

[2022 LiveLaw \(SC\) 283](#)

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

SANJIV KHANNA; BELA M. TRIVEDI, JJ.

S.L.P. (CRL.) NO. 9313 OF 2021; MARCH 07, 2022

GANESH PATEL VERSUS UMAKANT RAJORIA

Code of Criminal Procedure, 1973; Section 362 - Application for recall of the order maintainable when it is an application seeking a procedural review, and not a substantive review.

Summary: Appeal against High Court order which recalled an order passed by it in a criminal case - Dismissed - This application for recall of the order was maintainable as it was an application seeking a procedural review, and not a substantive review.

For Petitioner(s) Mr. Prashant Shukla, Adv. Anushree Shukla, Adv. Mr. Mayank Goutam, Adv. Mr. Ashu Bhindwar, Adv. Mr. Divyesh Pratap Singh, AOR

For Respondent(s) Mr. Varinder Kumar Sharma, AOR

ORDER

We do not find any good ground or reason to interfere with the impugned order. In fact, we must observe that the petitioner has concealed in the petition for special leave to appeal that the alleged compromise deed dated 18.04.2016 has been disputed and denied by the respondent.

The compromise deed was also relied upon by the petitioner before the High Court in CRR NO. 3100/ 2015, which was dismissed vide order dated 18.02.2016. This order specifically records that on two previous dates, viz., 07.12.2015 and 14.01.2016, the appellant was directed to surrender before the trial court, but he had not done so.

The order dated 18.02.2016 was challenged before this court in Crl.M.P. No. 20184 of 2016, which was dismissed vide order dated 25.04.2017, as the appellant had not complied with the direction to surrender and file proof within four weeks. The prayer for exemption from surrendering was rejected.

The petitioner, had filed a criminal appeal along with an application for condonation of delay under section 5 of the Limitation Act, 1963, before the Sessions Court, Sagar. This application was dismissed vide order dated 23.09.2015. Resultantly, the criminal appeal was dismissed.

The petitioner filed another appeal and section 5 application for condonation of delay before the IInd ASJ, Sagar, which was dismissed vide order dated 30.03.2016.

Undeterred by the aforesaid orders, the petitioner filed Miscellaneous Criminal Case No. 6576 of 2017 before the High Court contending that there has been a compromise between him and the respondent. This petition under section 482 of the Code of Criminal Procedure, 1973, was allowed ex parte vide judgment dated 13.10.2017.

The respondent thereupon preferred an application for recall of the order dated 13.10.2017. The aforesaid order, it was stated, was passed in the absence of the respondent, and based on false information. The High Court recalled the order dated 13.10.2017 vide the impugned order dated 23.10.2021.

This application for recall of the order was maintainable as it was an application seeking a procedural review, and not a substantive review to which Section 362 of the Code of Criminal Procedure, 1973, would be attracted. [***Grindlays Bank Ltd. v. Central Government Industrial Tribunal & Ors. 1980 (supp) SCC 420***]. On the aspect of the difference between recall and review and when an order of recall can be passed reference can be made to ***Budhia Swain and Others v. Gopinath Deb and Others, (1999) 4 SCC 396***.

The High Court was therefore right in recalling the order and listing MCRC No. 6576/2017 for hearing and decision on merits.

Rs. 25,000/- (Rupees Twenty Five Thousand Only) deposited by the petitioner in terms of the order dated 10.12.2021 would be paid to the respondent.

For the reasons stated above, the petition seeking special leave to appeal is dismissed and the interim order passed by us on 11th February, 2022 will no longer operate.

All pending applications stand disposed of.