

IN THE SUPREME COURT OF INDIA

INHERENT JURISDICTION

REVIEW PETITION (CRIMINAL) NO. _____ OF 2020

[DIARY NO. 6216/2020]

IN

M.A. NO. 1927 OF 2019

IN

CRIMINAL APPEAL NO. 151 OF 2019

H. MALLAIH

.... PETITIONER(S)

VERSUS

THE STATE OF KARNATAKA

....RESPONDENT(S)

O R D E R

Delay condoned in filing review petition.

Application for personal hearing before the Court is rejected.

By this review petition, the Petitioner prays to review the order dated 21.10.2019 passed in Miscellaneous Application No. 1927 of 2019 in Criminal Appeal No. 151 of 2019 (arising out of Special Leave Petition (Criminal) No. 9054 of 2018).

The records reveal that five accused, including the Petitioner herein, were tried for the offences under Section 307 read with Section 149 of the Indian Penal Code, 1860 (IPC), apart from other offences. The Trial Court convicted Accused Nos. 1 to 4 for the offences punishable under Section 324 read with Section 34 of the IPC and under Section 326 read with Section 34 of the IPC, and acquitted Accused No. 5. The judgment of the Trial Court was confirmed by the High Court in Criminal Appeal No. 2520 of 2010.

Against the judgment of the High Court, all the four accused, including the Petitioner, approached this Court initially by filing Special Leave Petition (Criminal) Diary No. 18016 of 2018. At the time of filing the said SLP, the convicted accused did not surrender. They filed an application before this Court praying for exemption from surrendering. This Court vide order dated 14.09.2018 passed in Special Leave Petition (Criminal) Diary No. 18016 of 2018 [renumbered Special Leave Petition (Criminal) No. 9054 of 2018] granted four weeks' time to Petitioner Nos. 1, 3 and 4 to surrender, with the specific observation that in case of failure to surrender, the SLP shall stand dismissed qua Petitioner Nos. 1, 3 and 4 without further reference to the Court. At that time, Petitioner No. 2, namely, H. Rudrappa had already surrendered.

Though Petitioner Nos. 1 and 4 surrendered within four weeks' time as directed by the Court, the Petitioner, who was Accused No. 3 before the Trial Court, did not surrender within the time stipulated, and thus the SLP qua him stood dismissed.

As the facts stood thus, the accused compromised the matter with the complainant and filed an application before this Court for permission to compound the offences. This Court, based on the prevailing facts and circumstances and having regard to the material on record, exercised its power under Article 142 of the Constitution of India and permitted the parties to compromise vide order dated 25.01.2019. Vide that order, this Court also

held that the offence would fall under Section 324 of the IPC, rather than Section 326. Be that as it may, the fact remains that Criminal Appeal No. 151 of 2019 arising out of Special Leave Petition (Criminal) No. 9054 of 2018 came to be disposed of on 25.01.2019, setting the judgments of the Trial Court and the High Court aside. Thus, the accused stood acquitted.

Though Accused Nos. 1, 2 and 4 were acquitted by the order dated 25.01.2019 passed by the Court in Criminal Appeal No. 151 of 2019 pursuant to the compromise between the parties, the benefit of that order of acquittal did not inure to the Petitioner, inasmuch his SLP was dismissed peremptorily in terms of the order dated 14.09.2018 of this Court for his failure to surrender before the concerned authorities within the time stipulated by the Court. The Petitioner herein therefore filed Miscellaneous Application No. 1927 of 2019 before this Court praying for recalling the order dated 14.09.2018. Unfortunately, not a whisper is made in the said application about the subsequent compromise between the parties and the order dated 25.01.2019 passed by this Court in Criminal Appeal No. 151 of 2019.

As mentioned supra, Criminal Appeal No. 151 of 2019 arising out of Special Leave Petition (Criminal) No. 9054 of 2018 was disposed of recording the compromise between the parties and that the accused were acquitted. While Miscellaneous Application No. 1927 of 2019 was being heard, had the Petitioner brought to the notice of the Court the order dated 25.01.2019 passed in Criminal Appeal No. 151 of 2019, the earlier order dated 14.09.2018

would have been recalled, but because of the lapse on the part of the Petitioner, the order dated 25.01.2019 was not brought to the notice of the Court. It is relevant to note that the Petitioner surrendered on 02.08.2019 and he is said to be in custody since then.

Having regard to the aforementioned facts on record, we are of the considered opinion that the Petitioner should also get the benefit of the order dated 25.01.2019 passed in Criminal Appeal No. 151 of 2019 arising out of Special Leave Petition (Criminal) No. 9054 of 2018. The said benefit would have accrued to the Petitioner on 21.10.2019 itself, when the order in Miscellaneous Application No. 1927 of 2019 was passed, had he brought to the notice of the Court the order dated 25.01.2019 passed in Criminal Appeal No. 151 of 2019.

Be that as it may, since the order dated 25.01.2019 passed in Criminal Appeal No. 151 of 2019 based on the compromise between the parties has now been brought to the notice of the Court, the order dated 21.10.2019 passed in Miscellaneous Application No. 1927 of 2019 in Criminal Appeal No. 151 of 2019 is reviewed and recalled. No useful purpose will be served in hearing the parties again on merits inasmuch as the matter had already been compromised between the parties and the order of acquittal is passed based on the same, as mentioned supra. Accordingly, the petitioner is also acquitted of the charges levelled against him.

The orders dated 14.09.2018 passed in Special Leave Petition

(Criminal) Diary No. 18016 of 2018 [renumbered Special Leave Petition (Criminal) No. 9054 of 2018] and dated 21.10.2019 passed in Miscellaneous Application No. 1927 of 2019 in Criminal Appeal No. 151 of 2019 are recalled. The judgments of the Trial Court and the High Court stand set aside qua the Petitioner as well. The petitioner shall be released forthwith from custody if not required in any other case.

The review petition is, accordingly, disposed of.

Pending application(s), if any, stands disposed of accordingly.

.....J.
[MOHAN M. SHANTANAGOUDAR]

NEW DELHI;
MAY 19, 2020.

.....J.
[AJAY RASTOGI]

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

REVIEW PETITION (CRIMINAL) Diary No(s). 6216/2020

(Arising out of impugned final judgment and order dated 21-10-2019 in MA No. 1927/2019 21-10-2019 in CrI.A. No. No. 151/2019 passed by the Supreme Court Of India)

H. MALLAIH

Petitioner(s)

VERSUS

THE STATE OF KARNATAKA

Respondent(s)

IA No. 29402/2020 - CONDONATION OF DELAY IN FILING REVIEW PETITION
IA No. 29413/2020 - GRANT OF BAIL
IA No. 29409/2020 - PERSONAL HEARING BEFORE THE COURT)

Date : 19-05-2020 These matters were circulated on for hearing today.

CORAM : HON'BLE MR. JUSTICE MOHAN M. SHANTANAGOUDAR
HON'BLE MR. JUSTICE AJAY RASTOGI

By Circulation

UPON perusing papers the Court made the following
O R D E R

Delay condoned in filing review petition.

Application for personal hearing before the Court is rejected.

The orders dated 14.09.2018 passed in Special Leave Petition (Criminal) Diary No. 18016 of 2018 [renumbered Special Leave Petition (Criminal) No. 9054 of 2018] and dated 21.10.2019 passed in Miscellaneous Application No. 1927 of 2019 in Criminal Appeal No. 151 of 2019 are recalled. The judgments of the Trial Court and

the High Court stand set aside qua the Petitioner as well. The petitioner shall be released forthwith from custody if not required in any other case.

The review petition is disposed of in terms of the signed order.

Pending applicatio(s), if any, stands disposed of accordingly.

(GULSHAN KUMAR ARORA)
AR-CUM-PS

(R.S. NARAYANAN)
COURT MASTER