2025:AHC:157122-DB

AFR

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 1876 of 1983

Laxman

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	:	G.P. Dixit, Prakash Chandra Srivastava, Vishnu Prakash
Counsel for Respondent(s)	:	A.G.A.

In Chamber

HON'BLE VIVEK KUMAR BIRLA, J.
HON'BLE PRAVEEN KUMAR GIRI, J.

Order on Criminal Misc. Recall Application along with Delay Condonation Application

1. Heard Mr. Prakash Chandra Srivastava, learned counsel for the applicant/appellant and Mr. Jai Narain, learned A.G.A. for the respondent State.

2. The present application along with delay condonation application has been filed by the applicant/appellant under Section Section 528 of BNSS (corresponding Section 482 of Cr.P.C.) seeking recall of the judgment and order dated 17.3.2025, passed by this Court in Criminal Appeal No.1876 of 1983 whereby this Court has confirmed the conviction and sentence of the appellant.

3. The learned counsel for the appellant submits that the impugned judgment was passed in the absence of the appellant, treating him as an absconder despite the appeal being admitted and the applicant having been granted bail by this court.

4. Learned counsel for the appellant further submits that the appellant's counsel, Mr. G.P. Dixit, passed away a long time ago. Consequently, the appellant could not be informed about the hearing of the appeal and

therefore was not properly represented. Although this court issued coercive measures against the appellant, he could not be informed because he was no longer living in his village of Beerpur Salempur. It is submitted that the appellant was residing at House No. 636, Har Gobind Nagar Muktasar Sahib, in Punjab with his brother/deponent, who was taking care of him. As a result, the appellant could not respond to the notice issued by this court.

5. It is further submitted that appellant came to know about the impugned judgment on 30.05.2025. Thereafter, he appeared before the learned Chief Judicial Magistrate, Etahwah, on 02.06.2025, and has been in jail since that date.

6. Learned counsel for the appellant further submits that the impugned order has been passed ex parte without affording an opportunity of hearing to the appellant and, therefore, the same may be recalled. He has relied upon the decision in the case of **Dhanajay Rai @ Guddu rai vs. State of Bihar (2022 LiveLaw (SC) 597)** to submit that an admitted appeal against conviction cannot be dismissed on the ground that the accused in absconding. Learned counsel for the appellant has relied upon paragraph No.8 of this judgment which is quoted below :

> *"8. The anguish expressed by the division bench about the brazen action of the appellant of absconding and defeating the administration of justice can be well understood. However, that is no good ground to dismiss the appeal against the conviction, which was already admitted for final hearing, for non prosecution without adverting to merits. Therefore the impugned judgment will have to be set aside and the appeal will have to be remanded to the High Court for consideration of the merit".*

7. As against this, learned A.G.A for the respondent State has submitted that the impugned order has been passed on merits, after re-appreciation of the evidence rather than due to non prosecution. Therefore, the recall application is not maintainable in view of Section 362 of Cr.P.C.

8. Learned A.G.A. has further submitted that the applicant was absconding for a long time; therefore, this Court issued a notice for his appearance either personally or through an advocate. Learned A.G.A. has

relied upon paragraphs 1 to 6 of the judgment dated 17.3.2025, which confirmed the trial Court's judgment. Paragraphs 1 to 6 of the said judgment are being reproduced:

> *"1. List revised. No one appears on behalf of the appellant to press the present appeal.*
>
> *2. Learned counsel for the appellant died long back and as such, appellant was issued notice to engage another counsel vide order dated 24.10.2018. As per the report submitted by Chief Judicial Magistrate, Etawah dated 11.01.2022, the appellant Luxman is missing since last 30 years. Noticing the aforesaid fact on 27.04.2024, following order was passed:*
>
> > *"The Chief Judicial Magistrate, Etawah, by a letter dated 11.1.2022, has informed that the appellant Luxman is missing/absconding for the last 30 years.*
> >
> > *The Chief Judicial Magistrate, Etawah, with the help of administration may adopt all possible measures to search out the appellant. The measures which he would take would include the measure of tapping the sureties.*
> >
> > *List this case on 27.5.2024."*
>
> *3. According to the office report dated 24.05.2024, based on the report of Chief Judicial Magistrate, Etawah dated 23.05.2024, whereabouts of the appellant and his family members are not known. Names and addresses of sureties could not be ascertained as the bail bonds furnished by appellant-accused were not found in the trial court's record. The Chief Judicial Magistrate, Etawah vide letter dated 25.07.2024 has again reported that the appellant and the sureties could not be located.*
>
> *4. In* ***Surya Baksh Singh vs. State of Uttar Pradesh, (2014) 14 SCC 222,*** *the Hon'ble Apex Court has held that it is always not necessary to adjourn the matter in case both appellants or his counsels/lawyers are absent and the Court can decide the appeal on merits after perusal of the record and the judgement of the trial Court. It has further been observed that if the case is decided on merits in the absence of the appellant, the higher court can remedy the situation. It has also been observed that appointment of Amicus Curiae is also on the discretion of the court. In paragraph 26 of the said judgement, it was held that it is always not essential for the High Court to an appoint Amicus Curiae, paragraphs 24 and 26 of the said judgement whereof are quoted as under:*

"*24. It seems to us that it is necessary for the Appellate Court which is confronted with the absence of the convict as well as his Counsel, to immediately proceed against the persons who stood surety at the time when the convict was granted bail, as this may lead to his discovery and production in Court. If even this exercise fails to locate and bring forth the convict, the Appellate Court is empowered to dismiss the appeal. We fully and respectfully concur with the recent elucidation of the law, profound yet perspicuous, in K.S. Panduranga v. State of Karnataka, (2013) 3 SCC 721. After a comprehensive analysis of previous decisions our learned Brother had distilled the legal position into six propositions:*

> "*19.1. that the High Court cannot dismiss an appeal for non-prosecution simpliciter without examining the merits;*
>
> *19.2. that the Court is not bound to adjourn the matter if both the Appellant or his Counsel/lawyer are absent;*
>
> *19.3. that the court may, as a matter of prudence or indulgence, adjourn the matter but it is not bound to do so;*
>
> *19.4. that it can dispose of the appeal after perusing the record and judgment of the trial court.*
>
> *19.5. that if the accused is in jail and cannot, on his own, come to court, it would be advisable to adjourn the case and fix another date to facilitate the appearance of the Appellant-accused if his lawyer is not present, and if the lawyer is absent and the court deems it appropriate to appoint a lawyer at the State expense to assist it, nothing in law would preclude the court from doing so; and*
>
> *19.6. that if the case is decided on merits in the absence of the Appellant, the higher court can remedy the situation.*

25.…..

> *26. Reverting back to the facts of the present case a perusal of the impugned order makes it abundantly evident that the High Court has considered the case in all its complexities. The argument that the High Court was duty-bound to appoint an amicus curiae is not legally sound. Panduranga correctly considers Mohd. Sukur Ali v. State of Assam (1996) 4 SCC 729 as per incuriam, inasmuch as the latter mandates the appointment of an amicus curiae and is thus irreconcilable with Bani Singh vs. State of U.P. (1996) 4 SCC 720. In the case in hand the High Court has manifestly discussed the evidence that have been led, and finding it of probative value, has come to the conclusion that the conviction is above Appellate reproach correction and interference. In view of the analysis of the law the contention raised before us that it was essential for the High Court to have appointed an amicus curiae is wholly untenable. The High Court has duly undertaken the curial responsibility that fastens upon the Appellate Court, and cannot be faulted on the approach adopted by it. In this respect, we find no error."*
>
> *(Emphasis supplied)*

5. The aforesaid view has been followed by the Hon'ble Full Bench in ***Criminal Reference No.1 of 2024, In Re-Procedure To Be Followed In Hearing Of Criminal Appeals vs. State of U.P.,*** *decided on 22.01.2025, paragraph Nos. 151 and 152 whereof are quoted as under:*

> "*151. The crux of the aforesaid observations of the three celebrated judgments rendered by the Hon'ble Supreme Court in Bani Singh and others Vs. State of U.P. 11, Surya Baksh Singh Vs. State of Uttar Pradesh 12 and K.S. Panduranga Vs. State of Karnataka 13, thus, covers the entire length and breadth of Question No. 5 formulated by the Division Bench at Lucknow for consideration by this Bench and no fresh exercise, in our considered opinion, is required to be undertaken by this Bench, including on one point which has been highlighted by the Division Bench at Lucknow i.e. whether the amicus curiae may be appointed even when the presence of the convict, appellant or accused-respondent may be secured and without his consent.*
>
> *152. The aforesaid legal precedents would evidently canvass that the emphasis of the Apex Court has been on providing opportunity of being*

> *heard to the appellant who is willing to cooperate with the appellate court or his counsel and in this regard a process to cause his presence for the purpose of giving opportunity of being heard is required to be issued to him and when the court is satisfied that such appellant is deliberately avoiding his presence before the court, in such a situation, the court may dispose of the appeal in the manner approved by the Hon'ble Supreme Court in Bani Singh and others Vs. State of U.P. 11, Surya Baksh Singh Vs. State of Uttar Pradesh 12 and K.S. Panduranga Vs. State of Karnataka 13 (i.e. after perusing the record/evidence vis-a-vis judgment of the trial court with the assistance of prosecutor and Amicus, if appointed) and we do not have any reason to deviate from the settled proposition laid down by the Apex Court in the above mentioned cases, moreover, the appointment of amicus is only for the purpose to provide fair trail to the appellant and also for rendering the assistance to the Court."*
>
> *6. Under such circumstances, we proceed to consider the present appeal on merits with the help of Shri Rahul Asthana, learned AGA for the State."*

9. This Court has gone through the entire record and after perusal of the entire record and other documents, it is observed that that the appellant was given ample opportunity to appear before this court, but he failed to do so. It is undisputed that despite being released on bail, the appellant chose to abscond and did not appear to represent himself. Therefore, this court proceeded to consider and adjudicate the appeal on merits.

10. The appeal preferred by the applicant/appellant was considered and decided on its merits, after re-appreciating and re-evaluating the evidence on record following the decisions in **Surya Baksh Singh (Supra)** and in **Criminal Reference No.1 of 2024, In Re- Procedure To Be Followed In Hearing Of Criminal Appeals vs. State of U.P.**. The judgment confirming the conviction appellant, which spans in 19 pages, details the facts and evidence on record, discusses the depositions of prosecution witnesses, and applies the facts to relevant case laws. Therefore, it cannot be said that the impugned judgment is passed without adverting to the merits of the case.

11. The judgment relied by the appellant in **Dhananjay Rai (Supra)**

cannot aid the appellant, as the facts in the said matter is different from the present one. In that case, the appeal was dismissed for non prosecution without adverting to merits. However, in the present case, the appeal has been decided on merits after re-appreciating and re-evaluating of evidence on record.

12. Moreover, Hon'ble the Supreme Court has time and again held that held that a High Court cannot entertain a recall or review application under Section 482 of Cr.P.C. (Section 528 of BNSS) to re-examine or modify its own judgment on merits after it has been signed. The inherent power under Section 482 of Cr.P.C. (Section 528 of BNSS) can be used only to prevent an abuse of the process of the Court or to secure the ends of justice, but it does not extend to reviewing a final judgment except for rectifying minor errors.

13. In a recent decision in **Vikram Bakshi and Others vs. R.P. Khosla and Another, 2025 SCC Online SC 1783** the Hon'ble Supreme Court has held as under :

> *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 fin Criminal Appeal @ SLP (Crl.) No.3425/2022 Page 16 of 27 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.

29. Similarly, in Hari Singh Mann vs. Harbhajan Singh Bajwa and Others5, 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.

34. Criminal Appeal @ SLP (Crl.) No.3425/2022 Page 19 of 27 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."

14. The appellant has not annexed any document which shows that he was residing outside of his residence and he never approached to his residence. No information was given to him by his family members and he was evading the Court proceedings for last thirty years. The order sheet of Criminal Appeal No. 1876 of 1983 reveals that several opportunities were given to the applicant/appellant. Even non-bailable

warrant was issued against him but he did not come before the Court and gave wrong impression that whereabouts were not known to anybody. Thus in the present facts and circumstances of the case, this recall application filed under Section 528 of BNSS along with delay condonation application is not maintainable as it is barred by Section 362 of Cr.P.C. (Section 403 of BNSS).

15. In view of the above, this recall application along with delay condonation application is dismissed.

(Praveen Kumar Giri,J.) (Vivek Kumar Birla,J.)

September 4, 2025
DKS