the right to purchase are hereby dismissed. C.W.P. 2438 of 1980 which challenges the purchase of land by the tenants under section 18 in consonance with *Jagdish and Santu's case* is hereby allowed and the impugned order of the Financial Commissioner is hereby set aside.

(22) In view of the conflict of precedent and the somewhat intricate issues involved the parties are left to bear their own costs.

N.K.S.

FULL BENCH.

Before S. S. Sandhawalia, C.J., D. S. Tewatia and K. S. Tewana, JJ.

AJIT SINGH and another,—*Appellants.*

versus

STATE OF PUNJAB,—*Respondent.*

Criminal Misc. No. 2638 *of* 1981

In

Criminal Appeal No. 490 *of* 1979.

November 13, 1981.

Code of Criminal Procedure (V of 1898)—Sections 369, 424, 430 and 561-A—Judgment by a High Court in the exercise of its criminal jurisdiction—Such Court—Whether has power to review or alter the same—Alteration or modification of sentence only without consideration of merits of the conviction—Whether amounts to review.

Held, that the High Court has no power to review or alter its earlier judgment within the criminal jurisdiction except to correct clerical errors. **(Para 7).**

Lal Singh and others *v.* State and others, A.I.R. 1970 Punjab and Haryana 32. *Overruled.*

Held, that a mere alteration or modification in the sentence alone without consideration of the merits of the conviction amounts to a review in the eye of law. **(Para 8).**

Prem Singh *v.* State of Punjab, 1980 Chandigarh Law Reporter 234
Ved Parkash *v.* State of Haryana 1969 P.L.R. (Short Note) 43.
Overruled.

Shamsher Singh *v.* State of Haryana 1975 Ch. Law Reports 57.
Partly OVERRULED.

Application under Section 482 Cr. P. C. praying that the applicant be allowed to remit the fine and delay may kindly be condoned.

Avinash Chander Jain, Advocate, *for the Appellant.*

T. N. Bhalla, Advocate, *for the State*

JUDGMENT

S. S. Sandhawalia, C.J.

(1) The two meaningful questions which in essence fall for determination in this reference to the Full Bench are:—

(1) Whether the High Court has no power to review or alter its earlier judgment (except to correct clerical errors) rendered within the criminal jurisdiction?

(2) Whether any alteration or modification of the sentence alone (without touching the merits or the section under which the conviction is recorded) would amount to a review in the eye of law?

2. Equally at issue is the connected question whether the view expressed by the Division Bench in *Lal Singh and others* v. *State and others,* (1) can still hold the field in wake of the recent judgment in *State of Orissa* v. *Ram Chander Agarwala etc.,* (2).

3. The two petitioners were brought to trial on the charge of attempted murder before the Additional Sessions Judge, Amritsar. The learned Judge, however, acquitted them of that charge but held Ajit Singh, petitioner guilty substantively under section 326, Indian Penal Code, and Charan Singh petitioner under section 326 read

(1) A.I.R. 1970 Pb. & Haryana 32.
(2) A.I.R. 1979 S.C. 87.

with section 34, Indian Penal Code, and imposed sentences of two years' rigorous imprisonment and fine of Rs. 100/- and one years rigorous imprisonment and fine of Rs. 50/- respectively. They appealed, and the matter came up before my learned brother Tewatia, J., sitting singly. While upholding their conviction, the sentence imposed was altered in the following terms:—

> "Accordingly, instead of sending back the two appellants who are on bail, to jail, the unexpired portion of their sentence is converted into a fine of Rs. 1,000/- each, in addition to the fine already imposed by the trial Court. The entire fine is directed to be deposited within four months from today. In the event of non-compliance of this condition the appellants shall surrender and undergo the remaining portion of their substantive sentences. However, in the event of the realisation of the fine, half of the same shall be made over to Makhan Singh injured, who shall be intimated about his right to receive the part of the fine by the trial Court where the same is to be deposited. The appeal stands disposed of accordingly."

(4) It would appear that both the petitioners failed to deposit the fine within the time prescribed. The present application under section 482 of the Criminal Procedure Code was then moved on their behalf praying that the petitioners may now be allowed to deposit the fine and the failure to do so within the prescribed time be condoned. Noticing some discordance of judicial opinion on the point whether a relief of this nature could be allowed, my learned brother Tewatia, J. referred the matter to a larger Bench. When the cases came up before the Division Bench, Reliance on behalf of the petitioners was placed on *Lal Singh and others* case (supra) whilst on behalf of the respondent-State it was contended that the ratio was no longer tenable in view of the observations of their Lordships in *Ram Chander Agarwala's* case (supra). The present reference to the larger Bench was thus necessitated.

5. At the very outset it must be noticed that we are inclined to take the view that the two questions before us are now concluded by binding precedent. It would, therefore, be wasteful to examine

the issue in principle and in fact within this jurisdiction one would be virtually precluded from doing so. Consequently it suffice to briefly indicate that the dictum of their Lordships in *Ram Chander Agarwala's* case (supra) on a patently analogous issue now completely covers this field as well.

6. That two views were perhaps earlier possible and equally there might have been much to be said for the other side as well is manifest from the exhaustive judgment of the Division Bench, in *Lal Singh's* case (supra) to which I was a party. Therein the virtually identical question pointedly raised with regard to the revisional jurisdiction of the High Court was formulated in the following terms:—

> "Is this High Court empowered to revoke, review, recall or alter its own earlier decision in a criminal revision and re-hear the same?"

The Division Bench after an elaborate discussion both on principle and precedent had rendered an answer to the aforesaid question in the affirmative by holding that at least so far as the revisional jurisdiction was concerned the High Court as the apex Court of criminal jurisdiction and being a Court of record had the ultimate power to review and recall its own orders in exceptional cases. However, we cannot but conclude now that this view can no longer hold the field in face of the cateforic enunciation of the law in *Ram Chander Agarwala's case* (supra).

7. An analysis of the judgment in *Lal Singh's* case would show that the four postulates which underlie its ratio were:—

(i) that the provisions of section 369 of the Code of Criminal Procedure, 1898 were applicable only to the trial Court and the original jurisdiction and did not encompass within it the appellate and the revisional jurisdiction of the High Court;

(ii) that the provisions of sections 369, 424 and 430 of the Old Code were indicative of the fact that a review at least with the revisional jurisdiction was not barred;

(iii) that in any case the inherent powers of the High Court under section 561-A could equally be invoked in this context to remedy any grave injustice;

(iv) that the observations of S. B. Dass J., in *U. J. S. Chopra's* case (1955-S.C. 633) were authoritative and binding.

Now a close perusal of the judgment in *Ram Chander Agarwala's* case would show that all the aforesaid premises came up for consideration directly or indirectly before their Lordships in the said case. Therein with regard to section 369 it has been categorically laid down as follows:—

> "*** A reading of section 369 of Criminal Procedure Code would reveal that this section is intended to apply to all Courts, the provisions being 'no court when it has signed its judgment shall alter or review the same' 'No Court' would include "all courts."

Equally as regards the reliance on the other provisions of the Code like sections 424 and 430 when read in conjunction with section 369 it was held as follows:—

> "***, On a careful reading of sections 369 and 424 and 430, we are satisfied that section 369 is general in its application. The word 'no court' would include all courts and apply in respect of all judgments. Section 424 is confined, in its application. only to the mode of delivery of judgment, the language of the judgment, the contents of judgment etc., and section 430 of Criminal Procedure Code to the finality of judgments on appeal, except as provided for. Whether the judgment is by the trial court or the appellate court, section 369 is universal in its application and when once a judgment is signed, it shall not be altered or reviewed except for correcting "a clerical error."

Reliance on the inherent powers of the High Court under section 561-A was also excluded in this context by the following observations in paragraph 17 of the report, :—

> "If Section 369 of the Criminal Procedure Code is understood as applying to judgments on appeal by the High Court

Section 561-A cannot be invoked for enabling the Court to review its own order which is specially prohibited by Section 369 by providing that, no court when it has signed its judgment, shall alter or review the same except to correct a clerical error."

Again it was held that the observations of S. R. Das J., in *U. J. S. Chopra's* case were a minority view which consequently had no sanctity:—

"***, As the majority judgment does not share the view expressed by Das J., quoted above reliance can not be placed on the view of Das J. The view expressed by Privy Council in *Jai Ram Das's* (3) case, that alteration by the High Court of its judgment is prohibited by section 369 of the Code was not brought to the notice of Das, J. Later decisions of this Court, particularly the decision in *Supdt. and Remembrancer of Legal Affairs, W.B.* v. *Mohan Singh,* (4), held that when once the judgment has been pronounced by the High Court either in exercise of its appellate or its revisional jurisdiction, no review or revision can be entertained."

Lastly it was concluded as follows:—

"In the result we accept the contention put forward by Mr. Mukherjee for the State and hold that High Court has no power to revise its own order. The appeal is allowed."

Form the aforesaid authoritative enunciation of the law it seems to be more than manifest that both with regard to the appellate and the revisional jurisdiction of the High Court there is no power to review or revise its earlier judgment, except to correct clerical errors. In face of the all prevading dictum there is no option but to hold that *Lal Singh's case* (supra) can no longer hold the field and is hereby overruled. Consequently the answer to the first question has to be rendered in the affirmative and it is held that the High Court has no power to review or alter its earlier judgment wihtin the criminal jurisdiction except to correct clerical errors.

(3) A.I.R. 1945 P.C. 94.
(4) A.I.R. 1975 S.C. 1002.

8. Coming now to the second question it again appears that *Ram Chander Agarwala's* case equally covers the question whether even a mere alteration of the sentence would amount to review. Therein the High Court of Orissa whilst maintaining the conviction on merits under section 20(e) of the Forward Contracts (Regulation) Act, 1952, rendered in its earlier judgment had merely converted the substantive sentence of imprisonment into one of fine. Their Lordships of the Supreme Court whilst holding that this amounted to a review, which had been held to be barred, reversed the judgment of the High Court. Consequently within this narrow field it is no longer tenable to say that merely an alteration or modification in the sentence alone does not amount to a review in the eye of law. The answer to the second question is also rendered in the affirmative.

9. In fairness to the learned counsel for the petitioner we must notice his vehement reliance on *Rattan Lal* v. *The State of Punjab*, (5). It was pointed out that therein by majority, their Lordships had set aside the order of the High Court in revision and directed it to make an order under section 6 of the Probation of Offenders Act, 1958, or if it so desired to remand it to Sessions Court for doing so. A close analysis of the judgment in *Rattan Lal's case* (supra) would show that it has little or no relevance to the issue before us. Therein Rattan Lal appellant had been convicted by the trial Court on the 31st of May, 1962, prior to the appilcation of the Probation of Offenders Act to the District of Gurgaon which was extended thereto on 1st September, 1962. The appeal before the Court of Session was dismissed on 22nd September, 1962, but the attention of the appellate Court was not drawn to the provisions of the Act. Later the revision was also dismissed by the High Court on 27th September, 1982 without reference to the said Act. In this context the primary and indeed the solitary question before their Lordships of the Supreme Court was whether the appellate or the revisional Court could make an order under the Probation of Offenders Act in cases in which the trial Court on the date of conviction could not have made an order thereunder. It was in this context that the retrospective operation of an *ex post facto* law was considered and it was held that in exercise of powers under section 11 of the Act

(5) A.I.R. 1963 S.C. 444.

the appellate Court or the High Court in revision could make an order under section 6. It is thus plain that the question whether any review of its own order is possible by the High Court or what would actually amount to review was not even remotely before their Lordships in *Rattan Lal's* case. We are firmly of the view that *Rattan Lal's* case is no warrant for the proposition that the High Court has the power to review or revise its own earlier judgment.

(8-A) Reliance was then placed on the Division Bench judgment in *Shamsher* v. *State of Haryana,* (6) wherein an application for extending the benefits of the Probation of Offenders Act to the petitioner, whose appeal had already been disposed of, was allowed. A reference to the judgment makes it patent that the question whether this would amount to a review was not even remotely raised and consequently was not at all adjudicated upon. It seems to have been assumed that such an application was maintainable on the authority of *Rattan Lal's case* (supra). This case is, therefore, distinguishable but if the mere fact of allowing of such application is to be construed as a warrant for assuming a power of review then the same is no longer a good law and the judgment has to be overruled on this specific point. For the identical reasons the Single Bench judgment in *Prem Singh* v. *The State of Punjab,* (7), which relied on *Shamsher Singh's* case has to be overruled.

(10) Reference also must be made to *Ved Parkash* v. *State of Haryana,* (8). Therein the learned Single Judge seems to have taken the view that section 561-A of Code empowers the High Court to review or alter its earlier judgment in order to give the benefit of the Probation of Offenders Act to an accused person. On this assumption it was concluded therein as follows:—

> "* * I would allow this petition, and in exercise of my powers under section 4 of the Act read with section 561-A of the Criminal Procedure Code, in modification of my order, dated 26th March, 1969, direct that the petitioner be released on his entering into a bond with two sureties

(6) 1975 Chandigarh Law Reporter 57.
(7) 1980 Ch. L.R. 234.
(8) 1969 P.L.R. Short Note 43.

in the sum of Rs. 10,000/- each to appear and receive the sentence for the aforesaid offences for which he has been convicted, when called upon during such period, and in the meantime to keep the peace and be of good behaviour."

It would be plain that invoking the inherent powers under section 561-A of the Code is now in head long conflict with the ratio in *Ram Chander Agarwala's* case (supra) and on this specific point the law has not been correctly laid down in this Court and has to be overruled.

11. Repelled on this basic legal stand, the learned counsel for the petitioner had then faintly attempted to contend that the relief of the extension of time for the deposit of fine at least would not amount to a review or alteration of the original judgment. In this context it deserves to be recalled that the appellate order whilst granting conditional relief had clearly directed that in the event of non-compliance of this condition the appellants would surrender and undergo the remaining portions of their substantive sentences. On the failure to comply with the condition of the payment of fine within four months the *status qua ante* would thus be restored and the substantive sentences of imprisonment would be resuscitated. Consequently the allowance of the application would involve a clear review of the earlier judgment on the point of sentence and setting aside the same the payment of the fine would have to be substituted. This, as already noticed would be clearly barred by the direct ratio in *Ram Chander Agarwala's* case (supra).

12. In the light of the aforesaid discussion and the answer to the two legal questions, Criminal Miscellaneous Application is plainly without merit and is hereby dismissed.

D. S. Tewatia, J.—I agree.

K. S. Tiwana, J.—I agree.

N.K.S.

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