

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL No.1852 OF 2019

(Arising out of Special Leave Petition (Crl.) No.8499 of 2014)

NEW INDIA ASSURANCE CO. LTD.

... APPELLANT

Versus

KRISHNA KUMAR PANDEY

... RESPONDENT

O R D E R

1. Leave granted.
2. Aggrieved by the refusal of the Madhya Pradesh High Court to recall an order passed in a criminal revision filed by the respondent- *herein*, holding that the conviction of the respondent for an offence punishable under Section 498-A of the Indian Penal Code, 1860, shall not affect the service career of the respondent adversely, the New India Assurance Company limited which is the employer of the respondent, has come up with the above appeal.
3. The respondent *herein* joined the services of the appellant, way back in the year 1985. The daughter-in-law of the respondent lodged a complaint in Criminal Complaint No.7534 of 2008 not only against the respondent's son but also against the other family members including the respondent *herein*. The Court of the Judicial Magistrate First Class, Gwalior, by a Judgment dated 30.01.2012 convicted the respondent and imposed the sentence of rigorous imprisonment for a term of one year and a

fine of Rs.1000/- .

4. The appeal filed by the respondent was dismissed by the 10th Additional Sessions Judge, Gwalior by a Judgment dated 5.06.2012. However, the criminal revision filed by the respondent in Cr.R.No.402 of 2012 was partly allowed by the High Court by a judgment dated 29.06.2012, reducing the punishment to the period of sentence already undergone, subject to the respondent depositing a compensation/fine amount of Rs.5000/-.

5. Thereafter, the respondent appears to have moved a Miscellaneous Application in Criminal Case No.8951 of 2012, purportedly for correction of the Order dated 29.06.2012 passed in the revision. On the said application, the High Court passed an order on 23.11.2012 (after five months of original order), clarifying that the conviction shall not affect the service career of the respondent adversely, in any manner. This order was passed by the High Court on the ground that the factum of employment of the respondent with the appellant- company was not brought to the notice of the Court when the revision was disposed of and that the conviction may impact the service career of the respondent adversely.

6. Upon being informed of the said order of the High Court, the appellant-company moved an application in Miscellaneous Criminal Case No.2417 of 2013 under Section 482 of the Code of Criminal Procedure, 1973 for recalling the Order dated 23.11.2012. This application was moved on the basis that the right of the employer to take note of any misconduct

on the part of the employee, which led to his conviction by criminal court, cannot be taken away in a collateral proceeding behind the back of the employer. But the High Court dismissed the miscellaneous application by Order dated 3.02.2014 on the short ground that a review of the order passed by a coordinate Bench was not permissible and that the appellant will be at liberty to file appropriate proceedings. It is against the said Order of the High Court dated 3.02.2014 that the employer has come up with the above appeal.

7. The short issue that arises for consideration is as to whether in a revision under Section 397 of the Code of Criminal Procedure, arising out of conviction, the High Court could have, even while affirming the conviction, taken away the right of the employer to exercise disciplinary control over an employee, on the basis of the conviction by the criminal court.

8. The scope of the revisional jurisdiction of the High Court (or Sessions Court) under Section 397 Cr.P.C, is limited to the extent of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order passed by an inferior Court. The revisional Court is entitled to look into the regularity of any proceeding before an inferior Court. As reiterated by this Court in a number of cases, the purpose of this revisional power is to set right a patent defect or an error of jurisdiction or law.

9. Obviously the power conferred by Sections 397 and 401 are actually powers of superintendence/supervision over inferior Courts. The power cannot be converted into the power of superintendence over the employer of

the person accused. None of the provisions of Sections 397 to 401 confer any power upon the High Court to declare that there shall be no civil consequences, resulting from the conviction. Therefore, what the High Court did by its Order dated 23.11.2012, holding that the conviction shall not affect the service career of the respondent adversely, was completely outside the purview of its revisional jurisdiction and cannot be sustained.

10. However, Mr. Ranji Thomas, learned Senior Counsel appearing for the respondent strenuously contended that in view of the embargo spelt out in Section 362 of the Code, there was no power for the High Court to alter or review the judgment rendered earlier in the revision filed by the respondent, except for the correction of a clerical or arithmetical error. In this regard, the learned Senior Counsel for the respondent placed strong reliance upon the Judgment of this Court in **State of Punjab Versus Davinder Pal Singh Bhullar & Others**¹. It is his contention that the High Court was right in rejecting the application filed by the appellant under Section 482 Cr.P.C for recall/review of its earlier order, as the High Court did not have the power to do so.

11. But the above contention of the learned Senior Counsel for the respondent is fallacious for two reasons. The *first* is that Section 362 of the Code is expressly subjected to “*what is otherwise provided by the Code or by any other law for the time being in force.*” Though this Court pointed out in **Davinder Pal Singh** (supra) that the exceptions carved out in Section 362

¹ (2011) 14 SCC 770

of the Code would apply only to those provisions where the Court has been expressly authorized either by the Code or by any other law but not to the inherent power of the Court, this Court nevertheless held that the inherent power of the Court under Section 482 Cr.P.C is saved, where an order has been passed by the criminal Court, which is required to be set aside to secure the ends of justice, or where the proceeding amounts to abuse of the process of Court. In paragraph 46 in particular, this Court held in

Davinder Pal Singh as follows:

“46. If a judgment has been pronounced without jurisdiction or in violation of principles of natural justice or where the order has been pronounced without giving an opportunity of being heard to a party affected by it or where an order was obtained by abuse of the process of court which would really amount to its being without jurisdiction, inherent powers can be exercised to recall such order for the reason that in such an eventuality the order becomes a nullity and the provisions of Section 362 Cr.P.C. would not operate. In such an eventuality, the judgment is manifestly contrary to the audi alteram partem rule of natural justice. The power of recall is different from the power of altering/reviewing the judgment. However, the party seeking recall/alteration has to establish that it was not at fault.”

12. The case on hand is one where the respondent secured an order from the High Court, behind the back of his employer that his conviction will not have an impact upon the service career of the respondent. The High Court did not have the power to pass such an order. If at all, the High Court could have invoked, after convicting the respondent, the provisions of the Probation of Offenders Act, 1958, so that the respondent could take shelter, if eligible, under Section 12 of the said Act. In this case, the High Court ventured to do something which it was not empowered to do. Therefore, the

respondent cannot take umbrage under Section 362 of Cr.P.C. The *second* reason why the argument of the learned Senior Counsel for the respondent is fallacious is that the respondent himself was a beneficiary of what he is now accusing the appellant of. As we have stated earlier, the criminal revision petition filed by the respondent in Cr.R.No.402 of 2012 was disposed of by the High Court by a Judgment dated 29.06.2012. Thereafter the respondent moved a Miscellaneous Application in Criminal case No.8951 of 2012 purportedly for the correction of the order. There was neither an arithmetical nor a clerical error in the judgment of the High Court, warranting the invocation of Section 362 Cr.P.C. The respondent cleverly borrowed the language of Section 362 Cr.P.C to affix a label to his petition and the High Court fell into the trap. After having invited an order, which, by the very same argument of the respondent, could not have been passed, it is not open to the respondent today to contend that there was no jurisdiction for the High Court to pass such an order. It is nothing but a case of pot calling the kettle black.

13. It is true that the respondent entered service way back in the year 1985 and it may certainly cause serious prejudice, if the conviction under Section 498-A IPC at the instance of his daughter-in-law also shakes the very foundation of his employment. But the respondent can certainly seek protection against such action only before an appropriate forum, if and when the employer chooses to initiate any action. It is not necessary that the employer in all such cases will invariably initiate disciplinary

proceeding. The employer may certainly take note of the long service rendered by the respondent, apart from the fact that the conviction had nothing to do with the discharge of his duties officially. In any case, if the employer chooses to take action, the employee has a host of remedies available in law. But the High Court, in a revision arising out of conviction, could not have sealed the right of the employer to take action on the basis of conduct which led to the conviction of an employee, within the parameters of the service Rules.

14. Hence, the appeal is allowed and the impugned order of the High Court dated 23.11.2012 passed in Miscellaneous Criminal Case No.8951 of 2012 is set aside.

.....**J**
(N.V. Ramana)

.....**J**
(A.S. Bopanna)

.....**J**
(V. Ramasubramanian)

New Delhi
December 06, 2019.

ITEM NO.29

COURT NO.2

SECTION II-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition for Special Leave to Appeal (Crl.) No.8499/2014

(Arising out of impugned final judgment and order dated 03-02-2014
in MCRC No. 2417/2013 passed by the High Court of M.P. at Gwalior)

NEW INDIA ASSURANCE CO LTD.

Petitioner(s)

VERSUS

KRISHNA KUMAR PANDEY

Respondent(s)

Date : 06-12-2019 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE N.V. RAMANA
HON'BLE MR. JUSTICE A.S. BOPANNA
HON'BLE MR. JUSTICE V. RAMASUBRAMANIAN

For Petitioner(s)

Mr. Saurabh Prakash, Adv.
Mr. Shekhar Kumar, AOR
Mr. Siddharth Bansal, Adv.
Ms. Yashaswini Bansal, Adv.

For Respondent(s)

Mr. Ranji Thomas, Sr. Adv.
Mrs. K. Sarada Devi, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

(VISHAL ANAND)
COURT MASTER (SH)

(RAJ RANI NEGI)
ASSISTANT REGISTRAR

(Signed Order is placed on the file)