

**Court No. - 75**

Recall/Restoration Application No. 5 of 2023

IN

**Case :-** CRIMINAL REVISION No. - 1839 of 2022

**Revisionist :-** Govind @ Arvind And 3 Others

**Opposite Party :-** State of U.P. and Another

**Counsel for Revisionist :-** Amit Rana, Anand Prakash  
Dubey, Neeraj Srivastava, Suhel Ahmad Azmi

**Counsel for Opposite Party :-** G.A., Adesh Kumar, Barkha  
Chaudhary

**Hon'ble Sanjay Kumar Singh, J.**

1. By means of this application, the applicant/revisionist has prayed for recall of the order dated 28.9.2022 passed by this Court in Criminal Revision No. 1839 of 2022.

2. The facts giving rise to the present restoration application are that on an application moved by the prosecution/complainant, the revisionist/applicant was summoned by the learned Additional Sessions Judge, Court No. 6, Meerut vide order dated 07.4.2022 to face the trial in Case Crime No. 610 of 2020, under Section 147, 148, 149, 302, 506, 120B IPC. The aforesaid summoning order was challenged by the revisionist/applicant by filing Criminal Revision No. 1839 of 2022 through advocate Shri Amit Rana, which was disposed of by this Court vide order dated 28.9.2022.

3. By means of this application, the applicant has prayed for recall of the order dated 28.9.2022 passed by this Court in Criminal Revision No. 1839 of 2022. At the time of hearing of the revision, learned counsel for the applicant gave up his challenge to the aforesaid impugned order and confined his submission to the disposal of his bail application in

accordance with the guidelines laid down by the Apex Court in the case of **Satender Kumar Antil Vs. Central Bureau of Investigation and another**, 2021 SCC Online SC 922. The said revision was disposed of by this Court vide order dated 28.9.2022. The order sought to be recalled reads thus:

*"Heard learned counsel for the revisionists, learned Additional Government Advocate for the State of U.P./opposite party no.1 and perused the record.*

*The instant criminal revision under Section 397/401 Cr.P.C. has been preferred by the revisionists namely Govind @ Arvind, Ankit, Manish and Anil against the judgment and order dated 07.04.2022 passed by Additional Sessions Judge, Court No. 06, Meerut in Sessions Trial No. 186 of 2021, arising out of Case Crime No. 610 of By means of this application, the applicant has prayed for recall of the order dated 28.9.2022 passed by this Court in Crimin2020 (State vs. Pankaj), under Sections 302, 147, 148, 149, 506, 120-B IPC, Police Station Kankarkhera, District Meerut whereby the revisionists have been summoned as an additional accused.*

*At the outset, learned counsel for the revisionists gave up his challenge to the aforesaid impugned order and confined his submission requesting to grant some protection to the revisionists to surrender before the concerned court below. The learned counsel for the revisionists further stated at the Bar that he is not pressing any other prayer on merits and prayed that a direction may be issued to the concerned court below to consider and decide the bail application of the revisionists expeditiously.*

*Learned A.G.A. for the State of U.P. submits that in case the revisionists is not pressing the relief as sought for by on merits and wants to surrender before the concerned court below, he has no objection if the Court grants protection to them for a short period.*

*However considering the aforesaid prayer made by learned counsel for the revisionists, it is directed that the revisionists-Govind @ Arvind, Ankit, Manish and Anil shall surrender before the concerned court below within three weeks' from today and in case they apply for bail, the same shall be disposed of expeditiously by the courts below in accordance with law and keeping in view the guidelines as laid down by the Apex Court in the case of Satender Kumar Antil vs Central Bureau of Investigation and another, reported in 2021 SCC Online SC 922.*

*For the period of three weeks' from today or till the revisionists surrender before the court concerned, whichever is earlier, they shall not be arrested in the aforesaid case.*

*With the above observations and directions, the instant criminal revision stands disposed of."*

4. It appears that the revisionist has not complied with the order of this Court dated 28.9.2022 and filed this restoration application through another advocate namely Smt. Gunjan Sharma with the prayer to recall the order dated 28.9.2022 and decide Criminal Revision No. 1839 of 2022 afresh on merits.

5. Before discussing the case law on the subject, it would be useful to quote section 362 of Code of Criminal Procedure:

**362. Court not to alter judgment:- Save as otherwise provided by this code or by any other law for the time being in force, no court, when it has signed its judgement or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error.**

6. Perusal of Section 362 Cr.P.C. it is crystal clear that no Court after it has signed its judgement or final order disposing of a case, shall not alter or review the same except to correct a clerical or arithmetical error. By means of this recall application, the revisionist/applicant wants this Court to rehear the case afresh on merits. If the contention of the learned counsel for the applicant is accepted and Court hears the case on merits and pass order, that would amount to reviewing its earlier order altering it, which is totally prohibited by Section 362 Cr.P.C.

7. It is settled by Hon'ble Supreme Court in plethora of judgement that the Court should not review its earlier order.

8. In **State of Orissa Vs. Ram Chander Agarwala and others**, 1979 SCR (1) 1114, the accused therein after being convicted filed an appeal before the learned Sessions Judge. Learned Sessions Judge

while dismissing the appeals found that the law required imposition of a minimum sentence of fine of Rs. 1000/-for each offence and as the sentence passed by the Trial Court was not in accordance with the law, he referred the matter to the High Court for passing an appropriate sentence. The accused preferred a revision against the order of Sessions Judge. Both the proceedings were heard together and the High Court dismissed the revision petition preferred by the accused and accepted the reference by the Sessions Judge and enhanced the sentence so far as the firms are concerned to a sum of Rs. 3900/-. As regard the Managers or the managing partners the High Court sentenced them to six months rigorous imprisonment. The Manager and Managing partners filed petitions before the High Court for review of its order. The High court accepted the petition for review and recalled its previous judgement imposing sentence of six months and instead imposed a fine of Rs. 3000/-.

9. Hon'ble Supreme Court while quashing the subsequent order of the High Court has held as under:

*"That once a judgement has been pronounced by a High Court either in exercise of its appellate or its revisional jurisdiction, no review or revision can be entertained against that judgement as there are no provisions in the Criminal Procedure Code which would enable the High Court to review the same or to exercise revisional jurisdiction."*

10. In **Moti Lal Vs. State of Madhya Pradesh**, AIR 1994 SC 1544, Hon'ble Supreme Court held that Section 362 Cr.P.C. in clear terms lays down that the Court cannot alter judgement after the same has been signed except to correct clerical or arithmetical error. That being the position the High Court had no jurisdiction under Section 482 Cr.P.C. to alter the earlier judgment.

11. A three Judge Bench of Hon'ble Supreme Court in **Naresh and another Vs. State of Uttar Pradesh**, AIR 1981 SC 1385, held as under:

*"We are entirely at a loss to understand the order dated April*

14, 1989. In their judgement dated February 25, 1980 while discussing the case against Naresh the learned Judge had given a specific and express finding that he intended to kill the deceased Bahadur and, therefore, had committed an offence punishable under Section 302 Indian Penal code. The operative part of the judgment also said the same thing. We do not understand what the learned Judges mean when they state in their order dated April 14, 1980, " there is clerical mistake in the operative part of the judgment." The High Court was wholly wrong in altering the judgment pronounced by them disposing of the Criminal Appeals. That was clearly in contravention of the provisions of Section 362 Cr.P.C. what was worse, the High court acted in purported exercise of the power to correct clerical mistakes when in fact there was none. The conviction under Section 302 Indian Penal Code was perfectly correct and the conviction had been rightly affirmed by the High Court in the first instance. There was no occasion at all for the purported exercise of power to correct a clerical mistake and alter the conviction under Section 302 to one under Section 304 Indian Penal Code. We are greatly concerned that the High court should have committed this grievous error. There is, however, nothing that we can do about it at this juncture as the State has not chosen to file any appeal against the order dated April 14, 1980."

12. In **Smt. Sooraj Devi Vs. Pyare Lal and another**, AIR 1981 SC 736, Hon'ble Apex Court held that the prohibition in Section 362 Cr.P.C. against the Court altering or reviewing its judgement, is subject to what is "otherwise provided by this code or by any other law for the time being in force". Those words, however, refer to those provisions only where the Court has been expressly authorised by the Code or other law to alter or review its judgement. The inherent power of the Court is not contemplated by the saving provision contained in Section 362 Cr.P.C. and, therefore, the attempt to invoke that power can be of no avail.

13. **Hari Singh Mann Vs. Harbhajan Singh Bajwa and others**, 2001 (1) SCC 169, was a case in which after disposal of the petition filed by the applicant therein by the High Court and consequently action was taken thereof, the applicant filed another petition, which was entertained and disposed of by the same learned Single Judge. Hon'ble Apex Court while setting aside the order passed by the High Court held as under:

*"We have noted with disgust that the impugned orders were passed completely ignoring the basic principles of criminal law. No review of an order is contemplated under the Code of Criminal Procedure. After the disposal of the main petition on 7.1.1999, there was no lis pending in the High Court wherein the respondent could have filed any miscellaneous petition. The filing of a miscellaneous petition not referable to any provision of Code of Criminal Procedure or the rules of the Court, cannot be resorted to as a substitute of fresh litigation. The record of the proceedings produced before us shows that directions in the case filed by the respondents were issued apparently without notice to any of the respondents in the petition. Merely because the respondent No. 1 was an Advocate, did not justify the issuance of directions at his request without notice of the other side. The impugned orders dated 30th April, 1999 and 21st July, 1999 could not have been passed by the High Court under its inherent power under Section 482 of the Code of Criminal Procedure. The practice of filing miscellaneous petitions after the disposal of the main case and issuance of fresh directions in such miscellaneous petitions by the High Court are unwarranted, not referable to any statutory provision and in substance the abuse of the process of the court.*

*There is no provision in the Code of Criminal Procedure authorizing the High Court to review its judgment passed either in exercise of its appellate or revisional or original criminal jurisdiction. Such a power cannot be exercised with the aid or under the cloak of Section 482 of the Code.*

The Court further held thus:

*"Section 362 of the Code mandates that no Court, when it has signed its judgment or final order disposing of a case shall alter or review the same except to correct a clerical or arithmetical error. The Section is based on an acknowledged principle of law that once a matter is finally disposed of by a Court, the said Court in the absence of a specific statutory provision becomes functus officio and disentitled to entertain a fresh prayer for the same relief unless the former order of final disposal is set aside by a court of competent jurisdiction in a manner prescribed by law. The court becomes functus officio the moment the official order disposing of a case is signed. Such an order cannot be altered except to the extent of correcting a clerical or arithmetical error."*

14. Hon'ble Supreme Court in **State represented by D.S.P. Vs. K.V. Rajendran and others, (Criminal Appeal No. 1389 of 2008), decided on 02.9.2008**, while dealing with a question as to whether in exercise of the inherent powers under

Section 482 of the code of Criminal Procedure, an order disposing of a criminal petition, refusing to grant any relief, could be modified and, thereafter, an investigation, which was with the State Police authorities could be transferred to the Central Bureau of Investigation. The Court after discussing a catena of judgement observed thus:

*"As noted herein earlier, Section 362 of the code prohibits reopening of a final order except in the cases of clerical or arithmetical errors. Such being the position and in view of the expressed prohibition in the code itself in the form of Section 362, exercise of power under Section 482 of the Code cannot be exercised to reopen or alter an order disposing of a petition decided on merits."*

15. In **State of Punjab Vs. Davinder Pal Singh Bhullar**, (2011) 14 SCC 770 the Hon'ble Apex Court held as under:

*"There is no power of review with the criminal court after the judgement has been rendered. The High Court can alter or review its judgement before it is signed. When an order is passed, it cannot be reviewed. Section 362 Cr.P.C. is based on an acknowledged principle of law that once a matter is finally disposed of by a court, the said court in the absence of a specific statutory provision becomes functus officio and is disentitled to entertain a fresh prayer for any relief unless the former order of final disposal is set aside by a court of competent jurisdiction in a manner prescribed by law. The court becomes functus officio the moment the order for disposing of a case is signed. Such an order cannot be altered except to the extent of correcting a clerical or arithmetical error. There is also no provision for modification of the judgement."*

16. Thus, the law on the issue can be summarized to the effect that the criminal justice delivery system does not empower the Court to add or delete any words, except to correct the clerical or arithmetical error as has specifically been provided under the statute itself that after pronouncement of the judgement the Judge becomes functus officio. Any mistake or glaring omission is left to be corrected only by the appropriate forum in accordance with law.

17. In view of the aforesaid pronouncements of

Hon'ble Supreme Court coupled with the provisions of Section 362 Cr.P.C., I am not inclined to recall my order dated 28.9.2022 disposing of the revision.

18. Accordingly, this recall application is ***rejected***.

**Order Date :-** 31.5.2023

Ishrat