CRM-17720-2024 in
CRM-M-7426-2020

GURINDER SINGH V/S STATE OF PUNJAB

Present: Mr. R.S. Cheema, Sr. Advocate with
Mr. A.S. Cheema, Advocate
Mr. Satish Sharma, Advocate and
Mr. Prince Baral, Advocate
for the applicant-petitioner.

Mr. A.D.S. Sukhija, Addl. A.G., Punjab.

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1. The State of Punjab, seeking to recall an order dated 27.07.2023 passed by this Court of clubbing the police reports in the above-captioned FIR because of the State's No Objection, has come up before this Court under Section 482 CrPC.

2. It would be appropriate to reproduce the order dated 27.07.2023, which reads as follows: -

> "*The limited prayer for which the petitioner has come up before this Court is for clubbing of all the challans for one joint trial in case FIR No.10 dated 17.08.2017 registered under Sections 406, 409, 420, 467, 468, 471, 477A, 1208 IPC (Section 200 IPC added later on), Section 13(1)(d) read with 13(2) of Prevention of Corruption Act 1988 at Police Station Vigilance Bureau, District Mohali.*
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> *2. Counsel for the petitioner submits that prosecution filed separate challan against different accused before the trial Court. Now the trial Court trying them separately, however, all relate to same FIR.*
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> *3. Counsel for the State submits that due to pendency of this petition, the trial has derailed and they would have no objection if all the challans in the FIR are clubbed.*
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> *4. In view of the submission of counsel for the State, petition stands allowed. The trial Court is directed to club all the challans for one joint trial in the above captioned FIR. All pending applications, if any, stand disposed.*
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> *5. Keeping in view the pendency of the case, since long before the trial Court, concerned Court to expedite the trial."*

3. The petitioner had come up before this Court seeking clubbing of the challans (Police Reports), and the pendency of the petition had delayed the trial. On this, the State's Counsel had not objected to club the challans by stating that they had no objection if this Court clubs the challans. Given the above, this Court had neither gone into the case's merits nor touched the legality or necessity of clubbing the challans but had proceeded because of the State's No Objection to the petitioner's prayers and had

directed the trial Court to club all the challans. Thus, it is clear that the order was not passed after scrutinizing the legality of such clubbing or on the case's merits.

4. The State's prayer is to recall the entire order, which would make the order as nonest.

5. Regarding the need for earlier No Objection and now seeking to recall the said order, the State's counsel submits that massive practical difficulties were realized and has referred to para no.21 of the application, which reads as follows: -

> *"21. The consent given by the Ld. State counsel: That in the present case the Ld. State counsel gave a no objection for directing the clubbing of challans and a joint trial, in view of the fact that the trial in these cases was stayed for a long time. However, subsequent to the order dated 27.07.2023 passed by the Hon'ble Court, the opinion of the Ld. Deputy District Attorney, who is conducting the trial before the Ld. Special Court, was received wherein he flagged various factual issues, as has been pointed out in the preceding paragraphs of this application, in conducting of joint trial in the cases. It is clear that the Ld. State Counsel gave no objection under a misconception oblivious of the practical difficulties/ impracticality in holding a joint trial. legal and factual complications involved besides the fact that a joint trial would rather make the conclusion of the trial practically impossible. It will be a huge task to ensure presence of all accused on a given day, to determine the order in which witnesses are to examined, the marshalling of documents to be brought in evidence, the complexities in framing statements under section 313 Cr.P.C and most of all the complex situation which a trial judge would face in marshalling and sifting such voluminous records and number of witnesses to reach a finding about guilt or otherwise of the accused. All these aspects have come forth while evaluating the implications of the order dated 27.07.2023. Moreover, the affidavits filed in the said case, from time to time, by different officers, depicted not only the number and nature of challans but also the facts and circumstances due to which all these challans were filed besides registering of FIR No. 3. The details mentioned therein clearly suggested that neither the joint trial was legally made out nor practically feasible. Thus there was no occasion for the prosecution to have ever acquiesced in such consent. The said factual aspects were not disclosed in the petition filed by the non-applicant/petitioner. Therefore, it is most humbly prayed that the applicant/respondent may kindly be permitted to withdraw the statement regarding no objection made by the Ld. State Counsel on its behalf and the matter be decided on its merits."*

6. Mr. A.D.S. Sukhija, Addl. A.G., Punjab has based his arguments on the application for re-call itself; therefore, it would be appropriate to reproduce the relevant portions of the application, which reads as follows: -

"A. That FIR no 10 was registered on 17.08.2017 u/s 406/409/420/467/468/471/477A/120B (Section 201 added later on) of the IPC and Section 13 (1)(d) read with section 13(2) of the Prevention of Corruption Act, 1988 at Police Station Vigilance Bureau, Flying Squad-1. Punjab at Mohali. The said FIR pertains to a scam in the irrigation department whereby the higher officials of the Government including those from the Irrigation Department, by grossly misusing their positions in connivance with the non-applicant/petitioner allocated him work of Irrigation Department worth rupees thousands of crores, on rates 50% higher than the departmental rates, by misinterpreting the rules, ignoring the secrecy of the process of E- tenders, tailoring the terms and conditions of tender thereby minimizing the competition by adopting unfair tactics.

B. That in furtherance of the aforesaid FIR, the Vigilance Bureau conducted investigation and after finding credible material qua the involvement of various people in multiple projects emerged across various districts of State of Punjab, wherein contracts were unlawfully awarded to the non- applicant/petitioner. Consequently, distinct main challans and supplementary challans were filed corresponding to each specific project, despite the originating FIR being singular in nature. It would be pertinent to mention here that the huge scam involves illegal allotment of contract work worth rupees hundreds of crores and there has been a substantial wrongful loss to the state exchequer running into hundreds of crores.

C. That it would be pertinent to mention here that in FIR no. 10 of 2017, a total of 9 main challans and 7 supplementary challans u/s 173(8) CrPC (total 16) have been presented before the Ld. Special court, against a total of 32 accused i.e 26 public officials and 6 private persons. Further, one of the accused Gurminder Singh Bains, SDO was declared a Proclaimed offender by the Ld. Special Court on 25.05.2018.

E. That vide order dated 20.01.2020, the Ld. Special Court look cognizance of offences on the basis of the challans in FIR No. 10 of 2017, submitted by the Vigilance Bureau and initiated trial of the following cases:

Sr.No.	*Title of the case*	*Case No.*
1.	*State Vs. Gurvinder Singh and Ors.*	*PC-13-2018*
2.	*State Vs. Gurdev Singh and Ors*	*PC-18-2018*
3.	*State Vs. Sanjeev Kumar Dhir & Ors.*	*PC-27-2018*
4.	*State Vs. Mukesh Chander Sharma & Ors.*	*PC-28-2018*
5.	*State Vs. Harvinder Singh & Ors.*	*PC-1-2019*

6.	*State Vs. Devinder Singh Kohli & Ors.*	*PC-6-2019*
7.	*State Vs. Gulshan Nagpal & Ors.*	*PC-11-2019*
8.	*State Vs. Vinod Chaudhary & Ors.*	*PC-12-2019*
9.	*State Vs. Paramjit Singh & Ors.*	*PC-15-2019*

F. That the non-applicant/petitioner approached this Hon'ble court on 27.07.2018 by filing petition u/s 482 Cr.P.C (CRM-M-29816-2018) seeking quashing of order dated 14.05.2018 passed by the Ld. Special Judge. Mohali and further for clubbing of three challans for one joint trial in FIR No. 10 dated 17.08.2017. The Hon'ble Court was pleased to allow the said petition vide order dated 11.10.2018 (A copy of the order dated 11.10.2018 is attached herewith as Annexure A-1) whereby the order dated 14.05.2018 was set aside and the Ld. Special Court was directed to pass fresh order after hearing both the parties on the point whether all the challans were to be clubbed together or to be tried separately etc. as per law.

G. That on 02.08.2019, the Deputy Superintendent of Police, Vigilance Bureau suffered a statement before the Ld. Special Court that the investigation in FIR No. 10 of 2017 is complete and no further challan is to be presented. The Ld. Special court in its order dated 02.08.2019 (A copy of the order dated 02.08.2019 is attached herewith as Annexure A-2.) observed that the question of merger and segregation of challans can be adjudicated upon if arguments on charge are also heard along with it. Therefore, the case was adjourned directing the counsel for the parties to address arguments on merger/segregation of challans as well as the charges to be framed against the accused.

H. That the non-applicant/petitioner impugned the order dated 02.08.2019 before this Hon'ble court vide petition no. CRM-M-33617-2019. This Hon'ble court was pleased to dispose of the said petition vide order dated 21.08.2019 whereby the order dated 02.08.2019 was set aside and the Ld. Special court was directed to decide the point of merger/segregation at first stage, prior to deciding the point of framing of charges against the accused on the next date of hearing.

I. That pursuant to the directions of this Hon'ble court, the Ld. Special Court after hearing the parties decided to segregate the cases into 9 different trials vide a well-reasoned order dated 20.01.2020. The non-applicant/petitioner thereafter, impugned the said order before this Hon'ble court by filing the present petition no. CRM-M-7426-2020 (out of which the present application arises). The said petition was allowed by this Hon'ble Court vide the order dated 21.07.2023.

K. That though the above said order dated 17.07.2023 would reflect that the State had given no objection to clubbing of

challans, yet a reading of the circumstances narrated hereinafter will show that besides the practical and legal difficulties pointed out by the Ld. Public Prosecutor conducting the trial before the Ld. Special Court, the no objection given on behalf of the State was a result of an apparent misconception whereas there could be no reason whatsoever to give the no objection, as the stated object of the same i.e, expeditious disposal of the trial, would not be feasible/practical/possible because of the clubbing and rather this clubbing would make the conclusion of trial factually impracticable if not impossible. Moreover, the affidavits filed in the said case, from time to time, by different officers, depicted not only the number and nature of challans but also the facts and circumstances due to which all these challans were filed besides registering of FIR No. 3. The details mentioned therein clearly suggested that neither the joint trial was legally made out nor practically feasible. Thus there was no occasion for the prosecution to have ever acquiesced in such consent. It is apparent that even this Hon'ble Court was not exactly made aware of the teething problems that would arise is such a situation otherwise, the said order would not have been passed. Thus the State of Punjab is constrained to file the present application so that a fair trial can be conducted in a smooth manner in order to serve the cause of justice, inter alia, on the following grounds:

4. All challans and both the FIR No. 10 and 3 pertain to different works allotted in different area, allocated over a span of years: That in the instant case, after registration of the FIR No. 10 of 2017, the investigation revealed a substantial and intricate scam having wider ramifications for the society as well as the public exchequer. The malfeasance in question became complex as it involved various contracts for different works and additionally, different individuals were responsible for assigning these diverse contracts. Another FIR no. 03 of 2018 was registered qua a work related to Kandi Canal, which does not have any bearing in FIR No 10 of 2017, and also a number of separate challans were presented in the FIR No. 10 of 2017.

5. Different accused and different witnesses: That each contract involved different set of individuals and the mode and manner in which the contracts were illegally granted to the respondents is also unique to each contract work. Further, the witnesses and evidence (both oral and documentary) qua each of the contract works is substantively different and mixing them all together would cause disorder, confusion and chaos which would eventually rule out the possibility of an effective adjudication.

6. Temporal and spatial differences: It is noteworthy that the period of allotment of these different contracts to the respondent spans from 2010 to 2016. Further, the presence of three distinct administrative units involved in the case adds another layer of complexity. These administrative units include the Kandi Arca Development Irrigation Department in Punjab, Chandigarh:

> *Shahapur Kandi Dam Irrigation Works in Punjab, Shahpur Kandi Township; and Drainage Irrigation Works in Punjab, Chandigarh. Since, all the contracts were executed over a considerable timeframe, by different people for different projects spreading over different geographical locations coupled with the involvement of multiple administrative units necessitated the filing of separate challans. This systematic approach duly serves the interests of justice by facilitating a more organized and comprehensive examination of the alleged offenses.*
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> *12. Distinct and separate offences for each different contract work: That the respondent got allotted different contract works illegally over a period of time spanning from 2010-2016, therefore, this is not a case where a single offence was committed. The illegal allotment of each contract work would constitute a separate and distinct offence, despite the fact that there may be similarity of the mode and manner in which the said offences were committed. Further, in all the challans, the offences under the Prevention of Corruption Act, are substantive and main, whereas the offence of criminal conspiracy is just an allied offence."*

7. Mr. R.S. Cheema, Sr. Advocate Counsel for the applicant-petitioner, has raised the following arguments: -

> *"The contents of the applicant: A reference has been made in the application to Awo order; one dated 27.07.2023 passed by this Hon'ble Court and the other dated 18.08.2023 passed by a coordinate bench of this Hon'ble Court in CRM- M3092/2019. The grounds raised in the application substantially touch the merits of the order, which is wholly impermissible. However, the primary contention raised in para 3 is that the application is filed under compelling circumstances including practical, technical and legal issues (which are not specified). It is humbly submitted that no application on such grounds for review is maintainable. It is also not deemed necessary to refer to on various grounds on merits incorporated in the application which have no bearing on the controversy.*
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> *3. That predominant submission raised in the application and set out in para (K) is reproduced hereunder: -*
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> *"K. That though the above said order dated 17.07.2023 would reflect that the State had given no objection to clubbing of challans, yet a reading of the circumstances narrated hereinafter will show that besides the practical and legal difficulties pointed out by the Ld. Public Prosecutor conducting the trial before the Ld. Special Court, the no objection given on behalf of the State was a result of an apparent misconception whereas there could be no reason whatsoever to give the no objection, as the stated object of the same le. expeditious disposal of the trial, would not be feasible/practical/possible because of the clubbing and rather this clubbing would make the conclusion of trial factually impracticable if not impossible.*

> *Similarly, in para 16 the plea is reinforced by making a reference to "practical difficulties in conducting join trial in both the cases", It is respectfully submitted that such practical difficulties do not enable the prosecution or empower this Hon'ble Court to review an order passed in accordance with law."*

8. I have heard counsel for the parties and gone through the pleadings and judicial precedents cited by the parties, and analysis would lead to the following outcome.

9. In State of Jharkhand through SP, CBI v. Lalu Prasad @ Lalu Prasad Yadav, 2017(2) R.C.R.(Criminal) 901: (2017) 8 SCC 1, Hon'ble Supreme Court holds,

> [39]. The modus operandi being the same would not make it a single offence when the offences are separate. Commission of offence pursuant to a conspiracy has to be punished. If conspiracy is furthered into several distinct offences there have to be separate trials. There may be a situation where in furtherance of general conspiracy, offences take place in various parts of India and several persons are killed at different times. Each trial has to be separately held and the accused to be punished separately for the offence committed in furtherance of conspiracy. In case there is only one trial for such conspiracy for separate offences, it would enable the accused person to go scot-free and commit number of offences which is not the intendment of law. The concept is of 'same offence' under Article 20(2) and Section 300 Cr.P.C. In case distinct offences are being committed there has to be independent trial for each of such offence based on such conspiracy and in the case of misappropriation as statutorily mandated, there should not be joinder of charges in one trial for more than one year except as provided in section 219. One general conspiracy from 1988 to 1996 has led to various offences as such there have to be different trials for each of such offence based upon conspiracy in which different persons have participated at different times at different places for completion of the offence. Whatever could be combined has already been done. Thus we find no merit in the submissions made by learned senior counsel appearing on behalf of accused persons.

10. In Uptron India Ltd. v. Shammi Bhan, (1998) 6 SCC 538, the Hon'ble Supreme Court holds,

> [23]. …Even otherwise, a wrong concession on a question of law, made by a counsel, is not binding on his client. Such concession cannot constitute a just ground for a binding precedent. The reliance placed by Mr. Manoj Swarup on this judgment, therefore, is wholly out of place….

11. This Court's order was not on merits but based on no objection given by the State's counsel. The prayer is not to alter, modify, or review the order but to recall it by exercising inherent jurisdiction under section 482 CrPC, 1973, to secure the ends of Justice.

12. The statutory prohibition under Section 362 CrPC certainly implies that when the orders are passed on merits and once the Courts have applied their mind and pronounced and signed the judgment, they become *functus officio*, and when the matters are not

decided on merits, but on technicalities, it would be an altogether different scenario. Thus, there are two distinct phases of prohibition under Section 362 CrPC, 1973. If the order and judgment have been passed on merits, i.e., after applying judicial mind, then certainly Section 362 CrPC would come into place, and the Court would be *functus officio*; however, when the orders have been passed on technicalities like dismissal in default or non-prosecution or wrong statement, these are certainly not the orders passed on merits, and the High Courts would be well within their jurisdiction to re-call such orders to prevent abuse of process of law and secure ends of justice.

13. The ground realities are that the High Courts have been allowing applications to re-call the orders where the matters had been finally closed for non-prosecution or dismissal in default despite the Courts allowing such applications by resorting to its inherent jurisdiction under Section 482 CrPC.

14. In Simrikhia v. Dolley Mukherjee and ors., (1990) 2 SCC 437, the Hon'ble Supreme Court holds,

> [3]. The learned counsel for the appellant contended before us that the second application under Section 482 Cr.P.C. was not entertainable, the exercise of power under Section 482, on a second application by the same party on the same ground virtually amounts to the review of the earlier order and is contrary to the spirit of Section 362 of the Cr.P.C. and the High Court was, therefore, clearly in error in having quashed the proceedings by adopting that course. We find considerable force in the contention of the learned counsel. The inherent power under Section 482 is intended to prevent the abuse of the process of the Court and to secure ends of justice. Such power cannot be exercised to do something which is expressly barred under the Code. If any consideration of the facts by way of review is not permissible under the Code and is expressly barred, it is not for the Court to exercise its inherent power to reconsider the matter and record a conflicting decision. If there had been change in the circumstances of the case, it would be in order for the High Court to exercise its inherent powers in the prevailing circumstances and pass appropriate orders to secure the ends of justice or to prevent the abuse of the process of the Court. Where there is no such changed circumstances and the decision has to be arrived at on the facts that existed as on the date of the earlier order, the exercise of the power to reconsider the same materials to arrive at different conclusion is in effect a review, which is expressly barred under Section 362.
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> [5]. Section 362 of the Code expressly provides that no court when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error save as otherwise provided by the Code. Section 482 enables the High Court to make such order as may be necessary to give effect to any order under the Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. The inherent powers, however, as much are controlled by principle and precedent as are its express powers by statues. If a matter is covered by an express letter of law, the court cannot give a go-by

> to the statutory provisions and instead evolve a new provision in the garb of inherent jurisdiction.
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> [6]. In Superintendent & Remembrancer of Legal Affairs v. Mohan Singh MANU/SC/0223/1974 : 1975CriL J812 , this Court held that Section 561A preserves the inherent power of the High Court to make such orders as it deems fit to prevent abuse of the process of the Court or to secure the ends of justice and the High Court must therefore exercise its inherent powers having regard to the situation prevailing at the particular point of time when its inherent jurisdiction is sought to be invoked. In that case the facts and circumstances obtaining at the time of the subsequent application were clearly different from what they were at the time of the earlier application. The question as to the scope and ambit of the inherent power of the High Court vis-a-vis an earlier order made by it was, therefore, not concluded by this decision.

15. In New India Assurance Co. Ltd. v. Krishna Kumar Pandey, (2021) 14 SCC 683, a three-member bench of the Hon'ble Supreme Court holds,

> [10]. However, Mr. Ranji Thomas, learned Senior Counsel appearing for the respondent strenuously contended that in view of the embargo spelt out in Section 362 of the Code, there was no power for the High Court to alter or review the judgment rendered earlier in the revision filed by the respondent, except for the correction of a clerical or arithmetical error. In this regard, the learned Senior Counsel for the respondent placed strong reliance upon the Judgment of this Court in State of Punjab v. Davinder Pal Singh Bhullar & Others, (2011) 14 SCC 770. It is his contention that the High Court was right in rejecting the application filed by the appellant under Section 482 Cr.P.C., 1973 for recall/review of its earlier order, as the High Court did not have the power to do so.
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> [11]. But the above contention of the learned Senior Counsel for the respondent is fallacious for two reasons. The first is that Section 362 of the Code is expressly subjected to "what is otherwise provided by the Code or by any other law for the time being in force." Though this Court pointed out in Davinder Pal Singh (supra) that the exceptions carved out in Section 362 of the Code would apply only to those provisions where the Court has been expressly authorized either by the Code or by any other law but not to the inherent power of the Court, this Court nevertheless held that the inherent power of the Court under Section 482 Cr.P.C., 1973 is saved, where an order has been passed by the criminal Court, which is required to be set aside to secure the ends of justice, or where the proceeding amounts to abuse of the process of Court. In paragraph 46 in particular, this Court held in Davinder Pal Singh as follows:
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> > "[46]. If a judgment has been pronounced without jurisdiction or in violation of principles of natural justice or where the order has been pronounced without giving an opportunity of being heard to a party affected by it or where an order was obtained by abuse of the process of court which would really amount to its being without jurisdiction, inherent powers can be exercised to recall such order for the reason that in such an eventuality the order becomes a nullity and the provisions of Section 362 Cr.P.C.,

> 1973 would not operate. In such an eventuality, the judgment is manifestly contrary to the audi alteram partem rule of natural justice. The power of recall is different from the power of altering/reviewing the judgment. However, the party seeking recall/alteration has to establish that it was not at fault."

16. In State of Punjab v. Davinder Pal Singh Bhullar, a two-member bench of the Hon'ble Supreme Court holds,

> III. BAR TO REVIEW/ALTER- JUDGMENT
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> [44]. There is no power of review with the Criminal Court after judgment has been rendered. The High Court can alter or review its judgment before it is signed. When an order is passed, it cannot be reviewed. Section 362 Criminal Procedure Code 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 judgment. (See: Hari Singh Mann v. Harbhajan Singh Bajwa & Ors., 2000(4) RCR (Criminal) 650 ; and Chhanni v. State of U.P., 2006(3) RCR (Criminal) 753 : 2006(2) Apex Criminal 666).
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> [45]. Moreover, the prohibition contained in Section 362 Criminal Procedure Code is absolute; after the judgment is signed, even the High Court in exercise of its inherent power under Section 482 Criminal Procedure Code has no authority or jurisdiction to alter/review the same. (See: Moti Lal v. State of M.P., 1994(3) RCR (Criminal) 77 ; Hari Singh Mann (supra); and State of Kerala v. M.M. Manikantan Nair, 2001(2) RCR (Criminal) 657).
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> [46]. If a judgment has been pronounced without jurisdiction or in violation of principles of natural justice or where the order has been pronounced without giving an opportunity of being heard to a party affected by it or where an order was obtained by abuse of the process of court which would really amount to its being without jurisdiction, inherent powers can be exercised to recall such order for the reason that in such an eventuality the order becomes a nullity and the provisions of Section 362 Criminal Procedure Code would not operate. In such eventuality, the judgment is manifestly contrary to the audi alteram partem rule of natural justice. The power of recall is different from the power of altering/reviewing the judgment. However, the party seeking recall/alteration has to establish that it was not at fault. (Vide: Chitawan & Ors. v. Mahboob Ilahi, 1970 Crl.L.J. 378; Deepak Thanwardas Balwani v. State of Maharashtra & Anr., 1985 Crl.L.J. 23; Habu v. State of Rajasthan, AIR 1987 Rajasthan 83 (F.B.); Swarth Mahto & Anr. v. Dharmdeo Narain Singh, AIR 1972 Supreme Court 1300; Makkapati Nagaswara Sastri v. S.S. Satyanarayan, AIR 1981 Supreme Court 1156; Asit Kumar Kar v. State of West Bengal & Ors., 2010(8) RCR (Civil) 111 : (2009) 2 SCC 703; and Vishnu Agarwal v. State of U.P. & Anr.,2011(2) RCR (Criminal) 754 : 2011(2) Recent Apex Judgments (R.A.J.) 585).

17. In Sher Mohd. Khan v. Madan Lal, 2013(4) R.C.R.(Criminal) 5, Punjab and Haryana High Court holds,

> [11]. All Courts, whether civil or criminal, in the absence of an express provision, as inherent in their constitution, possess all such powers as are necessary to do the right and to undo a wrong in the course of administration of justice on the principle *quando lex aliquit alicui concedit, concedere videtur id sine quo res ipsa esse non potest* (when the law gives a person anything it gives him that without which it cannot exist). Section 482 Criminal Procedure Code thus, does not confer a new jurisdiction or power on the High Court. It merely safeguards all existing inherent powers possessed by it necessary to secure the ends of justice. These powers by this provision have been preserved lest it be considered that the only powers possessed by it are those which are expressly conferred by the Code and that no inherent power had survived with the passing of the Code. This Section was added so that the High Courts may not feel hesitant to exercise their inherent powers even in cases where injustice was palpable and apparent in its absence. It is a sort of reminder to the High Courts that they are not merely Courts of law but also Courts of justice and possess inherent powers to prevent and remove injustice. However, in view of Section 482 Cr.P.C., this power is not available with the subordinate Courts now.
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> [12]. No legislative enactment dealing with the procedure, as exhaustive as it may be, can visualize and provide for all cases that may possibly arise. While putting into effect the procedural law, lacunae are sometimes discovered therein and it is to cover such lacunae and to deal with cases when such lacunae are discovered in the procedural law that these inherent powers are required. The Courts must, therefore, have inherent powers, apart from the express provisions of law, which are essential and necessary for their existence and for proper discharge of duties imposed upon them by law. This doctrine finds expression in Section 482 Cr.P.C.. The inherent power of the High Court is an inalienable attribute of the position it holds with respect to the Courts subordinate to it. The inherent jurisdiction of the High Court preserved under this Section is vested in it by "law" within the meaning of Article 21 of the Constitution.
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> [13]. The inherent jurisdiction possessed by the High Court and as envisaged under Section 482 Criminal Procedure Code can be exercised in three circumstances, namely:
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> (i) to give effect to an order under the Code;
> (ii) to prevent abuse of the process of any Court; and
> (iii) to otherwise secure the ends of justice.
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> [14]. Under any one or more of these three circumstances, this jurisdiction can be exercised by the High Court. Keeping in view the content, purpose and nature of this provision, it is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of the High Court's inherent jurisdiction. The powers of the High Court under this Section are extraordinary in their nature and exercised *ex debito justitiae*, that is to say, for the purpose of doing real and substantial justice, for the administration of which the Courts of law exist. But this does not mean that these inherent powers are to be exercised where such powers have been expressly taken away by legislation and also cannot be invoked which are directly covered by the specific provisions of the

legislation. If a remedy is specifically available under the Statute, High Court cannot, in such situations, invoke inherent jurisdiction. These powers are to be exercised only when there is no specific provision in the Code to meet a particular situation and only when no other remedy is available to the litigant. Inherent jurisdiction cannot be exercised against the provisions of law but needs to be exercised only in cases where substantial justice is required to be done and that too, where any one or more of the three circumstances, as mentioned in Section 482 Cr.P.C., exist.

[15]. Thus, the High Court is not given, nor did it ever possess, an unrestricted, unguided or undefined power to make any order which it might please to consider, was in the interest of justice. High Court like any other Court is also strictly governed by the provisions contained in the Criminal Procedure Code and is not supposed to travel beyond those specific provisions. Its inherent powers are as much controlled by principle and precedent as are its express powers by Statute.

[16]. It is a well established and recognised principle of legal jurisprudence that an act of the Court shall not harm any party, which means total and complete justice shall be done in the case by the Court. Relief will not be granted to a party whose hands are dirty with crime and misadventure or where it has not approached the Court bona-fide or with a mala-fide intention with an effort to mislead the Court especially when the facts are misrepresented or deliberately suppressed. It can conversely be said that when it comes to the knowledge of the Court that an order has been obtained by these means, the Court would exercise its inherent powers to see that justice is not made a causality by recalling or setting aside such order as the case may require.

[17]. This Court in circumstances as mentioned above would not feel helpless or give an interpretation to Section 482 Criminal Procedure Code in a narrow campus to make itself powerless to correct its own error. Inherent jurisdiction exists for the advancement of justice and if any attempt is made to abuse that authority, so as to produce injustice, the Court has the power to prevent that abuse. One of the circumstances provided in Section 482 Criminal Procedure Code where inherent jurisdiction can be exercised is to prevent abuse of the process of any Court, which would include abuse of process of itself as well. In the absence of such power, the administration of law would fail to serve the purpose for which alone the Court exists, namely, to promote justice and to prevent injustice. It would be an abuse of process of law to allow an order obtained by playing fraud on the Court by intentionally misstating the facts and withholding the true facts from the Court to continue to operate despite true facts come or are brought to the notice of the Court.

[18]. The High Court thus, has very vast powers and such powers are restricted in situations, which have been dilated above, but that do not, in any way, put fetters in the exercise of inherent jurisdiction of the High Court in securing the ends of justice and invoking of the same is dependent upon the facts and circumstances of that particular case. These powers, thus, cannot be cast in any inflexible rule and the discretion must be exercised by the Court to prevent the abuse of process of Court and to secure the ends of justice which must prevail as the rule of law and dignity of the Courts is to be upheld and preserved. The High

> Court may exercise its jurisdiction under this Section as the order, so obtained, is ex-facie void. Normally, the inherent jurisdiction cannot be invoked by the same person for a second time as the same would not be entertainable particularly when there is no change in the facts and circumstances of the case between the passing of the earlier order and the filing of the subsequent petition under Section 482 Criminal Procedure Code This bar, however, would not be applicable in cases where there are fresh facts and on that basis fresh grounds are available to the petitioner.
>
> [19]. Section 362 of the Code of Criminal Procedure, which has been pressed into service by the counsel for respondent No. 1 to contend that the Court does not have the power to recall or set aside its own order, now requires to be analyzed, which reads as follows:-
>
> > "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 judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error."
>
> [20]. A perusal of the above Section leads us to a conclusion that there is a complete bar for altering or reviewing of a judgment or a final order on merits except to correct clerical or arithmetical error in the same. There is a difference between the recalling or setting aside of a judgment or an order and that of altering or reviewing it. What is forbidden is alteration or review of a final judgment or order disposing of a case but it does not prohibit the total abrogation of such judgment or order. There is thus no specific bar contained in Section 362 Criminal Procedure Code or any other Section of the Code against the revoking, setting aside or recall of a judgment or an order and inherent powers under Section 482 Criminal Procedure Code can be resorted to by the High Court in exceptional cases for doing so. However, one or other of the three conditions mentioned in Section 482 Criminal Procedure Code should be fulfilled i.e. (i) to give effect to any order passed under the Code of Criminal Procedure (ii) to prevent abuse of the process of any Court (iii) otherwise to secure the ends of justice.
>
> [21]. Thus, for the above three reasons, wherever necessary, on fulfilling anyone or more of these conditions, the Court has power to revoke, recall or set aside its own earlier order/judgment. However, this is an exceptional power which should be sparingly used and that too where the test as laid down in the Section stands satisfied.

18. In Habu v. State, AIR 1987 Raj 83, a Full Bench of Rajasthan High Court observed,

> What we intend to emphasise is that right of hearing is very important right of which no litigant should be deprived. Thus on the consideration of all the cases cited and on the two cases quoted by learned single Judge, we answer the reference as under:
>
> > (i) That the power of re-call is different than the power of altering or reviewing the judgement.

> (ii) That powers under Section 482 Criminal Procedure Code, 1973 can be and should be exercised by this Court for re-calling the judgement in case the hearing is not given to the accused and the case falls within one of the three conditions laid down under Section 482 Criminal Procedure Code, 1973.

19. Harjeet Singh Vs. State of West Bengal, MANU/WB/0037/2005, A full Bench of Calcutta High Court observed,

> [54]. We hold that in view of Section 362 of the said Code there is a clear bar for any Court, which includes the High Court, to either review or recall an Order or judgment passed even if it is found subsequently that it offends the principles of natural justice as this is the language of Section 362 of the said Code.

20. In Siba Bisoi v. State of Odisha, 2022(2) R.C.R.(Criminal) 555, Orissa High Court observed,

> [11]. The position that emerges from a reference to the case laws noted above is that the bar under section 362 of Cr.P.C., 1973 is not absolute and in any case, does not apply in case of recall of the order. There is no dispute that the inherent power of the High Court under section 482 of Cr.P.C., 1973 can be exercised if any of the three conditions exist, namely, to give effect to any order under the Code, to prevent abuse of the process of Court or to secure the ends of justice. In case any of the three conditions exist, the High Court would be justified in exercising its jurisdiction. Therefore, the objection raised by Mr. Panda with regard to maintainability of the I.A. is not tenable. However, whether such course of action is justified in facts and circumstances of the instant case, shall be discussed later.

21. In Pushpangathan v. State of Kerala, 2015(18) R.C.R.(Criminal) 46, Kerala High Court observed,

> [15]. There cannot be any quarrel on the proposition that the bar created under Section 362 Cr.P.C. has to be respected. But the concepts of recall, review and/or alteration are to be distinguished clearly. If we understand the said terms correctly, there will not be any difficulty to resolve the issue. Alteration and/or review prohibited by Section 362 Cr.P.C. presupposes the continuance of the order under challenge and effectuation of the same with some changes in it. If a party wants to seek the indulgence of Court to recall an order, he has to show a legal reason for challenging its existence and convince the Court that the order complained of shall not be allowed to continue or operate. When an order is recalled, the whole thing is abrogated and the parties are relegated to the original position; i.e., to a stage anterior to passing any judgment or final order in the matter. Conceptually, review/alteration is done while the order is in existence or force. The exercise undertaken in a review/alteration is to closely examine the order sought to be reviewed so as to find out any illegality or impropriety. For doing

> so, the existence of the judgment or order must be recognised. When a judgment or a final order is recalled for valid reasons, the resultant legal effect is that the order itself is abrogated or uprooted and the parties will be relegated to a position that existed at the commencement of the proceedings. Therefore, I am of the view that Section 362 Cr.P.C. does not affect the power of this Court to recall a judgment or order, if legal grounds are properly established by the party complaining.

22. The High Court has statutory powers under S. 482 CrPC, 1973, to prevent abuse of the process of any Court. S. 482 does not state that the word "Any Court" would not include the "High Court." Instead, "Any" must include the High Court. S. 362 CrPC, 1973, created an express bar before the Courts not to alter or review any judgment or final order once signed, except to correct a clerical or arithmetical error. The application has been filed under S. 482 CrPC, 1973, for recalling the order and not for altering, reviewing, or modifying it. Recalling an order does not mean reviewing, altering, or modifying an order. It implies that if the applicant's prayer is accepted, the order shall cease to exist and operate.

23. Recalling an order or judgment differs entirely from alteration, review, or modification and in peculiar facts and circumstances, and if this Court exercises its inherent jurisdiction under S. 482 CrPC to prevent the abuse of the process of law, such powers would not be eroded by the restriction imposed by S. 362 CrPC on alteration or review.

24. Given the above, the application is allowed. The order dated 27.07.2023 is re-called. Registry to restore the petition to its original number and list the matter for final hearing on 27 August 2024.

(ANOOP CHITKARA)
JUDGE

Reserved on: 08.07.2024
Pronounced on: 30.07.2024
Jyoti Sharma/anju saini