CRIMINAL MISCELLANEOUS

Before Shamsher Bahadur and S. S. Sandhawalia, JJ.

LAL SINGH AND OTHERS,—*Petitioners.*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Criminal Miscellaneous No. 959 of 1968 in Criminal Revision No. 37/R of 1967

October 9, 1968

Code of Criminal Procedure (Act V of 1898)—Sections 369, 439 and 561-A—High Court under its inherent powers—Whether can review and alter an order passed under Section 439—Section 369—Whether controlled by Sections 439 and 561-A—Section 430—Whether applicable to judgments passed in exercise of revisional jurisdiction of the High Court.

Held, that there is no bar, whatsoever, express or implied which rules out the applicability of the inherent powers of the High Court under Section 561-A *qua* an order purporting to be passed under Section 439 of the Code. The inherent powers which the High Court possesses to review a judgment made in exercise of its revisional jurisdiction does not relate either to a matter covered by a specific provision of the Code and its exercise would not in any way be inconsistent with any express provision of the same. The power to grant a re-hearing in an appropriate case falls within the ambit of the inherent powers of the Code. Inherent power implies by its very nature a power which cannot be expressed in terms but which must reside in a Court for achieving the higher and the main purpose of doing justice in a cause before it and for seeing that the act of the Court does no injury to any of the suitors. Whenever the High Court is satisfied that for the aforesaid purpose it should exercise its inherent powers, not only can it do so, but it is its duty to exercise it and secure the completion of this purpose. Hence the High Court in its inherent powers is fully empowered to revoke, review or recall and alter its own earlier decision in a Criminal revision and re-hear the same.

(Paras 9 and 12)

Held, that Section 369 of the Code of Criminal Procedure is subject to the other provisions of the Code and there is no reason why Section 439 of the Code and Section 561-A embodying the inherent powers of the High Court should not be regarded as such provisions. Section 439 of the Code is not in term controlled by Section 369 and in fact the revisional jurisdiction under Section 439 must be read as controlling Section 439 of the Code.

(Para 8)

Held, that the revisional jurisdiction embodied in Chapter 32 of the Code is in no way fettered by the Rule under Section 430 of the Code. This section does not in terms give finality to the judgments of a High Court passed in the exercise of its revisional jurisdiction. (Para 8)

Case referred by the Hon'ble Mr. Justice Jindra Lal, on 10th September, 1968, to a larger Bench for decision of an important question of law involved in the case. The Division Bench consisting of the Hon'ble Mr. Justice Shamsher Bahadur, and the Hon'ble Mr. Justic S. S. Sandhawalia, decided on 9th October, 1968, the question referred to and returned the case to the single Judge for decision on merits.

Application under Section 561-A of the Code of Criminal Procedure on behalf of the applicants-respondents praying that the ex parte *order dated 1st August, 1968, passed by Hon'ble Mr. Justice Jindra Lal in Criminal Revision No. 37/R-1968, be vacated and the revision be reheard.*

D. N. AGGARWAL, ADVOCATE, for the Petitioner.

N. S. CHHACHHI, ADVOCATE, for ADVOCATE-GENERAL, for the Respondent No. 1.

S. P. GOYAL, ADVOCATE, for private Respondents.

JUDGMENT

SANDHAWALIA, J.—The point of law which has necessitated the reference of this Criminal Miscellaneous Application to a Division Bench may be 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 rehear the same ?

The facts which deserve notice for the limited purpose of this application may now be surveyed. By his order, dated the 22nd October, 1967, the Executive Magistrate, 1st Class, Sangrur, in proceedings under section 145, Criminal Procedure Code, held that Karnail Singh and others were in possession of the land in dispute on the 6th of May, 1967, and directed the delivery of the same to them. Against this order, Lal Singh and others (respondents in the present Criminal Miscellaneous Application) went up in revision to the learned Sessions Judge, Sangrur who by his order, dated 1st April, 1968, made a recommendation to the High Court for the acceptance of the revision on the basis of the reasons given therein. It was recommended that the order of the learned Magistrate, dated the 22nd October, 1967, be set aside, and the possession of the land be ordered to be delivered to Lal Singh and others.

(2) The learned Sessions Judge had directed that the parties, if they so desire, may appear in the High Court on the 3rd May, 1968.

However, it appears that the matter came up before the Registrar on the 13th of May, 1968 and that none of the parties was then present. Notices, on that date, were directed to be issued for the 27th May, 1968, and all the parties were served. Some of the respondents therein, amongst them the present petitioners in this application, namely, Sher Singh, Kartar Singh, etc., did not put in any appearance and consequently on the 24th July, 1968, actual date notices were issued to them by registered post acknowledgement due intimating thereby that the revision would be heared by this Court on the 31st July, 1968. On the said date the revision came up for hearing before Jindra Lal, J. and it was found that actual date notices had not come back duly served. The State was represented through counsel and the recommendation was not opposed on its behalf. The learned Single Judge notices that some remark was made that the respondents, other than the State, were no longer interested in the matter on account of the Civil litigation having been compromised in the High Court and consequently on the 1st August, 1968, when the matter came up before Jindra Lal, J., he was pleased to pass the following order:—

> "This revision is reported for acceptance and is not opposed. For the reasons given by the learned Sessions Judge, Sangrur, the revision is accepted, the order of the learned Magistrate, dated the 22nd October, 1967, is set aside, and it is ordered that possession of the land, which is the subject-matter of the present proceedings, be delivered to the petitioners-tenants."

(3) The present Criminal Miscellaneous Application was then moved on behalf of Sher Singh, Kartar Singh, Charag Singh, Suraj Singh and Kapur Singh, under section 561-A, Criminal Procedure Code, on the 6th August, 1968. It was averred therein that the actual date notices issued by this Court for appearance to them on the 31st July, 1968, were actually delivered to them on the 4th of August, 1968, and the reports on the registered covers, dated the 31st July, 1968, clearly show that none of the present applicants was present in the village on that day. It was further averred that the order, dated the 1st August, 1968, which was passed without affording any opportunity of hearing to them is gravely prejudicial to their interests and the same be vacated. Notice of the present application was issued to the respondents and accepted on their behalf by the counsel and meanwhile the operation of the order, dated 1st August,

1968, was stayed. At the hearing of the application, it was contended on behalf of Lal Singh, etc., respondents that there is no power in this High Court for a review of its earlier order, dated the 1st August, 1968, and the same having become final could not now be interfered with. In view of the importance of the question involved, Jindra Lal, J., for the reasons given in the relevant order, referred this case for decision by a larger Bench and this is how the matter is before us.

(4) Mr. D. N. Aggarwal, learned counsel for the applicants in this Criminal Miscellaneous Application, has relied mainly upon the ratio and the reasoning of the majority judgment in the Full Bench case reported as *Raj Narain and others* v. *The State* (1) and particularly therein on the judgment of Raghubar Dayal, J. In that case, the identical point arising in this application was in issue and Raghubar Dayal and M. L. Chaturvedi, JJ. (O. H. Mootham, C.J. dissenting) held that the High Court had the power to recall its earlier decision and rehear a Criminal Revision and the learned Judges also further sought to classify the conditions and the circumstances which would justify the exercise of such an exceptional power. Mr. Aggarwal has also placed reliance on four decisions of the same High Court in support of the proposition canvassed by him. These are, the Division Bench judgment in *Sri Ram and another* v. *Emperor* (2) and three Single Bench judgments reported as *Chanderika* v. *Rex* (3), *Ram Dass* v. *State* (4); and *Barati Lal* v. *Salik Ram* (5). Two Division Benches of the Mysore and Patna High Courts have also been relied upon by the learned counsel, namely in *Bijamma, wife of Mohammad* (6); and *Ramballabh Jha* v. *The State of Bihar* (7).

(5) In reply to the contentions raised and the authorities cited on behalf of the applicants, Mr. S. P. Goyal, learned counsel for the private respondents Lal Singh and others, has relied primarily on the observations in the Full Bench judgment of the Andhra Pradesh High Court reported as *Public Prosecutor* v. *Denoreddi Nagi Reddi* (8).

(1) A.I.R. 1959 All. 315.
(2) A.I.R. 1948 All. 106.
(3) A.I.R. 1949 All. 176.
(4) A.I.R. 1952 All. 926.
(5) A.I.R. 1915 All. 441.
(6) A.I.R. 1963 Mysore 326.
(7) A.I.R. 1962 Patna 417.
(8) A.I.R. 1962 A.P. 479.

Reliance was also placed on three Single Bench judgments of the Madras High Court reported as *Mahesh Chandra Gupta* v. The State, (9); *in Anthony Doss and others* (10); and *S. Rangaswami and another* v. *R. Narayanan* (11), and another Single Bench judgment of the Orissa High Court reported as *Nalu Sahu and another* v. *The State* (12).

(6) To appreciate the rival contentions raised it is necessary to go back to the language of the statute as laid down in the relevant provisions of the Criminal Procedure Code. Reliance has been placed on the language of section 369, Criminal Procedure Code. which is in the following terms :—

> "369. Save as otherwise provided by this Code or by any other law for the time being in force, or, in the case of a High Court by the Letters Patent or other instrument constituting such High Court no Court, when it has signed its judgment, shall alter or review the same, except to correct a clerical error."

It has been contended by Mr. S. P. Goyal that section 369, Criminal Procedure Code, applies in terms to the revisional jurisdiction of the High Court and in the alternative it has been argued that if that be not so then in any case the principle and the doctrine of the finality of criminal judgments enshrined in this section is applicable by analogy to the revisional powers also. However, the true meaning and the exact scope of section 369, Criminal Procedure Code, is evident when this provision is viewed in the context of the general scheme of the Criminal Procedure Code and the place of this provision therein. Chapters 20 to 23 of the Code deal with different kinds of trials, i.e., trial of summons cases; warrant cases; summary trials and trials before High Courts and Courts of Session whilst chapter 24 contains general provisions regarding such enquiries and trials. Chapter 25 prescribes the mode of taking and recording evidence and it is thereafter that Chapter 26, in which section 369 finds its place, falls and is headed as 'of the judgment'. Chapter 27 provides for the submission and confirmation of the death sentences to the High Court whilst the rules relating to

(9) (1964) 2 Cr. Law Journal 632.
(10) (1963) 2 Cr. Law Journal 224.
(11) A.I.R. 1966 Madras 163.
(12) A.I.R. 1965 Orissa 7.

execution, suspension, remission and commutation of the sentences are to be found Chapters 28 and 29. From this overall view of the scheme noticed above, there is hardly any doubt that the provisions of the sections contained in chapter 26 pertain only to the judgment pronounced by the trial Court. This conclusion finds certain assurance from the language of some of these sections. Thus section 366, Criminal Procedure Code, which is the very first section in this Chapter refers to "the judgments in every trial in any criminal Court of original jurisdiction". Similarly section 367, Criminal Procedure Code, provides what must be contained in every "such judgment" that is to say a judgment in any original trial.

(7) As to what is the true meaning to be attributed to section 369, Criminal Procedure Code, particularly, in reference to the appellate jurisdiction under section 430, Criminal Procedure Code, came up for consideration before the Supreme Court in the case of *U. J. S. Chopra* v. *State of Bombay* (13). Their Lordships of the Supreme Court were particularly considering the rule of the finality of criminal judgments in the particular context of the provisions of section 439 sub-section (2) and sub-section (6) of the Code. The whole gamut of case law had been considered and discussed in this authoritative pronouncement and the following observations appear in the judgment of S. R. Das, J. (as he then was) :—

> "There is indication in the Code itself that the purpose of section 369 is not to prescribe a general rule of finality of all judgments of all Criminal Courts but is only to prescribe finality for the judgment of the trial Court so far as the trial Court is concerned."

It was further laid down—

> "Again, the rule of finality embodied in section 369 cannot, in terms, apply to the orders made by the High Court in exercise of its revisional jurisdiction, for section 442 of the Code which requires the result of the revision proceedings to be certified to the Court by which the finding, sentence or order revised was recorded or passed refers to it as its "decision or order" and not 'judgment'."

Mr. Goyal has, however, drawn our attention to certain observations made in the judgment of Bhagwati, J., in the above said case

(13) A.I.R. 1955 S.C. 633.

which torn from their context and read in isolation tend to support the contention advanced by him. However, on a closer analysis of the whole case we are of the view that some of the observations made with respect to the competence of the High Court to revise or recall the orders passed are to be taken in their particular context of the point for determination and consideration urged before the Supreme Court. It is noticeable, and we do not consider that these observations relate at all to the inherent power of the High Courts to pass appropriate orders to secure the ends of justice even if those orders amount to the reviewing or recalling of an earlier order.

(8) In any case section 369, Criminal Procedure Code, is subject to the other provisions of the Code and we see no reason why section 439 of the Code and section 561-A embodying the inherent powers of the High Court should not be regarded as such provisions. In our view section 439, Criminal Procedure Code, is not in term controlled by section 369 and in fact the revisional jurisdiction under section 439 must be read as controlling section 369 of the Code. Further support for this view arises from the language of section 424 of the Code of Criminal Procedure which refers to the appellate judgments of the Subordinate Courts. This is in the following terms :—

> "The rules contained in Chapter 26 as to the judgment of a Criminal Court of original jurisdiction shall apply, so far as may be practicable, to the judgment of any Appellate Court, other than a High Court;
>
> Provided that, unless the Appellate Court otherwise directs, the accused shall not be brought up, or required to attend, to hear judgment delivered."

This provision clearly indicates that section 369, Criminal Procedure Code which is placed in Chapter 26 of the Code had reference only to the judgment "of a Criminal Court of original jurisdiction". Again the appellate judgments of the High Court are expressly excluded from the ambit of the provisions of Chapter 25 of the Criminal Procedure Code. Reference may also be made to the provisions of section 430, which are as follows :—

> "Judgments and orders passed by an Appellate Court upon appeal shall be final, except in the cases provided for in section 417 and Chapter 32."

The provisions of this section, therefore, leave one in no manner of doubt that the revisional jurisdiction embodied in Chapter 32 of the Code is in no way fettered by the rule in section 430. It logically follows, therefore, that section 430 does not in terms give finality to the judgments of a High Court passed in the exercise of its revisional jurisdiction.

(9) On an overall consideration of the relevant statutory provisions we are unable to find any bar whatsoever express or implied which would rule out the applicability of the inherent powers of the High Courts under section 561-A *qua* an order purporting to be passed under section 439, Criminal Procedure Code. It cannot, therefore, be said that the inherent power which this Court possesses to review a judgment made in the exercise of its revisional jurisdiction relates either to a matter covered by a specific provision of the Code or that its exercise would in any way be inconsistent with any express provisions of the same.

(10) It is also necessary to consider the matter on principal in its historical background as well. Prior to the coming into force of the Government of India Act, 1935, the High Courts in India were the last and the final Courts of appeal and revision in its criminal jurisdiction subject to the extraordinary powers of the Judicial Committee of the Privy Council to interfere in cases occasioning a grave miscarriage of justice. After the Constitution of the Federal Court under the provisions of the Government of India Act, 1935, a very limited jurisdiction indeed in criminal matters was also vested in it under sections 205 and 207 of the said Act. Subsequent to the promulgation of the Constitution of India the jurisdiction exercised by the Judicial Committee of the Privy Council and the Federal Court have ceased to exist. Article 134 of the Constitution of India enshrines the special criminal jurisdiction of the Supreme Court in regard to criminal matters. On a consideration of this provision it is patent that subject to the extraordinary jurisdiction under Article 134(1) vested in the Supreme Court in criminal matters, the High Court practically remains the last Court of appeal and revision. That there remains an inherent power in the last Court of appeal and revision to rectify an error which may creep in seems to be well-recognised, and in the Code of Criminal Procedure express recognition of the same principle is also embodied in the provisions of section 561-A of the Code. This aspect of the power of a Court of last resort to rehear an issue came up for consideration before the

Privy Council in *Rajundernarain Rae* v. *Bijai Govind Singh* (14). In the said case an order had been made *ex-parte* upon the appearance of the respondents alone, for the dismissal of an appeal and it appeared that the appellants who were infants, under the protection of the Court of Wards in India had an agent in the matter of appeal who had absconded and abandoned the cause. Their Lordships rescinded the order of dismissal and restored the appeal for rehearing upon the terms of the appellant's paying the costs therefor. Their Lordships considered the powers of the Judicial Committe and also of the House of Lords to direct the rehearing of a case and Lord Brougham while delivering judgment observed as follows :—

> "Whatever, therefore, has been really determined in these Courts must stand, there being no power of re-hearing for the purpose of changing the judgment pronounced; nevertheless, if by misprison in embodying the judgments, errors have been introduced, these Courts possess, by common law, the same power which the Courts of Record and Statute have of rectifying the mistakes which have crept in. The Courts of Equity may correct the decrees made while they are in minutes when they are complete they can only vary them by re-hearing; and when they are signed and enrolled they can no longer be re-heard, but they must be altered, if at all, by appeal. The Courts of Law, after the term in which the judgments are given, can only alter them so as to correct misprisons, a power given by the Statutes of Amendment. The House of Lords exercises a similar power of rectifying mistakes made in drawing up its own judgments, and this Court must possess the same authority. The Lords have, however, gone a step further, and have corrected mistakes introduced through inadvertence in the details of judgments; or have supplied manifest defects in order to enable the decrees to be enforced, or have added explanatory matter, or have reconciled inconsistences."

It was further observed :—

> "It is impossible to doubt that the indulgence extended in such cases, is mainly owing to the natural desire prevailing to prevent irremediable injustice being done by a

(14) (1836) Moore P.C. 117.

Court of the last resort, whereby some accident, without any blame, the party has not been heard, and an order has been inadvertently made as if the party had been heard."

(11) In this connection reference may also be made to the case of the *Owners of the Vessel Singapore* and *Owners of the Vessel Hebe* (15), wherein Sir William Erle delivering the judgment of the Judicial Committee observed at page 388—

"We do not affirm that there is no competency in this Court to grant a rehearing in any case."

He further said later—

"This, however, is a Supreme Court of final appeal, and it is inconsistant with the purposes for which such a Tribunal was instituted, that in any case, at the option of the parties who are dissatisfied with the conclusion which the Court has arrived at they should be at liberty to apply for a reconsideration of the judgement upon the point decided thereby. Although it is within the competency of the Court to grant a rehearing, according to the authorities cited above, still it must be a very strong case indeed, and coming within the class of cases there collected, that would induce this Court so to interfere."

(12) This power to grant a rehearing in an appropriate case, therefore, would obviously fall within the ambit of the inherent powers of the Court. Inherent power implies by its very nature a power which cannot be expressed in terms but which must reside in a court for achieving the higher and the main purpose of doing justice in a cause before it and for seeing that the act of the Court does no injury to any of the suitors. This was enunciated in the words of Lord Cairns in *Rodger* v. *Comptoir D' Escompte De Paris* (16) at p. 475—

"Now, their Lordships are of opinion, that one of the first and highest duties of all Courts is to take care that the act of the Court does no injury to any of the suitors, and when the expression 'the act of the Court' is used, it does not mean merely the act of the Primary Court, or of any intermediate Court of appeal, put the act of the Court

(15) (1866) I.P.C. 378.
(16) (1871) 3 P.C. 465.

as a whole, from the lower Court which entertains jurisdiction over the matter up to the highest Court which finally disposes of the case. It is the duty of the aggregate of those Tribunals, if I may use the expression to take care that no act of the Court in the course of the whole of the proceedings does an injury to the suitors of the Court."

It is not necessary to multiply authorities and the proposition seems to be undisputed that the Court of records and the ultimate Courts of appeal and revision have inherent powers to act for the securing of the ends of justice. This very principle as regards criminal matters before the High Court in India is embodied in the provisions of section 561-A of the Code in the following terms :—

"Nothing in this Code shall be deemed to limit or affect the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.".

The true scope of this provision has been authoritatively pronounced upon by the Supreme Court in *Talab Haji Hussain* v. ***Madhukar*** *Purshottam Mondkar and another* (17). In the said case, their Lordships of the Supreme Court were considering the inherent powers of the High Court to cancel the bail granted to a person accused of a bailable offence. It was observed in the course of the judgment as follows :—

"In prescribing rules of procedure legislature undoubtedly attempts to provide for all cases that are likely to arise; but it is not possible that any legislative enactment dealing with procedure, however, carefully it may be drafted, would succeed in providing for all cases that may possibly arise in future. Lacunae are somtimes discovered in procedural law and it is to cover such lacunae and to deal with cases where such lacunae are discovered that procedure law invariably recognizes the existence of inherent power in Courts.

* * * * * *

There can thus be no dispute about the scope and nature of the inherent power of the High Courts and the extent of its exercise."

(17) A.I.R. 1958 S.C. 376.

From the above enunciation of the law it seems to be very clear that whenever the High Court is satisfied that for the aforesaid purposes it should exercise its inherent powers not only can it do so but it is its duty to exercise it and secure the completion of those purposes.

(13) It remains to consider the authorities cited at the bar. A number of decisions of the Allahabad High Court have been relied upon by Mr. D. N. Aggarwal and the first in point of time is a Division Bench judgement of the said Court reported as *Sri Ram and another* v. *Emperor* (2). The Bench in the above-said case was constituted by Malik and Raghubar Dayal, JJ. One Moti Lal, appellant in that case, had been convicted by a Magistrate for a breach of the Hoarding and Profiteering Prevention Ordinance 1948 and sentenced to 18 months rigorous imprisonment and to pay a fine. An application for revision to the High Court by the said Moti Lal was dismissed. It was, however, subsequently discovered that a mandatory provision of the law had been overlooked in the trial. It was held by the learned Judges that the High Court had power to correct such an error and to review and alter the earlier judgment even though the revision had already been decided; the provisions of section 369 were held to be no bar to the exercise of such a power. Another Single Bench judgment of the Allahabad High Court cited was *Chanderika* v. *Rex* (3), where an application was made for the rehearing of an appeal which had already been dismissed by the High Court. From the facts it appears that the Court had directed that the appeal be heard on 5th June, 1948, but by mistake it was placed on the list on the 25th of June, 1948, and the learned counsel being unaware of this fact did not appear and the appellant was not also heard. The High Court directed that the order passed on the 25th of June, 1948, be set aside and the appeal be reheard and it was held that the Court had power to make such an order under the provisions of section 561-A of the Code. In *Mohammad Wasi and another* v. *State* (18). Agarwala, J., held that under the provisions of section 561-A, the High Court had the power to review and modify an earlier order passd on an erroneous assumption. In *Ram Dass* v. *State* (4), the revision petition was dismissed for default, the Court being under the misapprehension that no medical certificate of the applicant or illness slip of counsel was filed, while in fact both were on the record. It was held that under section 561-A of the

(18) A.I.R. 1951 All. 441.

Code of Criminal Procedure the High Court had the power to review the earlier order and restore the case for hearing. It was observed as follows :—

> "No distinction has been made in Section 561-A or in the decided case between the points of fact and the points of law; where *ex-facie* order passed by a Court is factually wrong and it has been passed under a misapprehension of facts I am of opinion that the provisions of section 561-A, Criminal Procedure Code, can be applied and the order can be revised."

The authoritative pronouncement, however, on the identical point which is before us is the majority judgment prepared by Raghubar Dayal and M. L. Chaturvedi, JJ. (Mootham, C.J. dissenting) in *Raj Narain and others* v. *The State* (1). In this authority the learned Judges who have delivered separate judgments have exhaustively considered the whole case law on the point and have then come to the conclusion that the High Court has an inherent power to revoke, review, recall or alter its earlier decision in a criminal revision and to rehear the same.

(14) The Mysore High Court has also affirmed the view of the law enunciated by the Allahabad High Court. In *re Biyamma wife of Mohammad* (6), a Division Bench of the said High Court consisting of K. S. Hedge and Ahmad Ali Khan, JJ., considered the inherent powers of the High Court to alter or review its appellate Judgment. On a consideration of the authorities, the view expressed by the majority in *Raj Narain's case* was affirmed and it was observed as follows by K. S. Hegde, J.—

> "If the Criminal Courts had no inherent jurisdiction to alter or review their judgments there was no need to prohibit the exercise of that power by enacting Section 369 as well as Section 424. The Legislature would not have prohibited the exercise of a non-existing power. The Legislature while wisely, if I may say so with respect, prohibited the subordinate Courts from altering or reviewing their judgments left the field clear to the High Court because any error or mistake committed by the Subordinate Courts can be corrected by the High Courts either by exercising its revisional powers or by exercising its power

of superintendence under Article 227 of the Constitution but such remedies are not available as against any errors or mistakes that may be committed by the High Court. Therefore, I am of the opinion that the High Court has inherent power to alter or review its appellate judgments."

Ramballabh Jha v. *The State of Bihar* (7), is also a Division Bench authority which affirmed the view that the High Court under section 561-A, has power to set aside an appellate judgment and order the rehearing of the same. In the said case the name of the counsel appearing in the criminal appeal was omitted from the daily list through inadvertence of the office of the High Court with the result that the counsel could not know about the appeal having been posted for hearing and the appeal was dismissed without he being heard. It was held that the order dismissing the appeal was a judgment rendered without any opportunity being given to the appellant or his advocate within the meaning of section 421 and was liable to be set aside and the appeal could be ordered to be reheard in exercise of inherent powers under section 561-A.

(15) A contrary view, however, has been taken in *Public Prosecutor* v. *Devireddi Nagi Reddi* (8), which is a Full Bench judgment of the said Court and has been relied upon by Mr. S. P. Goyal. This is a case pertaining to the appellate jurisdiction of the High Court. It is noticeable that the learned Judges were directly considering the distinction between lack of inherent jurisdiction and illegal or irregular exercise of the same. Nevertheless there are clear observations supporting the contrary view and the learned Judges dissented from the majority view of *Raj Narain's case*. It is noticeable, however, that even in this authority an exception was made in regard to cases where there has been default of appearance. It was held that the High Court has no inherent power to alter or review its own judgment except in cases where it was passed without jurisdiction or in default of appearance, that is, without affording an opportunity to the accused to appear. Reliance was also placed on three Single Bench judgments of the Madras High Court. The first is *C. Lakshmana Iyer* v. *Pubbi Setti Sethamma and another* (19), where P. Kunhamed Kutti, J., held that there is

(19) (1964) I M.L.J. 362.

no inherent power in the High Court to alter or review its own judgments in a criminal case. In this case a criminal revision had been disposed of by the High Court on merits in the absence of the petitioner and his Advocate. From the short judgment in the case it appears that an opportunity had been fully given to the party and his counsel and the case remained on the list for some days, and when it came up for hearing none of them was present. In the circumstances of the case it was held that there was no justification to set aside the order passed earlier on merits. This case appears to be based primarily on its own facts and the point of law does not seem to have been seriously canvassed. In *S. Rangaswami and another* v. *R. Narayanan* (11), Kailasam, J., held that there was no inherent power to alter or review a judgment signed by it in view of the provisions of section 369 of the Code of Criminal Procedure and that the said section was also applicable to section 439 of the Code. This view seems patently to be in conflict with the dictum of their Lordships of the Supreme Court in *U. J. S. Chopra* v. *The State of Bombay* (13), which does not seem to have been brought to the notice of the Court. We would respectfully differ from this enunciation of the law. Reliance was also placed on a Single Bench judgment of the Orissa High Court in *Nalu Sahu and another* v. *The State* (12). This is a Single Bench decision by R. L. Narasimhan, C.J., wherein reliance primarily has been placed on *U. J. S. Chopra's case*. We have already referred to this authority of the Supreme Court and have expressed a view that the pronouncement therein does not in any way debar the exercise of inherent powers under section 561-A for the purposes of reviewing an order passed in its revisional jurisdiction by the High Court. In *re. Anthony Doss and others* (10), Sadasivam, J., held that the High Court has in exercise of its inherent powers, no right to set aside its own judgment on the ground that it is erroneous in law and facts. It is noticeable, however, that even in this authority, a notable exception is recognised, namely, in cases where earlier decision has been passed without jurisdiction or in default of appearance without an adjudication on merits.

(16) On a close and considered analysis of the authorities cited at the bar we fully accept and adopt the principle and the enunciation of the law by the majority judgment in *Raj Narain's case* and endorsed in *re. Biyamma, wife of Mohamad's case*. It is noticeable that in the Mysore case the Full Bench of Andhra Pradesh High

Court in *Devireddi Nagi Reddi's case* has been fully considered and dissented from. We are also in agreement with the law as laid down in *Ramballabh Jha's case* and with respect we are unable to agree with the reasoning or the enunciation of the law as laid in *Devireddi Nagi Reddi's case* and the Single Bench authorities of the Madras and the Orissa High Courts cited before us. We are, therefore, of the view that the High Court in its inherent powers is fully empowered to revoke, review, or recall and alter its own earlier decision in a criminal revision and to rehear the same. It is to be reiterated that the circumstances in which these powers can be exercised necessarily would be exceptional ones which would lead the Court to review that the exercise of the same is necessary to conform to the three conditions mentioned in section 561-A of the Code.

(17) Lastly an argument advanced by Mr. Goyal must also be noticed in passing. It has been strenuously contended that under the provisions of section 440 of the Criminal Procedure Code in the exercise of the revisional jurisdiction no party has any right to be heard either personally or by pleader and the High Court is empowered if it so desires to decide without giving such a hearing. It is, however, noticeable in the present case that it was not at all a matter in which the High Court had chosen to proceed under the provisions of section 440. At the time of admission, notice had been issued to both the parties on the 13th of May, 1968. Again actual date notices were issued on the 24th of July, 1968, directing that the case would be listed on the 31st of July, 1968. It is the admitted case of the parties that the respondents in the original criminal revision were not in fact served prior to that and that the said notices were actually delivered to them on the 4th of August, 1968, that is, after the hearing of the petition and the decision thereon. In view of this factual position this argument based on section 440 obviously is not well-conceived.

(18) Mr. N. S. Chhachhi, the learned counsel appearing for the respondent State of Punjab has reiterated the submissions advanced on behalf of the applicant by Mr. D. N. Aggarwal. He has submitted that particularly on the facts of the present case, the earlier order which has been passed without affording the applicant an opportunity to be heard should be set aside and the matter should be reheard on merits.

(19) This criminal miscellaneous application, therefore, succeeds and is allowed. The case should now go back to the learned Single Judge for decision on merits.

SHAMSHER BAHADUR, J.—The *ultima ratio* of judicial process undoubtedly resides in the highest tribunal of the land and if the finality in a criminal judgment envisaged in section 369, Code of Criminal Procedure, is to be attached to the High Court as well, its supremacy cannot be preserved. In the authorities as also the relevant statutory provisions, both of which have been fully and elaborately discussed by Sandhawalia, J., the power of the High Court to rectify and amend accidental and inadvertent errors is maintained. While the order of judgment of an original Court or even a Court of appeal can be set right if so needed by a superior tribunal, the inherent powers alone can enable a High Court to do likewise. Only the clearest language of a statute can deprive the High Court of this useful and necessary adjunct of judicial power.

(21) I agree entirely with the reasoning and conclusion of my learned brother.

K. S. K.

CIVIL MISCELLANEOUS.

Before Daya Krishan Mahajan and Prem Chand Jain, JJ.

PRITHVI RAJ MEHRA,—*Petitioners.*

versus

THE STATE OF PUNJAB,—*Respondents.*

Civil Writ No. 2241 of 1967.

October 11, 1968.

Punjab Service of Engineers, Class I, Public Works Department (Irrigation Branch) Rules, (1964)—Rule 8—Constitution of the Screening Committee under—All the Chief Engineers not on the Committee—Such Committee—Whether validly constituted—Rule 8(1)—Provisions of—Whether directory—Officers whose cases reviewed by the Committee—Whether entitled to an opportunity of hearing.