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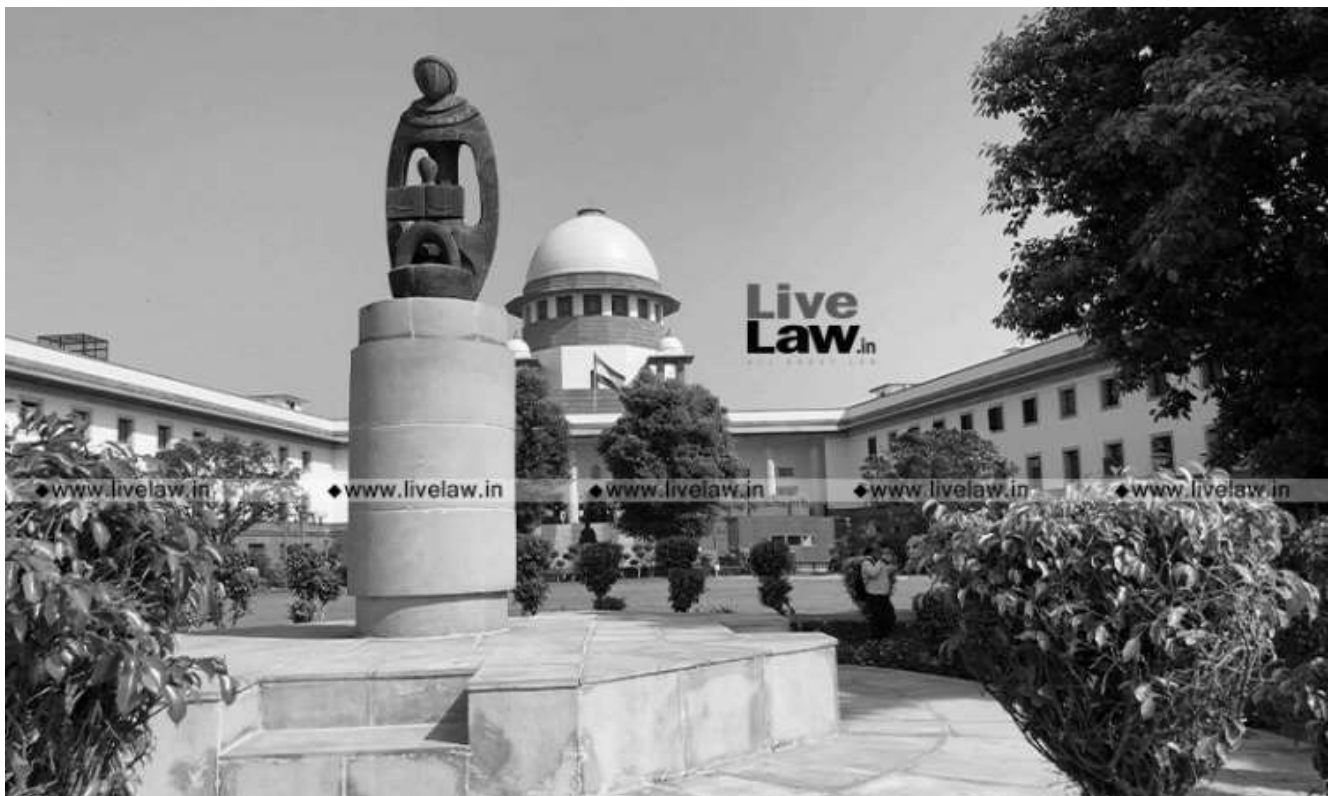
Section 362 CrPC - Application Seeking Recall Of An Order Maintainable When It Seeks Only A Procedural Review: Supreme Court

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The Supreme Court observed that the bar under Section 362 of Criminal Procedure Code does not apply to an application seeking a procedural review.

The bench comprising **Justices Sanjiv Khanna and Bela M. Trivedi** observed thus while upholding an order passed by the Madhya Pradesh High Court which recalled an order passed in a criminal case.

In this case, the accused filed a petition under section 482 of the Code of Criminal Procedure before the High Court contending that there has been a compromise between him and the defacto complainant. This petition was allowed by the High Court. The de-facto complaint, thereafter preferred an application for recall of the order contending that it was passed in his absence, and based on false information. The High Court, allowed the said application, and recalled the earlier order.

Before the Apex Court, the appellant relied on Section 362 CrPC which reads as follows: *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.*

"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.", the Apex Court bench said while dismissing the Special Leave Petition filed by the accused. In this regard, the court referred to *Grindlays Bank Ltd. v. Central Government Industrial Tribunal & Ors.* (Grindlays Bank Ltd. v. Central Government Industrial Tribunal & Ors. 1980 (supp) SCC 420) 1980 (supp) SCC 420.

In *Grindlays Bank* (supra), the court had observed thus: *The expression 'review' is used in two distinct senses, namely (1) a procedural review which is either inherent or implied in a court or Tribunal to set aside a palpably erroneous order passed under a misapprehension by it, and (2) a review on merits when the error sought to be corrected is one of law and is apparent on the face of the record. It is in the latter sense that the Court in Narshi Thakershi's case held that no review lies on merits unless a status specifically provides for it. Obviously when a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected ex debito justitiae to prevent the abuse of its process, and such power inheres in every court or Tribunal.*

The court also referred to a judgment in Budhia Swain and Others v. Gopinath Deb (<https://indiankanoon.org/doc/427502/>) (1999) 4 SCC 396 which discusses the difference between recall and review and when an order of recall can be passed.

The High Court was therefore right in recalling the order and listing the case for hearing and decision on merits, the court said.

Headnotes

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.

Case details

Ganesh Patel vs Umakant Rajoria | 2022 LiveLaw (SC) 283 | S.L.P. (CRL.) NO. 9313
OF 2021 | 7 March 2022
(https://www.livelaw.in/pdf_upload/proceduralreview362crpc-412127.pdf)

Coram: Justices Sanjiv Khanna and Bela M. Trivedi

Click here to Read/Download Order (https://www.livelaw.in/pdf_upload/283-ganesh-patel-v-umakant-rajoria-7-mar-2022-412257.pdf)

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 CrI.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 Page 1 / 2 dated 23.09.2015. Resultantly, the criminal

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

S.L.P. (CRL.) NO. 9313 OF 2021

GANESH PATEL

Petitioner

VERSUS

UMAKANT RAJORIA

Respondent

O R D E R

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 CrI.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.¹ 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*.²

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.

. J.
(SANJIV KHANNA)

. J.
(BELA M. TRIVEDI)

NEW DELHI;
MARCH 07, 2022

1 Grindlays Bank Ltd. v. Central Government Industrial Tribunal & Ors. 1980 (supp) SCC 420
2 (1999) 4 SCC 396

ITEM NO.27 Court 16 (Video Conferencing)

SECTION IIA

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

Petition(s) for Special Leave to Appeal (CrI.) No(s). 9313/2021
(Arising out of impugned final judgment and order dated 23-10-2021
in MCRC No. 5341/2018 passed by the High Court of M.P Principal
Seat at Jabalpur)

GANESH PATEL

Petitioner(s)

VERSUS

UMAKANT RAJORIA

Respondent(s)

(FOR ADMISSION and I.R. and IA No.156962/2021-EXEMPTION FROM FILING
O.T. and IA No.156968/2021-EXEMPTION FROM FILING AFFIDAVIT
IA No. 156968/2021 - EXEMPTION FROM FILING AFFIDAVIT
IA No. 156962/2021 - EXEMPTION FROM FILING O.T.)

Date : 07-03-2022 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MS. JUSTICE BELA M. TRIVEDI

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

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

The petition seeking special leave to appeal is
dismissed in terms of the Signed Order.

All pending applications stand disposed of.

(SONIA BHASIN)
COURT MASTER (SH)

(DIPTI KHURANA)
COURT MASTER (NSH)