2025 INSC 1020

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. OF 2025
[@ SLP (CRIMINAL) NO. 3425 OF 2022]

VIKRAM BAKSHI AND OTHERS ... APPELLANTS

VERSUS

R.P. KHOSLA AND ANOTHER ... RESPONDENTS

J U D G M E N T

AUGUSTINE GEORGE MASIH, J.

1. Leave granted.

2. The instant Criminal Appeal assails the Judgment and Order dated 05.05.2021 (hereinafter "Impugned Order") passed by the High Court of Delhi (hereinafter, "High Court"), whereby it recalled its earlier Judgment dated 13.08.2020 which had disposed of Criminal Miscellaneous (Co.) No. 4 of 2019 filed under Section 340 Criminal Procedure Code, 1973 (hereinafter, "CrPC") against the Appellants for prosecution of offences of perjury and directed that the said application be listed for hearing. In

the Judgment dated 13.08.2020, the High Court declined to interfere in the matter in view of the directions of this Court in Judgment dated 08.05.2014 passed in SLP (Criminal) No. 6873 of 2010 whereby dispute between the parties in relation to their Company Petition No.114 of 2007 (hereinafter "CP 114 of 2007") and other related matters arising out of it was to be decided by Company Law Board (hereinafter, "CLB").

3. The Appellants before us are Mr. Vikram Bakshi, Mr. Vinod Surha and Mr. Wadia Prakash while Mr. R.P. Khosla is the Contesting Respondent No.1 and Mr. Anand Mohan Mishra is Proforma Respondent No.2.

4. Briefly, the facts relevant for adjudication of the case in hand is that two groups, namely, the Khosla Group (comprising of Mr. R.P. Khosla, Mr. Deepak Khosla - son of R.P. Khosla and Ms. Sonia Khosla - wife of Mr. Deepak Khosla) and the Bakshi Group (comprising of Mr. Vikram Bakshi, Mr. Vinod Surha and Mr. Wadia Prakash) came together in relation to development of a resort at Kasauli in the State of Himachal Pradesh on the land owned by the Khosla Group where the Bakshi Group was to finance and manage the entire project.

5. The undisputed facts as presented and extracted from material on record are that a Memorandum of Understanding dated 21.12.2005 (hereinafter "MoU") was entered between Mr. Deepak Khosla (representing Khosla Group), Mr. R.P. Khosla, Mr. Vikram Bakshi and Montreaux Resorts Private Limited (hereinafter "MRPL") for development of the project.

6. The MRPL was a Special Purpose Vehicle incorporated under the provisions of the Companies Act, 1956 for execution of the said project. As the terms of MoU required transferring of shareholding in MRPL by Khosla Group to Mr. Vikram Bakshi subject to fulfilment of certain conditions, an Agreement dated 31.03.2006 was executed between Ms. Sonia Khosla, Mr. R.P. Khosla, Mr. Vikram Bakshi and MRPL, transferring 51% shareholding in MRPL to Mr. Vikram Bakshi. Pursuant to that, Mr. Vinod Surha and Mr. Wadia Prakash (of Bakshi Group) were appointed as Additional Directors in the MRPL.

7. Owing to subsequent disagreements, Ms. Sonia Khosla in her capacity as minority shareholder of MRPL, filed CP 114 of 2007 under section 397/398 of Companies Act, 1956 on 13.08.2007 before CLB alleging oppression and mismanagement by the Bakshi Group, *inter alia,* contending that her shareholding in MRPL had been illegally reduced from 49% to 36% and sought removal of

the Directors representing the Bakshi Group from the Board of Directors.

8. An application, C.A. No. 572/2007, in CP 114 of 2007 was filed by the Khosla Group praying to restrain the Bakshi Group from holding a meeting between themselves regarding the affairs of MRPL scheduled on 26.12.2007 claiming that the appointment of Directors belonging to the Bakshi Group was not confirmed as per the Minutes of Annual General Meeting (hereinafter "AGM") dated 30.09.2006 of MRPL, implying that they had ceased to be Directors and therefore cannot hold meeting of MRPL. CLB accepted the request and vide Order dated 24.12.2007 directed deferment of the aforesaid meeting scheduled for 26.12.2007.

9. Thereafter, while dealing with the CP 114 of 2007, the CLB vide Order dated 31.01.2008 directed maintenance of *status quo* with respect to the shareholding and composition of the Board of Directors in MRPL as existed on the date of the filing of said Company Petition by Ms. Sonia Khosla.

10. Aggrieved by the Order dated 31.01.2008, Mr. R.P. Khosla moved the High Court by filing Company Appeal (SB) No. 7 of 2008, which came to be disposed of as not pressed by the Appellant therein vide Order dated 11.04.2008 as the

High Court was informed that the parties have agreed that CP 114 of 2007 shall be withdrawn by Ms. Sonia Khosla and the dispute has already been referred to arbitration as per the terms of Agreement dated 31.03.2006. Furthermore, the parties had agreed to maintain *status quo* with respect to their shareholding in MRPL as it stood at the time of filing of CP 114 of 2007.

11. It needs mention here that Ms. Sonia Khosla had also assailed the same Order dated 31.01.2008 passed by the CLB in Company Appeal (SB) No. 6 of 2008 in which the High Court relying extensively upon the Order dated 11.04.2008 passed in Company Appeal (SB) No. 7 of 2008 dismissed the said appeal vide Order dated 22.04.2008 noting that agreement in terms of maintaining of *status quo* in shareholding and Board of Directors of MRPL has been achieved between parties.

12. In an attempt to prolong the litigation and not to be confined to 36% shareholding in MRPL, Mr. R.P. Khosla and Ms. Sonia Khosla had filed review petitions against Order dated 11.04.2008 in Company Appeal (SB) No. 7 of 2008 and Order dated 22.04.2008 in Company Appeal (SB) No. 6 of 2008 respectively before the High Court, these came to be dismissed on 06.05.2008.

13. In the interregnum, Bakshi Group filed an application being C.A. No. 1 of 2008 in CP 114 of 2007 before CLB seeking vacation of its Order dated 24.12.2007 leading to deferment of the meeting of MRPL scheduled on 26.12.2007. It was asserted in the said application that Mr. Vinod Surha and Mr. Wadia Prakash were confirmed as Directors of the MRPL as per the minutes of AGM held on 30.09.2006. It is at this stage, the litigation between the parties took a different turn altogether.

14. Alleging the Minutes of AGM of the MRPL dated 30.09.2006 as filed by Bakshi Group in C.A. No. 1 of 2008 are forged, Ms. Sonia Khosla filed an application under Section 340 of CrPC before the CLB seeking their prosecution for perjury.

15. However, citing inaction on the part of CLB, Ms. Sonia Khosla moved the High Court by filing Criminal Miscellaneous (Co.) No. 3 of 2008 seeking same relief of initiation of prosecution against Bakshi group under section 195(1)(b) and 195(4) read with section 340 (1) of CrPC for forgery and perjury with reference to claim made in C.A. 1 of 2008 and concerned affidavits filed by the Bakshi Group in CP 114 of 2007 before CLB.

16. Herein, the High Court, vide an interim Order dated 15.02.2010 directed the Registrar (Vigilance) of the High Court to hold a preliminary inquiry into the genuineness of the minutes of AGM dated 30.09.2006. This order dated 15.02.2010 was challenged by the Bakshi Group in SLP (Criminal) No. 6873 of 2010 contending that the Criminal Miscellaneous (Co.) No. 3 of 2008 filed by Ms. Sonia Khosla under section 340 of CrPC before the High Court was not maintainable.

17. This Court, vide Judgment dated 08.05.2014 in SLP (Criminal) No. 6873 of 2010, passed a consent order recording the submission of the parties that once the Company Petition i.e., CP 114 of 2007 itself is decided, the issue relating to the genuineness of the minutes of AGM dated 30.09.2006, as raised in the application under Section 340 of CrPC before the CLB, would also be addressed by the CLB. This Court accordingly directed the CLB to decide CP 114 of 2007 filed by Ms. Sonia Khosla within a period of six months from the date of receipt of a copy of the order. It was further directed that the High Court ought not proceed further with the application moved by Ms. Sonia Khosla under Section 340 of CrPC.

18. The relevant part of the Judgment dated 08.05.2014 passed by this Court is produced herein:

"21. In fact, though the learned Senior Counsel for the parties had argued the matters before us at length on the previous occasions, at the stage of conclusions of the arguments, the learned Senior Counsel Mr. Cama appearing for Khosla Group suggested for an early decision of the Company Petition before the CLB as a better alternative so that at least main dispute between the parties is adjudicated upon at an early date. He was candid in his submission that the issues which are subject matter of these two Special Leave Petitions and arise out of the proceedings in the High Court, have their origin in the orders dated 31.1.2008, which is an interim order passed by the CLB. He thus, pointed out that once the Company Petition itself is decided, the issues involved therein namely whether Board meeting dated 14.12.2007 was illegal or whether Board meeting dated 30.9.2006 was barred in law would also get decided. In the process the CLB would also be in a position to decide as to whether minutes of AGM of the Company allegedly held on 30.9.2006 are forged or not and on that basis application under Section 340 Cr. PC which is filed before the Company Law Boared [sic] Board would also be taken care of by the CLB itself. Learned Senior Counsels appearing for the Bakshi Group immediately agreed with the aforesaid course of action suggested by Mr. Cama. We are happy that at least there is an agreement between both the parties on the procedural course of action, to give quietus to the matters before us as well. In view of the aforesaid consensus, about the course of action to be adopted in deciding the disputes between the parties, we direct the Company Law Board to decide Company Petition No. 114 of 2007 filed before it by Ms. Sonia Khosla within a period of six months from the date of receiving a copy of this order. Since, it is the CLB which will be deciding the application under Section 340 Cr PC filed by Ms. Sonia Khosla in the CLB, High Court need not proceed further with the Criminal Misc. (Co.). No. 3 of 2008. Likewise the question whether Mr. R.K. Garg was validly inducted as a Director or not would be gone into by the CLB, the proceedings in Co. Appeal No. (SB) 23 of 2009 filed by Mr. R.K. Garg in the High Court, also become otiose.

22. The only aspect on which some directions need to be given are, as to what should be the interim arrangement. The Bakshi Group wants orders dated 31.1.2008 passed by CLB to continue the interregnum. The Khosla Group on the other hand refers to orders dated 11.4.2008 as it is their submission that this was a consent order passed by the High Court after the orders of the CLB and, therefore, this order should govern the field in the meantime.

23. After considering the matter, we are of the opinion that it is not necessary to either enforce orders dated 31.1.2008 passed by the CLB or orders dated 11.4.2008 passed by the High Court. Fact remains that there has been a complete deadlock, as far as affairs of the Company are concerned. The project has not taken

> *off. It is almost dead at present. Unless the parties re-concile, there is no chance for a joint venture i.e. to develop the resort, as per the MOU dated 21.12.2005. It is only after the decision of CLB, whereby the respective rights of the parties are crystallised, it would be possible to know about the future of this project. Even the Company in question is also defunct at present as it has no other business activity or venture. In a situation like this, we are of the opinion that more appropriate orders would be to direct the parties to maintain status quo in the meantime, during the pendency of the aforesaid company petition before the CLB. However, we make it clear that if any exigency arises necessitating some interim orders, it would be open to the parties to approach the CLB for appropriate directions.*
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> *24. Both these petitions are disposed of in the aforesaid terms. All other pending I.As including criminal contempt petitions and petitions filed under Section 340 Cr. PC are also disposed of as in the facts of this case, we are not inclined to entertain such application. No costs."*

19. The Criminal Miscellaneous (Co.) No. 3 of 2008 came to be dismissed vide Order dated 03.12.2018 of the High Court in consonance with Judgment dated 08.05.2014 passed in SLP (Criminal) No. 6873 of 2010 by this Court.

20. Reverting to the High Court's Orders dated 11.04.2008 and 22.04.2008 in Company Appeal (SB) No. 7 of 2008 and Company Appeal (SB) No. 6 of 2008 respectively, a Contempt Petition being C.C.P. (Co.) No. 1 of 2009, was filed by the Khosla Group before the High Court alleging wilful disobedience of abovesaid Orders dated 11.04.2008 and 22.04.2008, this petition came to be withdrawn with liberty to file afresh with a proper array of parties.

21. Thereafter, the Khosla Group filed another application being Criminal Miscellaneous (Co) No. 4 of 2019 under

Section 340 CrPC before the High Court alleging that the Bakshi Group had filed a counter-affidavit dated 24.02.2010 in C.C.P. (Co.) No. 1 of 2009 which contained false and contradictory statements. This application was disposed of by the High Court vide Judgment dated 13.08.2020, observing that the CLB (which has now been replaced by National Company Law Tribunal, hereinafter "NCLT") was seized of the matter as submitted by the Khosla Group that the CP 114 of 2007 was pending before NCLT, further taking note of the Judgment dated 08.05.2014 passed in SLP (Criminal) No. 6873 of 2010 by this Court that the CP 114 of 2007 and application under section 340 of CrPC was to be decided by the CLB/NCLT, the High Court decided not to interfere in the issue. Relevant portion of the Judgment dated 13.08.2020 passed by the High Court reads as follows:-

> *"20. Broadly understood, the claim of the Petitioner is that if the claim of the Respondents in C.A. No.1/2008 is that they were elected in the AGM held on 30.09.2006, then no EGM took place on 28.06.2006 and they were not elected in the said EGM. As a corollary if they had been elected in the EGM then a claim of having been elected in the AGM held on 30.09.2006 is false and the Minutes are forged, making the Respondents liable to punishment for perjury.*
> *21. In my view the allegations in the present petition, directly or indirectly touch upon the Minutes of the AGM of 30.09.2006, which is the subject matter of adjudication before NCLT. While Mr. Khosla urges that this petition can be independently decided as it relates to the alleged EGM and certain other issues raised therein, but on a holistic reading of the petition, this Court is of the opinion that any decision in the present petition will have a bearing on the genuineness of AGM dated 30.09.2006 and other aspects sub-judice before NCLT, as the controversies are intrinsically linked.*

> *22. It is apparent from the order passed by the Supreme Court, which was a consent order, that the parties chartered a course of action for further litigation and the path chosen was to have the entire dispute decided before the then CLB (now NCLT). In fact, it was the Petitioner Group which had put forth before the Supreme Court that once the Company Petition is decided, the connected issues of the alleged illegalities in the various Board Meetings would be taken care of, including allegations qua AGM held on 30.09.2006. In this light Supreme Court directed the CLB to decide the Co. Pet. No. 114/2007 as also the Application under Section 340 Cr.PC. Apposite would it be to emphasize that the Supreme Court categorically directed the High Court not to proceed with Crl. Misc. (Co.) No. 3/2008 and the said petition has been dismissed by this Court, in the light of the observation of the Supreme Court.*
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> *23. It is not disputed by Mr. Khosla that the NCLT is even currently seized of the Petitions/ Applications, as referred to in the order of the Supreme Court, between the two Groups. Thus in the light of the order of the Supreme Court, it is not proper for this Court to entertain the present Petition at this stage. Petitioner may approach the NCLT, in accordance with law, if so advised.*
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> *24. In all probability once the proceedings pending before the NCLT end, the creases shall be ironed out with respect to the EGM also. Nonetheless, in case the issues raised herein still survive after the proceedings end before NCLT, it shall be open to the Petitioner to approach this Court, in accordance with law.*
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> *25. It is made clear that this Court has not expressed any view on the merits of this case or with respect to any inter-se litigation between the parties."*

21A. Khosla Group, thereafter, moved an application under Order XLVII of the Code of Civil Procedure, 1908, seeking review and recall of the Judgment dated 13.08.2020 alleging that CP 114 of 2007 was withdrawn by Ms. Sonia Khosla on 07.02.2020 with liberty to file a fresh petition and this fact was not brought to the notice of the court prior to the passing of the Judgment dated 13.08.2020. Moreover, it was contended that in Criminal Miscellaneous (Co) No. 4 of 2019 allegations of false affidavits being filed by Respondent No.2 on behalf of Bakshi Group had been

made and, therefore, the same should be heard on its merits without relegating the dispute to the NCLT.

22. Objecting to the said contention on behalf of Khosla Group, the Bakshi Group reiterated the observations made in Judgment dated 13.08.2020 with reference to the earlier order of this Court and further asserted that the High Court did not have power to review or alter its order passed while exercising criminal jurisdiction as per Section 362 of CrPC.

23. The High Court while passing the Impugned Order dated 05.05.2021, did take note of the objections of the Bakshi Group and observed that there can be no debate that a review petition does not lie under the CrPC, except for correction of clerical and arithmetical errors but, still, it proceeded to recall the Judgment dated 13.08.2020 on the ground that the fact of withdrawal of the Company Petition before the CLB (now NCLT) was not brought to the notice of the court earlier but only now through the review application and as a consequence, directed Criminal Miscellaneous (Co) No. 4 of 2019 to be listed for consideration. It is this order dated 05.05.2021 which is under challenge before this Court.

24. The learned Senior Counsel for the Appellants contends that there is no power of review under Criminal Procedure Code of 1973. The only power available under Section 362 of CrPC is to correct a clerical or arithmetical error. To substantiate this contention, reliance is placed upon the decision of this Court in ***Sanjeev Kapoor vs. Chandana Kapoor and Others***[1] which held that that there are only two relaxations given from the rigour of Section 362 of CrPC where such power to alter or review is provided either (i) by the CrPC itself or (ii) by any other law for time being in force and no such relaxations are met out in the Impugned Order. He further highlighted that the High Court in Impugned Order agreed with the proposition that review was not maintainable, yet decided to review and recalled its Judgment dated 13.08.2020. He contends that this Court while dealing with the litigation between two groups involving similar applications under section 340 of CrPC, vide Judgment dated 08.05.2014 had directed CLB/NCLT to decide the matter and restrained the High Court to proceed with the application under section 340 of CrPC. The learned Counsel contends that the High Court acted in violation of this Court's above judgment while passing the Impugned Order. He prays for setting aside of Impugned Order dated 05.05.2021 passed by the High Court.

[1] (2020) 13 SCC 172

25. Per contra, the learned Counsel for the Respondents, contends that the Impugned Order dated 05.05.2021 is a classic manifestation of the court undoing its own wrong. He submits that the Order was not passed under any statutory provision but by the court acting *ex debito justitiae* in order to undo the injurious effect flowing from its factually erroneous observation included in Judgment dated 13.08.2020. He relied on the order passed by this Court in ***Ganesh Patel vs. Umakant Rajoria***[2] which relying on ***Grindlays Bank Ltd. vs. Central Government Industrial Tribunal and Others***[3] has carved out a distinction between "procedural review" and "substantive review" and has clarified that when it comes to procedural review, the rigour of Section 362 of CrPC will not be attracted. He submits that the recall in such circumstances is a recall simpliciter and not a review ensuing recall which is on merits. He further asserted that the High Court in the Impugned Order has clearly recorded that it is not entering into the merits of case and merely correcting the mistake it made in Judgment dated 13.08.2020 due to absence of the correct material factual development and thus sustainable. Further, it is contended that while passing its Judgment dated 13.08.2020, the High Court was not dealing with a criminal proceeding per se, as the outcome of application

[2] 2022 SCC OnLine SC 2050
[3] 1980 Supp SCC 420

filed under Section 340 of CrPC does not directly result into any sentence or fine or any other implication which is a necessary outcome for a proceeding to be of criminal in nature. The proceedings under section 340 of CrPC are just to ascertain whether an offence of perjury has been prima facie made out. He, therefore, prays for dismissal of the appeal.

26. Having heard the learned Counsels for the parties, and on perusal of the material on record, the primary issue which arises for consideration of this Court is "whether a review or recall of an order passed in a criminal proceeding initiated under section 340 of CrPC is permissible or not?" In our opinion, the resolution of the said issue would lead to conclusion of present petition.

27. The law relating to power of a criminal court to review or alter its own judgment or order is governed by the provisions of Section 362 of CrPC (equivalent to Section 403 of Bhartiya Nagrik Suraksha Sanhita, 2023). The Provision explicitly provides that except for clerical and arithmetical error, no court shall alter or review its judgment. It is appropriate to refer to the bare provision of Section 362 of CrPC which reads as follows:

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

27A. The comparison of the power of review of a civil court *vis-a-vis* power of criminal court to review or recall its own judgment or order arising out of criminal proceedings has been put to rest by numerous decisions of this Court. It would be appropriate at this juncture to discuss the relevant decisions of this court pertaining to review or recall power of criminal courts to ascertain the correct position of law before proceeding to refer and deal with the factual matrix of the present case.

28. The scope of Section 362 of CrPC has been discussed and elaborated by a three-judge bench decision of this Court in ***State of Kerala vs. M.M. Manikantan Nair,***[4] wherein it held that CrPC does not authorize High Court to review its judgment or order passed either in exercise of its appellate, revisional or original jurisdiction. Section 362 explicitly prohibits the court after it has signed its judgment or final order disposing of case from altering or reviewing the said judgment or order except to correct a clerical or arithmetical error. This prohibition is complete and no criminal court can review its own judgment or order after it is signed.

[4] (2001) 4 SCC 752

29. Similarly, in ***Hari Singh Mann vs. Harbhajan Singh Bajwa and Others***[5], this Court observed that section 362 of CrPC is based on the acknowledged principle of law that once a matter is finally disposed of by a court, the said court, in absence of specific statutory provisions, becomes *functus officio* and is disentitled to entertain fresh prayer for same relief.

30. In ***Sanjeev Kapoor (supra)*** it has been reiterated that Section 362 of CrPC imposes an embargo on a criminal court to alter and review its own judgment. Elaborating on the two relaxations envisioned by the legislature, this Court explained that an alteration or review is only feasible if it is so provided by the said legislation itself or by any other law in force. It was also clarified that such an attempt to alter or review is also not feasible or permissible through a reference to Section 482 of CrPC for being expressly barred under Section 362 of CrPC.

31. This Court, however, in exceptional cases, has carved out limited scope for exercise of review power by criminal courts. In ***Grindlays Bank Ltd. (supra)***, it was observed that review can be distinguished between "procedural review" and "substantive review". A "procedural review" is inherent or implied in a court to set aside a palpably erroneous order passed under misapprehension by it,

[5] (2001) 1 SCC 169

however, a "substantive review" is when error sought to be corrected is one of law and is apparent on the face of the record. It is in the latter sense, this Court, held that no review lies on merits unless specifically provided under a statute.

32. This distinction has been further clarified in ***Budhia Swain and Others vs. Gopinath Deb and Others***[6], wherein this Court has laid down certain grounds on which a criminal court can review or recall its judgment or order i.e. when the proceedings before it itself suffers from an inherent lack of jurisdiction or, a fraud is played upon court to obtain the order or, a mistake of court causing prejudice to party or the order was in ignorance of non-serving of necessary party or party had died and estate was not represented. It was further clarified that these exceptions were subjected to the limitation that such grounds cannot be raised to recall or review if they were available during the original action and was not availed.

33. In ***Ganesh Patel (supra)*** this Court held that application for recall seeking "procedural review" and not "substantive review" to which Section 362 of CrPC be attracted is permissible. This Court upheld the order of the High Court wherein it recalled the earlier order passed in the absence of the Respondent and based on false information.

[6] (1999) 4 SCC 396

34. A careful consideration of the statutory provisions and the aforesaid decisions of this Court clarify the now-well-settled position of jurisprudence of Section 362 of CrPC which when summarize would be that the criminal courts, as envisaged under the CrPC, are barred from altering or review their own judgments except for the exceptions which are explicitly provided by the statute, namely, correction of a clerical or an arithmetical error that might have been committed or the said power is provided under any other law for the time being in force. As the courts become *functus officio* the very moment a judgment or an order is signed, the bar of Section 362 CrPC becomes applicable, this, despite the powers provided under Section 482 CrPC which, this veil cannot allow the courts to step beyond or circumvent an explicit bar. It also stands clarified that it is only in situations wherein an application for recall of an order or judgment seeking a "procedural review" that the bar would not apply and not a substantive review" where the bar as contained in Section "362 CrPC is attracted. Numerous decisions of this Court have also elaborated that the bar under said provision is to be applied *stricto sensu*.

34A. Having said that, the following exceptional circumstances may be identified, wherein a criminal court is empowered to alter or review its own judgment or a final order under Section 362 CrPC:

a. Such power is expressly conferred upon court by CrPC or any other law for the time being in force or;
b. The court passing such a judgement or order lacked inherent jurisdiction to do so or;
c. A fraud or collusion is being played on court to obtain such judgment or order or;
d. A mistake on the part of court caused prejudice to a party or;
e. Fact relating to non-serving of necessary party or death leading to estate being non-represented, not brought to notice of court while passing such judgment or order.

It needs to be reiterated that all these exceptions are only exercisable for seeking a recall or review of an order or judgment, if a ground that is raised was not available or existent at the time of original proceedings before the Court. Mere fact that the said ground, although available, was not raised or pressed during the concerned proceedings, does not provide for an exemption to the parties to assert it as a ground. Moreover, the said power cannot be invoked as a means to circumvent the finality of the judicial process or mistakes and/or errors in the decision which are attributable to a conscious omission by the parties.

35. Before we delve into the facts of the instant case in an attempt to sieve out the correct jurisprudence from the gamut of the arguments raised by the parties before us, we find it appropriate to first consider the maintainability of the Review Petition No. 579 of 2020 under Order XLVII of the Code of Civil Procedure, 1908 preferred by the Khosla Group before the High Court. The Khosla Group filed the said review under the provisions of CPC 1908 seeking recall of Order dated 13.08.2020 passed in Criminal Miscellaneous (Co.) No. 4 of 2019 which was filed under section 340 of the CrPC.

36. The scheme of CrPC as enshrined in its long title defines it is an Act "to consolidate and amend the law relating to Criminal Procedure". Further, Section 4 of CrPC provides for scope of the CrPC which is reproduced herein:

> ***"4. Trial of offences under the Indian Penal Code and other laws.***
>
> *(1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.*
>
> *(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner of place of investigating, inquiring into, trying or otherwise dealing with such offences."*

The provisions of Sub-section (1) of Section 4 of CrPC expressly mandates an investigation, inquiry or trial of offences under Indian Penal Code of 1860 to be conducted strictly as per the procedure provided in the provisions of the CrPC. The definition of "inquiry" as stipulated in Section 2 (g) of CrPC means every inquiry, other than a trial, conducted under the CrPC by a Magistrate or Court.

37. The intent of proceedings as can been seen from provision of Section 340 of the CrPC, is to determine as to whether a complaint ought to be made in writing by concerned court to the competent Magistrate for prosecution of accused in respect of an offence alleged to have been committed in or in relation to a proceeding in a court. Section 340 of CrPC empowers the court that such determination may be done by way of holding preliminary inquiry to ascertain sufficient material to justify the initiation of prosecution against the accused. The nature of such an inquiry is not administrative or mere procedural. It is an initial step to a course which may lead to criminal prosecution, and this step is taken by a court with avowed purpose of examining whether a person should be prosecuted for an offence which, more often than not, relates to fabricating or giving false evidence, or committing other offences affecting the administration of justice, all of which are offences punishable under the Indian Penal Code.

38. If the nature of proceeding is such, the outcome of which, may result in a trial before a criminal court and, upon conviction, entail punishment for an offence under the penal law, then such a proceeding must, in substance, be treated as criminal in nature. Section 4(1) of the Code mandates that all offences under the Indian Penal Code. must be investigated, inquired into, tried, and otherwise dealt with in accordance with the procedure prescribed by the CrPC. The nature of the proceeding is determined by its substance and consequences it may result into. Thus, a proceeding initiated under section 340 of CrPC is in the nature of criminal proceeding and governed by the provisions of the CrPC, as a consequence, thereof, all the procedural safeguards, consequences, and effects thereto associated with a criminal proceeding under CrPC are also attracted to it.

39. Considering that the proceedings initiated under section 340 of CrPC are of criminal nature and governed by the provisions of CrPC which is a self-contained Code, and includes entire procedure within itself to deal with the proceedings initiated under its provisions, there is no scope for application of provisions of any other procedural law until specifically provided under such law.

40. In the present case, the review application was filed by Khosla Group under Order XLVII of CPC 1908 before High Court. The CPC 1908 does not expressly provide for a provision wherein a review can be filed in the proceedings of criminal nature initiated under CrPC. As a result, the said petition filed by Khosla Group under provisions of CPC 1908 could not have been entertained by the High Court for being patently not maintainable in light of above discussion. This finding itself leads to the disposal of case at hand, however, in our view, it is pertinent to delve into the merits of the review application so moved by the Khosla Group and leading to the Impugned Order vis-à-vis the jurisdiction and expanse of Section 362 of CrPC.

41. To deal with the case at hand, it is essential to peruse the material-on-record, especially the Impugned Order dated 05.05.2021 and the Judgment dated 13.08.2020 in juxtaposition to the scope and applicability of Section 362 CrPC. While it appears that the withdrawal of the CP 114 of 2007 pending before the CLB/NCLT (now) impressed the High Court to recall its Judgment dated 13.08.2020 vide the Impugned Order dated 05.05.2021 but a perusal of the former would show that it was not premised exclusively on the pendency of the CP 114 of 2007. The High Court had gone on to observe the intertwined nature of the allegation with the on-going proceedings between the parties before the NCLT. Moreover, it was originally pursuant to the

binding directions of this Court in Judgment dated 08.05.2014 passed in SLP (Criminal) No. 6873 of 2010 to the effect that aforesaid Company Petition and the application filed by Ms. Sonia Khosla under Section 340 CrPC alleging perjury on part of the Bakshi Group before the then CLB were to be decided by the CLB/NCLT and the High Court was directed not to proceed with Criminal Miscellaneous (Co.) No. 3 of 2008.

42. Hypothetically, even the withdrawal of the CP 114 of 2007 by Ms. Sonia Khosla, does not disturb or hamper the directions and observations of this Court in Judgment dated 08.05.2014 with respect to vesting of jurisdiction with the CLB/NCLT. The High Court would have been required to therefore re-assess the binding nature of this Court's Order. Such an application for recall could not have been held to be maintainable by the High Court owing to it being a prima facie attempt to circumvent the position of law and the letter and spirit of the provision/statute.

43. Further, neither the Impugned Order falls within the ambit of "procedural review" to not attract the bar of Section 362 CrPC, nor is it the case of the Khosla Group that they were either denied a hearing before the High Court or were not given an opportunity to inform the court of the said development. It is pellucid that Ms. Sonia Khosla of the

Khosla Group had herself withdrawn the CP 114 of 2007 on 07.02.2020 that too, more than six months before the passing/pronouncement of the Judgment dated 13.08.2020. It rather appears as an intentional attempt to mislead the court. An explicit statement is recorded on the part of the Khosla Group in paragraph 23 of the Judgment dated 13.08.2020 (reproduced above) that NCLT was still seized of the proceedings vis-à-vis CP 114 of 2007. The ground on which recall was later sought was one that was fully available to the Khosla Group at the time of the original hearing and thus, could have been duly raised but was not so taken. Later, in their attempt to abuse the process, they had moved the Company Application No 579 of 2020 for review that too under Order XLVII of CPC, 1908 which, any way, would not be permissible leading to passing of the Impugned Order by the High Court.

44. Such an act to undermine the finality of the judicial proceedings cannot be permitted especially in such situations of deliberate omissions or misrepresentation on the part of the parties before the court and thereafter attempting to defend themselves and obtaining the verboten order dated 05.05.2021, substantially reviewing and recalling the Judgment dated 13.08.2020, under the garb of "procedural review" which is impermissible.

45. In light of the aforesaid, we cannot allow the Impugned Order dated 05.05.2021 to hold the field, being antithetical to the law as laid down by this Court relating to Section 362 of CrPC and, thus, ought to be set aside. Ordered accordingly.

46. The appeal is allowed in the above terms.

47. Pending application(s), if any, shall stand disposed of.

.....CJI.
[B. R. GAVAI]

.....J.
[AUGUSTINE GEORGE MASIH]

NEW DELHI;
AUGUST 20, 2025.