



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

THURSDAY, THE 24TH DAY OF OCTOBER 2024 / 2ND KARTHIKA, 1946

CRL.MC NO. 6884 OF 2024

AGAINST THE ORDER DATED 23.07.2024 in CRMP 14/2024 IN SC
NO.539 OF 2023 OF SPECIAL COURT FOR SC/ST (POA) ACT & NDPS ACT
CASES, MANJERI

PETITIONER:

FARHAN V.S
AGED 22 YEARS, S/O. SAJID.V.A,
VALIYAKATH HOUSE,
SDPY ROAD, NAMBIAPURAM,
PALLURUTHY P.O. KOCHI,
ERNAKULAM DISTRICT, PIN - 682006

BY ADVS.
SRI.JEFRIN JOSE
SRI.S.SURESH BABU
SMT.JASMINE LIGY

RESPONDENTS:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682031

SRI. NOUSHAD K.A., PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
14.10.2024, THE COURT ON 24.10.2024 PASSED THE FOLLOWING:



BECHU KURIAN THOMAS, J

Crl.M.C No.6884 of 2024

Dated this the 24th day of October, 2024

ORDER

Petitioner faces an indictment for the offences under Sections 22(c) and 29(1) of the Narcotic Drugs and Psychotropic Substances Act, 1985. Petitioner was granted statutory bail as per the order in Crl.M.C No.3491/2023 by a learned single Judge of this Court after imposing conditions. Pursuant to the condition directing surrender of his passport before the Special Court, petitioner surrendered his passport. Later, he filed an application before the Special Court for its release. Without noticing the absence of authority to modify the conditions, the Special Court allowed the application and directed the passport to be released as per Annexure 2 order dated 17-05-2024. However, on noticing that the condition directing surrender of the passport was imposed by this Court and there was no stipulation enabling the Special Court to modify the conditions, the order releasing the passport was recalled by another order dated 23-07-2024, which is produced as Annexure 5. The order of recall is under challenge in this proceeding under section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

2. I have heard Sri. Jefrin Jose, the learned counsel for the petitioner as well as Sri. Noushad K.A., the learned Public Prosecutor.



3. Concededly, when petitioner was granted statutory bail by the High Court after imposing conditions, there was no stipulation enabling the Special Court to relax the conditions imposed by this Court. Therefore, modification of the conditions imposed in the bail order could have been permitted only by the High Court. Instead of applying for modification of the said condition before the Court which granted bail, petitioner approached the Special Court and the application for release of his passport was allowed. However, on noticing the absence of any jurisdiction to relax the conditions, the Special Court, recalled its earlier order.

4. True, the initial order directing release of the passport was legally without authority. Nevertheless, the impugned order recalling the earlier order is equally without legal authority. The order directing release of the passport was without authority, but it was not challenged. Without any challenge against it, the trial court could not have recalled its earlier order.

5. The criminal courts of the District Judiciary which include the Sessions Courts, the Magistrate Courts and even the Special Courts are not conferred with any inherent power. In the absence of any conferment of power, the aforementioned courts cannot exercise any power of review, modification or even recall. Even the High Court is not vested with such powers despite the availability of the inherent power in view of the specific bar under section 362 Cr.P.C. Of course, High Courts can take recourse to the inherent power to recall a judgment or order only to a limited extent, notwithstanding the restriction under section 362 Cr.P.C.

6. In the decision in **State of Punjab v. Davinder Pal Singh Bhullar**



and Others [(2011) 14 SCC 770] it was observed that there is no power of review with the Criminal Court after judgment has been rendered and the High Court can alter or review its judgment before it is signed. It was further noted that when an order is passed, it cannot be reviewed and the Court is disentitled to entertain a fresh prayer for any relief unless the former order is set aside by a Court of competent jurisdiction in a manner prescribed by law.

7. Similarly, while dealing with a case that arose under the Cr.P.C of 1898, the Supreme Court had in **Bindeshwari Prasad Singh v. Kali Singh** [(1977) 1 SCC 57] held as follows “.....*there is absolutely no provision in the Code of Criminal Procedure of 1898 empowering a Magistrate to review or recall an order passed by him. Code of Criminal Procedure does contain a provision for inherent powers, namely, Section 561A which, however, confers these powers on the High Court and the High Court alone. Unlike Section 151 of Civil Procedure Code, the subordinate criminal courts have no inherent powers. In these circumstances, therefore, the learned Magistrate had absolutely no jurisdiction to recall the order dismissing the complaint. The remedy of the respondent was to move the Sessions Judge or the High Court in revision.*”

8. In view of the above propositions, it is explicit that the criminal courts of the District Judiciary cannot recall their earlier orders. An illegal order or an order without jurisdiction cannot be corrected by another illegal order or another order without jurisdiction. Resort to another illegality to rectify an earlier illegality cannot be undertaken. In the instant case, without any challenge to the earlier order directing release of the passport, the Special



Court could not have recalled its earlier order on its own. Hence, the impugned order is without authority or jurisdiction.

9. Accordingly, the impugned order dated 23-07-2024 in Crl.M.P No.14/2024 in S.C. No.539/2023 on the files of the Special Court for SC/ST (POA) Act & NDPS Act Cases, Manjeri, is hereby set aside.

This criminal miscellaneous case is allowed.

Sd/-

BECHU KURIAN THOMAS
JUDGE

vps



APPENDIX

PETITIONER ANNEXURES

- Annexure 1** A TRUE COPY OF THE ORDER DATED 22/8/2023 IN CRL.M.C. NO. 3491/2023 PASSED BY THIS HON'BLE COURT
- Annexure 2** A TRUE COPY OF THE ORDER DATED 17/5/2024 PASSED BY THE SPECIAL COURT FOR SC/ST (POA) ACT AND NDPS ACT CASES, MANJERI IN CRL.M.P. NO. 14/2024 IN S.C. NO. 539/2023
- Annexure 3** A TRUE COPY OF THE SHOW CAUSE MEMO DATED NIL
- Annexure 4** A TRUE COPY OF THE EXPLANATION DATED 20/7/2024 SUBMITTED BY THE PETITIONER BEFORE THE SPECIAL COURT FOR SC/ST (POA) ACT & NDPS CASES, MANJERI IN CRL.M.P. NO. 14/2024 IN S.C. NO. 539/2023
- Annexure 5** CERTIFIED COPY OF THE ORDER DATED 23/7/2024 PASSED BY THE SPECIAL COURT FOR SC/ST (POA) ACT & NDPS ACT CASES, MANJERI IN CRL.M.P. NO. 14/2024 IN S.C. NO. 539/2023
- Annexure 6** A TRUE COPY OF THE NOTIFICATION NO. G.S.R.570(E) DATED 25/8/1993 (PUBLISHED IN THE GAZETTE OF INDIA, EXTRA PART IIS. 3(I) DATED 25/8/1993) ISSUED BY THE CENTRAL GOVERNMENT UNDER CLAUSE (a) OF THE PASSPORT ACT, 1967
- Annexure 7** A TRUE COPY OF THE DICTUM LAID DOWN BY THIS HON'BLE COURT IN ASOK KUMAR VS. STATE OF KERALA [2009 ICO 754]
- Annexure 8** A TRUE COPY OF THE DICTUM LAID DOWN BY THIS HON'BLE COURT IN HARIS K. VS. STATE OF KERALA [2010 ICO 2027]
- Annexure 9** A TRUE COPY OF THE DICTUM LAID DOWN BY THIS HON'BLE COURT IN MUHAMMED VS. STATE OF KERALA & ANOTHER [2012 ICO 1394]