and that it is not possible to enumerate such circumstances.

**M. L. Chaturvedi, J.**

75. This reference to a Full Bench arises out of a criminal revision filed by ten applicants in this

Court. The revision was admitted, notice was issued to the State and the applicants were directed to be released on bail. Before it came up for final hearing, the learned counsel for the applicants filed an application under the rules of this Court for adjournment of his cases from the 19th May to the 7th July, 1958, on the ground that the adjournment of the cases was required in the interests of the health of the learned counsel. He included this revision also in the application. The learned counsel then left for the hills.

76. The revision was put up for hearing on the 9th June, 1958. Another counsel made a request, on behalf of the learned counsel for the applicants, that the case be adjourned and the Court adjourned the hearing of the case for three days. It was again listed on the 12th June, 1958, but nobody appeared on that date and the revision was heard and decided on merits without hearing the applicants or their counsel. On his return from the hills the learned counsel for the applicants filed an application, out of which this reference arises, for a rehearing of the revision. The learned single Judge, who had decided the revision, considered a number of authorities on the point whether ho could allow the application for rehearing. In the end he was of the opinion that the question was one in which there were a number of authoritative pronouncements. The case was, therefore, ordered to be laid before the Hon'ble Chief Justice for the constitution of a Bench for deciding the questions mentioned by the learned single Judge and the revision came up before a Division Bench of this Court.
The Division Bench found that there were conflicting decisions of the Division Benches on the points referred to by the learned single Judge and ordered that the papers be laid before the Hon'ble Chief Justice for constituting a larger Bench. The case then came up before us for expressing our opinions on the points mentioned by the learned single Judge.

77. The points are :

> "(1) Whether this Court has power to revoke, review, recall or alter its own earlier decision in a criminal revision and rehear the same ?
> (2) If so, in what circumstances ?"

78. I propose to express my opinion on the first point but as regards the second only so far as it is necessary to do so having regard to the facts of the case before me. The circumstances in which the Court may have power to review or alter its earlier decision may be numerous and I do not consider it possible to enumerate all those circumstances. The decisions of the Courts on the above points are many and I propose to consider only the more important of the decisions.

79. Reference may be made at the very outset to two sections of the Code of Criminal Procedure, namely, Sections 369 and 561-A. Section 369 is the section relied upon by the learned counsel appearing for the State and Section 561-A has been relied upon by the learned counsel for the applicants. Section 369 is as follows :-

"Save as otherwise provided by this Code or by any other law for the time being in force or, in the case of a High Court by the Letters Patent or other instrument constituting such High Court, no Court, when it has signed its judgment, shall alter or review the same, except to correct a clerical error."

80. The above section has undergone changes from time to time. In the Criminal Procedure Code of 1882, the section was worded as follows :

"No Court, other than a High Court, when it has signed its judgment, shall alter or review the same, except as provided in Section 395 or to correct a clerical error."

81. In the present Criminal Procedure Code of 1898 the only alteration made in the section, as it originally stood, was that Section 484 of the Criminal Procedure Code was added after Section 395. In 1923 the section underwent a substantial change and it now stands as already quoted above. The important changes made by the Criminal Procedure Code (Amendment) Act of 1923 are that the High Court is no longer exempted from the operation of the section and this inclusion of the High Courts appears to have led to the further amendments by the introduction of a saving clause in the beginning and of another saving clause governing the High Courts alone.
The result of these clauses is that the section has been made subject to the other provisions of the Code of Criminal Procedure and also to the provisions of any other law for the time being in force and, in the case of High Courts established by Royal Charter, further subject to the provisions of the Letters Patent of such High Court. The same Amendment Act, which made the above changes in Section 369 of the Code of Criminal Procedure, added Section 581-A in the Code in the following words :

"Nothing in this 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."

82. The section thus clearly recognizes the inherent power of the High Court to make orders as may be deemed by it to be necessary for purposes of

(1) giving effect to any order under the Coda of Criminal Procedure,
(2) for preventing abuse of the process of any Court, and
(3) for otherwise securing the ends of justice. It declares that the inherent power of the High Courts in the above three matters would prevail as against any other provision that may be found in the Code of Criminal Procedure. So far as the wordings of Sections 369 and 561-A, as amended by the Criminal Procedure Code (Amendment) Act of 1923, are concerned, the position appears to be that the High Courts have got inherent powers to; pass necessary orders in respect of the three matters mentioned in Section 561-A in spite

of any provision of Section 369 of the Code of Criminal Procedure which may be considered to lead to a contrary conclusion.

83. Section 151 of the Code of Civil Procedure gives statutory recognition to the inherent powers of every Court to make such order as may be necessary in the ends of justice or to prevent abuse of the process of any Court. The civil courts have exercised powers of numerous kinds under their inherent jurisdiction, e.g. remanding the case to the trial court, passing order of restitution to original position in cases which do not fall under Section 144 of the Code of Civil Procedure , setting aside ex parte orders in execution proceedings and so forth. It is also well settled that Section 151 of the Code of Civil Procedure confers no additional powers on the civil courts, but only recognizes the existence of inherent power of the court to make orders as might be deemed necessary for securing ends of justice and preventing abuse of the process of court. The same is the position with respect to Section 561-A of the Code of Criminal Procedure.

84. The Privy Council has held in the cases of 1945 All LJ 47 : (AIR 1945 PC 18) and 1945 All LJ 340 : (AIR 1945 PC 94), that Section 561-A, Criminal Procedure Code, confers no powers on the High Courts. It merely safeguards all existing inherent powers possessed by the High Courts for purposes enumerated in the Section. Section 151, Civil Procedure Code, and Section 561-A, Criminal Procedure Code, thus merely safeguard the existing inherent powers. Section 151, Civil Procedure Code, safeguards inherent powers of all civil courts, but Section 561-A, Criminal Procedure Code, safeguards inherent powers only of the High Court. As far as criminal cases are concerned Section 369 has the effect of revoking any such inherent power which may have existed in criminal courts and specifically prohibits the criminal courts from altering or reviewing their judgments, after once the judgments have been signed.
The combined effect of Sections 369 and 561-A, Criminal Procedure Code, appears to be that no court exercising criminal jurisdiction can alter or review its judgment after it has been signed. The saving clause in the beginning of the section makes an exception in cases where the other provisions of the Code of Criminal Procedure provide to the contrary. One of these other provisions clearly is Section 561-A and it safeguards the inherent power only of the High Court. No subordinate criminal court can review or alter its judgment except to correct a clerical error, but the inherent powers of the High Court in the three matters, enumerated in Section 561-A, have been preserved by that section.

85. I consequently think that the High Court has power, amongst other matters, to alter or review its own judgment also, provided it is necessary to do so to give effect to any order under the Code of Criminal Procedure or to prevent abuse of the process of any court or to secure the ends of justice. In criminal cases, Section 561-A recognizes the inherent power of the High Court to alter or review the orders or judgments of the subordinate courts as well. This power has been exercised for quashing proceedings in criminal courts instituted only for purposes of harassing the accused persons and also for expunging remarks improperly made in the judgment or order of a subordinate court.

86. Section 369, Criminal Procedure Code, came up for consideration before their Lordships of the Supreme Court in the case of AIR 1955 Supreme Court 633. The point that arose for decision in that case was very different. The Court was called upon to decide whether the accused person had a right to urge before the High Court under Section 439 (6) of the Code of Criminal Procedure that his conviction was not justified on the evidence on the record, after the appeal filed by him had been summarily dismissed. After the summary dismissal of his appeal an application was made on behalf of the State for the enhancement of the sentence passed upon the accused, and the contention of the learned counsel for the accused was that he had a right to show to the Court that his conviction was not justified on the evidence. The majority judgment of the Bench was delivered by Mr. Justice Bhagwati and, according to this Judgment, the accused could show cause against his conviction under Section 439 (6), Criminal Procedure Code, if his appeal or revision had been dismissed in limine, but he could not show cause against his conviction if his appeal or revision had been dismissed after hearing both the parties. Hon'ble Mr. Justice S.R. Das (as he then was) made observations in his judgment to the effect that Section 369, Criminal Procedure Code, imposed a bar only on the trial court prohibiting it from altering or reviewing its order, but it did not impose any bar on the Court of appeal or revision. He then observed.

> "In any case, Section 369 is subject to the other provisions of the Code and I see no reason why Section 439 (6) should not be regarded as one of such other provisions."

The learned Judge later on said,

> "If Section 369 were susceptible of as wide a meaning as is read into it, namely, that it applies to all judgments of all courts, original, appellate or revisional, I would, in that case, hold that that meaning must be taken as cut down, by reason of the words 'subject to the other provisions of the Code etc.' by the mandatory provisions of Section 439 (6). In other words Section 439 (6) must be read as controlling Section 369 rather than the other way about.

He then held that Section 369 was further subject to the provisions of Section 430. The other two learned Judges did not say that Section 369 applied only to the judgments of the trial courts but based their decision mainly on the ground that an order dismissing an appeal or a revision in limine is not a judgment. Section 369 prohibits review or alteration of a judgment only and, as an order of summary dismissal of an appeal or a revision was held not to be a judgment, the necessary consequence was that Section 369 would not he attracted to such a dismissal. The learned Judges further remarked,

> "Section 369 in terms provides 'save as otherwise provided in this Code' and Section 439 (6) would be an otherwise provision which is saved by this 'non obstante' clause appearing in Section 369. It is significant to note that both these amendments, the one in Section 369

and the other in Section 439 were enacted by Section 119 of Act XVIII of 1923 and the very purpose of these simultaneous amendments would appear to be to effectuate the right given to the accused to show cause against his conviction as enacted in Section 439 (6) of the Code of Criminal Procedure."

87. Following the above decision it must be held that Section 369 applies only to "judgments" passed by criminal courts and, the non obstante clause appearing in Section 369, makes the section inapplicable where there is express provision to the contrary in the Code of Criminal Procedure, particularly where that provision came into existence by the very Act which added non obstante clause in Section 369.

88. In the case of AIR 1958 Supreme Court 376, the provisions of Section 561-A came up for consideration before the Supreme Court. The Supreme Court in that case held that even where the accused was being prosecuted for the commission of a bailable offence, he forfeits his right to be released on bail and an order cancelling his bail can, in appropriate cases, be passed by the High Court under Section 561-A. After a consideration of the relevant provisions of law and the important cases, their Lordships observed.

"We must accordingly hold that the view taken by the Bombay High Court about its inherent power to act in this case under Section 561-A is right and must be confirmed. It is hardly necessary to add that the inherent power conferred on High Courts under Section 561-A 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. After all, procedure, whether criminal or civil, must serve the higher purpose of justice; and it is only when the ends of justice ate put in jeopardy by the conduct of the accused that the inherent power can and should be exercised in cases like the present."

89. The above is an authoritative pronouncement of the general powers of the High Court under Section 561-A of the Code of Criminal Procedure.

90. It has already been stated above that Section 369, as it stood before its amendment in 1923, exempted the High Courts from its operation. But even under that section it was the view of this Court that the High Court had no power to review its own order dismissing an application in revision made by an accused person. See,

(1) ILR 7 Allahabad 672;
(2) ILR 38 Allahabad 134 : AIR 1916 Allahabad 183.

Reference to other cases on the legal position, as it stood before the amendment of 1923, need not be made and I now come to the cases of this Court dealing with Section 369 after its amendment in 1923 and the introduction of Section 561-A of the Code of Criminal Procedure.

91. In the case of AIR 1935 Allahabad 60 a learned Judge of this Court has held that there is no definite provision for review of a judgment under Section 561-A and, as review was a definite method of procedure, Section 561-A does not authorize review of a judgment by the High Court. He further says that there never was any inherent power in the High Court to alter or review its own judgment in a criminal case, except in cases where it was passed without jurisdiction or in default of appearance without an adjudication on merits. This case, therefore, does not lay down that there is no inherent power in the High Court to alter or review its judgment where the judgment was delivered in default of appearance of the accused and without adjudicating on the merits of the case.

92. A Division Bench of this Court in the case of AIR 1935 Allahabad 466, held that a High Court cannot review an order passed by itself in exercise of revisional jurisdiction and that the High Court possessed no inherent power to review its judgment before the amendments of 1923; and consequently it cannot be said that Section 561-A either modifies the provisions of Section 369 or clothes the Court with any fresh power. In connection with this case I may respectfully say that the learned Judges did not consider the effect of the non obstante clause in Section 369 itself. What Section 369 prohibits is the alteration or review of a "judgment" and nothing else. If the non-obstante clause has any meaning, it has the effect of saying that in certain circumstances the High Court can alter or review its own "judgment" if it is so provided in any part of the Code or any other law for the time being in force. The non obstante clause can have reference only to the matter of alteration or review of judgment and to nothing else.

93. A Division Bench of this Court in the case of AIR 1948 Allahabad 106, took the view that in order to secure the ends of justice, the High Court can correct an error which has crept in its judgment due to the attention of the Court not having been invited to a mandatory provision of law. Moti Lal applicant had been sentenced to 18 months R.I. and his revision by this Court was dismissed. Subsequently it was brought to the notice of the Court that the trial was according to the summary procedure given in the Code of Criminal Procedure and the sentence in such a trial could not exceed three months. This Court held that the trial was a summary one and the maximum sentence in such a trial could not exceed three months but this aspect of the matter had not been previously brought to its notice. The Bench held, under the circumstances, that it could under Section 561-A correct such an obvious error in its judgment. I respectfully agree with the decision and think that the High Court could make the alteration for the sake of securing the ends of justice.

94. A learned judge of this Court in the case of AIR 1949 Allahabad 176 held that where an appeal was disposed of by the High Court before the date fixed for its hearing and the counsel had no opportunity of being heard, the High Court had inherent power to set aside the proceedings starting from the hearing of the appeal and terminating with the judgment. He also held that Section 369 is subject to provisions of Section 561-A. By the mistake of the office, the appeal was listed for hearing one day before the date fixed and was disposed of by the Court in

the absence of the counsel for the appellant. The learned single Judge held that the High Court had inherent power to set aside such proceedings and to rehear the appeal.

95. In the case of AIR 1950 Allahabad 299, a learned Judge of this Court held that where a revision application was rejected on merits, after going through the judgment of the lower court the High court had no power to set aside that order under Section 561-A. The case of Chandrika, AIR 1949 Allahabad 176, was distinguished, as it was the case of an appeal. It was observed that in a revision no party had a right to be heard and the revision having once been dismissed the applicant had no right to be heard again.

96. In the case of AIR 1950 Allahabad 625, a learned Judge of this Court followed the previous decision of this Court and held that this Court could review its order where a mandatory provision of law had been overlooked by the Court.

97. Another learned Judge of this Court in the case of AIR 1951 Allahabad 441, held that the High Court had inherent power to review or modify its order in order to secure the ends of justice where the on the ace of it erroneous and unjust and the defect was of such a glaring nature that it could be said that the Court had no jurisdiction to pass the order or that it had in that case failed to exercise jurisdiction vested in it by law.

98. A learned Judge in the case of AIR 1952 Allahabad 926, reviewed a previous order dismissing a criminal revision for default of appearance of the applicant though the applicant had submitted medical certificate and his counsel had sent us illness slip. It was in ignorance of the medical certificate and the slip that the criminal revision was dismissed. On correct facts being brought to the notice of the Court, the Court held that it could rehear the revision.

99. The case of AIR 1955 Allahabad 712, was a case where this Court had passed an order in revision on an application under Section 145 Criminal Procedure Code, in the absence of one of the parties. Subsequently an application for restoration was made, but the learned Judge dismissed it on the ground that the party had no right to be heard a the case had come up to this Court under its powers of revision.

100. The last case of this Court is the case of 1958 All LJ 518 : ( AIR 1959 Allahabad 313). An attempt was made in this case for a revision to be heard on the ground that some questions of law were not previously urged by the counsel. The application for rehearing was dismissed by the learned Judge.

101. As regards the cases, of other High Courts on the point I do not propose to mention them individually. Most of them have been considered in the case of AIR 1957 Patna 33. After a consideration of those cases, the learned Judges in the above case held that the order of dismissal of a criminal revision for default did not amount to a judgment and, as such, outside the ambit of

Section 369. It was further held that the High Court had inherent jurisdiction to pass an order restoring a case decided by it for securing the ends of justice.

102. In some of the cases the view has been taken that the non obstante clause in Section 369 is meant to refer to only three, sections in the Code of, Criminal Procedure, namely, Section 39, 484 and 434. I do not see any reason for confining the operation of the clause to the above three sections. On the other hand, I think that if the Legislative wanted to make an exception only as far as those sections are concerned, it could have easily said so in Section 369. In the Supreme Court case of AIR 1955 Supreme Court 633, Mr. Justice S.R. Das (as he then was) said that, assuming that Section 369 applied to judgments of all the criminal courts, including the High Court, Section 369 was subject also to Section 439(6) and Section 430, Criminal Procedure Code. The other two learned Judges also said (page 661) that Section 439(6) would be an otherwise provision, which is saved by the non obstante clause appearing in Section 369.

103. Their Lordships of the Supreme Court, in the above noted case have held that the judgments pronounced by the criminal courts, including the High Court, are final and not subject to review or revision, but in this case, Section 561-A of the Code of Criminal Procedure did not come up for consideration. The general rule of finality of orders and judgments would of course be applicable to all the decisions of the criminal Courts, but this general rule is, in my opinion, subject to the provisions of Section 561-A which expressly preserves the inherent right of the High Court in specified matters. This section begins by saying "Nothing in this Code shall be deemed to limit or affect the inherent power of the High Court....." While using the above words, Section 369 of the Code must have been present to the mind of the Legislature. In the Code of Civil Procedure there are provisions for setting aside ex parte decrees, restoring suits and appeals and rehearing appeals. In addition to those provisions there is Section 151, Civil Procedure Code, which reserves inherent rights of the Court to pass orders preventing abuse of the process of the Court and for securing the ends of justice. In the Code of Criminal Procedure there are no provisions for setting aside ex parte orders and rehearing, cases which have been decided once, and Section 369 further bars courts generally from altering or reviewing their orders. Only the inherent right of the High Court has been reserved in Section 561-A, Criminal Procedure Code, to pass necessary orders for the three purposes enumerated in the section.
It would thus appear that cases cannot be reheard even by the High Court in circumstances in which the Code of Civil Procedure permits rehearing under the specific provisions made in that behalf. But principles followed in exercising inherent powers recognized in Section 151, Civil Procedure Code can also be applied to the exercise of its inherent powers by the High Court as recognized in Section 561-A. Criminal Procedure Code, for the purposes specified therein.

104. For the above reasons, my answer to the two questions is as follows :

> 1. That this Court has power to revoke, review, recall or alter its own earlier decision in a criminal revision and rehear the same.

2. That this can be done only in cases falling under one or the other of the three conditions mentioned in Section 561-A. namely,
(i) for the purpose of giving effect to any Order passed under the Code of Criminal Procedure,
(ii) for the purpose of preventing abuse of the process of any court, and
(iii) for otherwise securing the ends of justice. This power is to be exercised, as the Supreme Court has said in the case of AIR 1958 Supreme Court 376 :
".....sparingly, carefully and with caution and only where such exercise is justified by the tests specifically laid down in the section itself....."

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 authorize this Court to rehear a case where the applicant or appellant was not heard due to some fault of his or of his counsel.

BY THE COURT

105. Our answer to the question referred is as follows :

1. That this Court has power to revoke, review, recall or alter its own earlier decision in a criminal revision and rehear the same.
2. That this can be done only in cases falling under one or the other of the three conditions mentioned in Section 561-A, namely :
(i) for the purpose of giving effect to any order passed under the Code of Criminal Procedure;
(ii) for the purpose of preventing abuse of the process of any Court;
(iii) for otherwise securing the ends of justice.

Reference answered accordingly.