against a judgment or order made by a Single Judge of the High Court while exercising the appellate jurisdiction *vis a vis* an appellate order made by a court subject to its superintendence. In other words, clause X of the Letters Patent does not provide for an appeal against any judgment of a Single Judge rendered while exercising its second appellate jurisdiction.

(9) As undoubtedly the impugned order (judgment) has been passed by a learned Single Judge of the Court while exercising its second appellate jurisdiction (i.e. while exercising its appellate jurisdiction in respect of a decree passed by an appellate court subject to its superintendence), we are clearly of opinion that the instant case falls in first of the four categories against which Letters Patent Appeals have not been allowed by clause X of the Letters Patent.

(10) Learned counsel for the appellants could not point out any other provision under which the order of the learned Single Judge has been made appealable. Since appeal is a creature of a statute and no statutory provision enabling the appellants to file an appeal against the order of the learned Single Judge has been brought to our notice, the present appeal fails and is dismissed without any order as to costs.

R.N.R.

Before D. S. Tewatia and S. S. Sodhi, JJ.

KAPOOR SINGH,—*Petitioner.*

versus

STATE OF PUNJAB,—*Respondent.*

Criminal Misc. No. 3508-*M of* 1987.

August 4, 1987.

Code of Criminal Procedure (II of 1974)—*Sections* 362 *and* 482—*Sentence of imprisonment ordered to run consecutively by Sessions Court—Modification of judgment sought on the basis of precedents to make sentence run concurrently—Modification sought—Whether would amount to review of the judgment of the trial Court—Sentence—Whether can be modified to run concurrently under inherent jurisdiction.*

Held, that making the sentence of imprisonment to run concurrently instead of consecutively would involve the review of the judgment and by no stretch of imagination can this be considered to be a correction of a clerical error in terms of the provisions of section 362 of the Code of Criminal Procedure, 1974. Hence it has to be held that once the Court has taken a conscious decision after due application of mind as to whether the sentence is to run concurrently or consecutively the High Court would not review that judgment and modify the sentence under its inherent jurisdiction. (Para 9)

Petition under section 482 Cr. P. C. praying that the sentences awarded under section 307/149 I.P.C., under section 364 I.P.C., under section 201 I.P.C., under section 148 I.P.C. be ordered to be run concurrently with the main sentence awarded under section 302/149 I.P.C. in Sessions case No. 157/43/11 of 1974-75, Sessions Trial No. 36 of 1975 decided on 11th August, 1975 by Shri Mewa Singh, 1st Additional Sessions Judge, Ludhiana.

D. D. Sharma, Advocate, *for the Petitioner.*

H. S. Riar, D.A.G. (Pb.), *for the Respondent.*

JUDGMENT

D. S. Tewatia, J.—(Oral).

(1) This petition under section 482, Code of Criminal Procedure, 1973 (for short 'the 1973 Code) had been moved by Kapoor Singh, petitioner, seeking the modification and review of the judgment of this Court, dated 12th September, 1978, passed in Criminal Appeal No. 1358 of 1975, sustaining the judgment of the trial Court dated 11th August, 1975, whereby the petitioner had been convicted and sentenced as under :—

(i) Imprisonment for life and fine of Rs. 2,000, in default of payment of fine to undergo further R.I. for two years, under section 302/149, I.P.C.

(ii) R.I. for seven years and fine of Rs. 500, in default of payment of fine to undergo further R.I. for six months, under section 307/149, I.P.C. for murderous assault on Charanjit Kaur.

(iii) R.I. for seven years and fine of Rs. 500, in default of payment of fine to undergo further R.I. for six months under section 307/149, I.P.C., for murderous assault on Satnam Singh.

(iv) R.I. for seven years and fine of Rs. 500, in default of payment of fine to undergo further R.I. for six months under section 307/149, I.P.C., for murderous assault on Gian Singh.

(v) R.I. for seven years and fine of Rs. 500, in default of payment of fine to undergo further R.I. for six months under section 364, I.P.C.

(vi) R.I. for three years and fine of Rs. 250, in default of payment of fine to undergo further R.I. for three months, under section 201, I.P.C.

(vi) R.I. for two years under section 148, I.P.C. Only the sentences under section 307/149, I.P.C. would run concurrently when these would start.

(2) The trial Court had ordered the undergoing of the sentence of imprisonment consecutively excepting regarding the sentences imposed under section 307, read with section 149, Indian Penal Code, regarding the murderous assault on Smt. Charanjit Kaur and on similar accounts regarding murderous assaults on Satnam Singh and Gian Singh. The petitioner has invoked the inherent jurisdiction of this Court to order that all sentences of imprisonment should run concurrently and modify the judgment of this Court accordingly.

(3) In the body of the petition, reference is made to the following judgments of this Court in which this Court is said to have modified the earlier judgments and had made the sentence of imprisonment to run concurrently:—

(1) Criminal Miscellaneous No. 6088-M of 1985, decided on 11th August, 1985.

(2) Criminal Miscellaneous No. 1196 of 1985, decided on 17th April, 1985.

(3) D. B. decision in Criminal Miscellaneous No. 2158 of 1985, decided on 17th May, 1985.

(4) Criminal Miscellaneous No. 3927 of 1986, decided on 1st August, 1986.

(4) It is not necessary to refer to these decisions in any detail: suffice to mention that in none of these judgments notice is taken of the provision of section 362 of the 1973-Code, nor of the binding decisions of the Supreme Court reported as *State of Orissa* v. *Ram Chander Agarwala etc.* (1); *Naresh and others* v. *State of U.P.* (2), and a Full Bench decision of this Court reported in *Ajit Singh and another* v. *State of Punjab* (3).

(5) Provision of section 362 of 1973-Code is in the following terms :—

> "*Section* 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 disposed of a case, shall alter or review the same except to correct a clerical or arithmetical error."

(6) Their Lordships in *Ram Chander's case* (supra) repelled the contention advanced before them that the High Court was competent in exercise of inherent jurisdiction conferred by section 561-A of the Code of Criminal Procedure, 1898 (hereinafter referred to as 'the Old Code') to review its order (the corresponding provision in the 1973-Code being section 482) by observing that inherent powers conferred by the said provision cannot be invoked to do what is prohibited by specific provisions of the 1973-Code itself. Their Lordships, therefore, held that inherent powers under section 561-A of the Old Code cannot be invoked for enabling the Court to review its own order, which is specifically prohibited by section 369 of the Old Code (the corresponding provision in the 1973-Code being section 362.

(7) In *Naresh's case* (supra) their Lordships took the view that under section 362, of the Code, the High Court was competent to correct only the clerical mistake in the judgment and had no power to review the judgment.

(8) Sandhawalia, C.J. in *Ajit Singh's case* (supra) who delivered the opinion for the Full Bench independently took the same view and held that it is more than manifest that both with regard to the appellate and the revisional jurisdiction of the High Court, there

(1) AIR 1979 S.C. 87.
(2) 1981 C.L.R. 637.
(3) 1982(1)C.L.R. 363.

is no power as to review or revise its earlier judgment, except to correct clerical error.

(9) In our view, making the sentence of imprisonment to run concurrently instead of consecutively would involve the review of the judgment and by no stretch of imagination can this be considered to be a correction of a clerical error. The Court has to take a conscious decision after due application of mind as to whether the sentence is to run concurrently or consecutively. It does so in the light of all the facts and circumstances of a case including the gravity of the offence or otherwise.

(10) For the reasons, aforementioned, we find no merit in this application and dismiss the same.

R.N.R.

Before D. V. Sehgal, J.

PUNJAB SMALL INDUSTRIES AND EXPORT CORPORATION LTD.,—*Petitioner.*

versus

SARDUL SINGH and others,—*Respondents.*

Civil Revision No. 412 of 1986.

August 5, 1987.

Arbitration Act (X of 1940)—Sections 17 and 39—Limitation Act (XXXVI of 1963)—Article 119(b)—Code of Civil Procedure (V of 1908)—Section 115—Award made rule of the Court ex-parte before 30 days limitation prescribed for filing objections to the Award—Judgment and decree passed by the trial Court in accordance with the award—Whether liable to be set aside in revisional jurisdiction—Appeal against such a decree—Whether maintainable.

Held, that the trial Court in having made the award rule of the Court within less than a period of 30 days for filing application for setting aside the award as even from the date of the making of the award by the Arbitrator, it has acted in the exercise of its jurisdiction illegally and with material irregularity. It was obligatory on the trial Court to have allowed the prescribed time of 30 days under Article 119(b) of the Limitation Act, 1963, for