



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Criminal Miscellaneous (Petition) No. 733/2021

1. Dharam Singh Meena S/o Shri Chauthmal Meena, Aged About 24 Years, R/o Village Kishanpura Post Garh, Tehsil Bassi Distt. Jaipur Rajasthan
2. Vikas Kumar S/o Hari Singh Sahoo, Aged About 24 Years, R/o Village And Post Ujal Was, Tehsil Nohar, Distt. Hanumangarh Rajasthan

----Petitioners

Versus

1. State Of Rajasthan, Through Public Prosecutor.
2. The Station House Officer, Ps Sadar, (South), Jaipur, Rajasthan

----Respondents

Connected with

S.B. Criminal Miscellaneous (Petition) No. 1655/2021

1. Babulal S/o Shri Jhabar Mal, Aged About 30 Years, R/o Village Geedawala, Post Simaria, Tehsil Shrimadhapur, District Sikar (Raj).
2. Shishram Son Of Shri Khyali Ram, Aged About 30 Years, R/o Village Heerawal, Tan Ghata Guwar, Post Chiplata, Tehsil Neem Ka Thana, Distirct Sikar.
3. Muniraj Meena S/o Shri Ramdayal Meena, Aged About 29 Years, R/o Village Bans Laxmipura, Post Kherla, Khurd, Tehsil Lalsot ,District Dausa.
4. Manish Kumar Bairwa S/o Nanagram Bairwa, Aged About 23 Years, R/o Village Marayanpura, Post Pichupada Kalan, Tehsil Baswa, District Dausa (Raj).

----Petitioners

Versus

1. State Of Rajasthan, Through Public Prosecutor.
2. SHO, Police Station Sadar, Jaipur South (Raj.)

----Respondents



For Petitioner(s) : Mr. Madan Mohan Kashyap
Mr. Basant Singh Rathore
For Respondent(s) : Mr. Chandragupt Chopra, PP

HON'BLE MR. JUSTICE ANOOP KUMAR DHAND
Order

11/01/2023

table

1. This order will govern disposal of both these petitions since it is submitted that both the petitions involve common issue and prayer in the identical fact situation.

2. Both these petitions have been filed by the petitioners with the following prayer:

"It is therefore most respectfully prayed your Lordships that S.B. Criminal Misc. Petition may kindly be accepted and allowed and impugned FIR bearing No.476/14 dt 5.12.2014 registered at PS Sadar, Jaipur South U/S 419 IPC may kindly be ordered to be quashed and set aside upto the extent of the accused / petitioners.

And pass any other order / orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and in the interest of justice."

3. At the outset it is observed that with regard to the same prayer, the petitioners filed S.B. Criminal Misc. Petition No.1438/2017 for quashing of the impugned FIR No.476/2014 before this Court with the similar prayer which is reproduced as under:

"It is therefore respectfully prayer your lordships that the criminal misc. petition may kindly be accepted and allowed and the impugned FIR bearing No.476/2014 dated 5/12/2014



registered at Police Station Sadar, Jaipur South offence under section 419 of I.P.C. may kindly be ordered to be quashed and set aside up to the extent of the accused – petitioners.

Any other order or relief which this Hon'ble Court deems fit may also kindly be passed in favour of the petitioners."

4. The aforesaid petition was dismissed by this Court vide order dated 08.08.2017 by observing thus:

"As per the prosecution story, posts of Constables were advertised. Petitioners applied for the post of Constables. However, some other persons appeared on behalf of the petitioners in the written examination. Case is still under investigation.

Keeping in view the nature of allegations levelled against the petitioners, no ground to scuttle the criminal proceedings at the very threshold is made out.

Dismissed."

5. Counsel for the petitioners submits that under the similar circumstances two FIRs were registered against the petitioners at Delhi i.e. FIR No.969/2014 and 539/2014 registered with Police Station Sarai Rohilla, Delhi for the offences under Section 419, 468 and 471 IPC. Counsel submits that High Court of Delhi has quashed FIR No.969/2019 registered with Police Station Sarai Rohilla, Delhi vide its order dated 02.03.2017 while deciding Criminal Misc. Case No.1218/2015. Counsel submits that this fact was not within the knowledge of the petitioners. Hence, it could not be brought into the notice of this Court at the time of disposal



of earlier S.B. Criminal Misc. Petition No.1438/2017. Counsel further submits that subsequently the High Court of Delhi quashed FIR No.539/2014 registered with Police Station Sarai Rohilla, Delhi vide order dated 03.08.2018. Counsel submits that under these circumstances, the petitioners have approached again this Court by way of filing this successive petition for quashing of FIR No.476/2014. Counsel submitted that under the changed circumstances, the inherent powers of this Court under Section 482 Cr.P.C. be exercised and the impugned FIR be also quashed.

6. Per contra, learned Public Prosecutor opposed the arguments raised by the counsel for the petitioners.

7. Heard learned counsel for the petitioners as well as learned Public Prosecutor and perused the material available on record.

8. Without going into the merits of the case, this Court is of the view that as per the provisions contained under Section 362 Cr.P.C., this Court cannot alter the order dated 08.08.2017 passed by this Court while deciding S.B. Criminal Misc. Petition No.1438/2017. For ready reference the provisions contained under Section 362 Cr.P.C. are quoted here as under:

“362. **Court not to after 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.”

9. Perusal of the aforesaid provision clearly indicates that this Court cannot alter its judgment or final order after disposal of the case. This Court can alter or review the same if there is any



clerical or arithmetical error is there. In the instant matter there is no clerical or arithmetical error.

10. A plain reading of Section 482 Cr.P.C. showcases that nothing in the Cr.P.C. shall be deemed to limit or affect the inherent powers of the High Court. However, the embargo that lies under Section 362 Cr.P.C. which prohibits a Court from altering or reviewing its judgment or final order disposing of a case, except to correct a clerical or arithmetical error, applies to Section 482 Cr.P.C. as well. The Supreme Court has time and again held that the inherent jurisdiction of the High Court cannot be invoked to override the bar of review under Section 362 Cr.P.C. In the case of **Simrikhia v. Dolley Mukherjee, (1990) 2 SCC 437**, the Supreme Court had observed as follows:

"3. The learned counsel for the appellant contended before us that the second application under Section 482 CrPC was not entertainable, the exercise of power under Section 482, on a second application by the same party on the same ground virtually amounts to the review of the earlier order and is contrary to the spirit of Section 362 of the CrPC and the High Court was, therefore, clearly in error in having quashed the proceedings by adopting that course. We find considerable force in the contention of the learned counsel. The inherent power under Section 482 is intended to prevent the abuse of the process of the court and to secure ends of justice. Such power cannot be exercised to do something which is expressly barred under the Code. If any consideration of the facts by way of review is not permissible under the Code and is expressly barred, it is not for the court to exercise its inherent power to reconsider the matter and



record a conflicting decision. If there had been change in the circumstances of the case, it would be in order for the High Court to exercise its inherent powers in the prevailing circumstances and pass appropriate orders to secure the ends of justice or to prevent the abuse of the process of the court. Where there is no such changed circumstances and the decision has to be arrived at on the facts that existed as on the date of the earlier order, the exercise of the power to reconsider the same materials to arrive at different conclusion is in effect a review, which is expressly barred under Section 362.

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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 statute. If a matter is covered by an express letter of law, the court cannot give a go-by to the statutory provisions and instead evolve a new provision in the garb of inherent jurisdiction.

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7. The inherent jurisdiction of the High Court cannot be invoked to override bar of review under Section 362. It is clearly stated in *Sooraj Devi v. Pyare Lal* [(1981) 1 SCC 500 : 1981 SCC (Cri) 188] , that the inherent power of the court cannot be exercised for doing that which is specifically





prohibited by the Code. The law is therefore clear that the inherent power cannot be exercised for doing that which cannot be done on account of the bar under other provisions of the Code. The court is not empowered to review its own decision under the purported exercise of inherent power. We find that the impugned order in this case is in effect one reviewing the earlier order on a reconsideration of the same materials. The High Court has grievously erred in doing so. Even on merits, we do not find any compelling reasons to quash the proceedings at that stage."

11. The purpose of Section 362 Cr.P.C. is that once a Court delivers a judgment or a final order disposing of a case, that judgment becomes functus officio, and it cannot be reconsidered or modified. The inherent power of the Court cannot be exercised for doing something that is specifically prohibited by the Cr.P.C. as doing so would be a violation of the law enacted by the Legislature and the precedents of the Supreme Court. Further, Section 482 Cr.P.C. does not confer any new powers on the High Court; it only saves the inherent power which the Court possessed before the commencement of the Code.

12. This Court is of the opinion that if any order is passed in consonance of the prayer made in this petition, it would invariably amounts to review which is barred under Section 362 Cr.P.C. and is not permissible even under the inherent powers possessed by this Court. The provisions under Section 482 Cr.P.C. cannot be invoked to set-aside the final order dated 08.08.2017 passed by this Court in Criminal Misc. Petition No.1438/2017. This Court cannot sit as an Appellate Court over the final order dated



08.08.2017 and set it aside which can only be done by the Hon'ble Apex Court.

13. Hence under these circumstances, the successive petition with regard to the same prayer is not maintainable and the same is liable to be dismissed.

14. Both criminal misc. petitions are accordingly dismissed. Stay applications also stand dismissed.

(ANOOP KUMAR DHAND),J

KuD/89-90

