

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S). 1444/2021
(Arising out of Special Leave Petition (Crl.) No(s). 5362/2021)

XXX

APPELLANT(s)

VERSUS

THE STATE OF KERALA & ORS.

RESPONDENT(s)

O R D E R

Leave granted.

An FIR was lodged by the respondent, which was challenged by the appellant by way of a petition filed before the High Court under Section 482 Cr.P.C. By a judgment and order dated 20.04.2021, the High Court allowed the petition and quashed the FIR. Thereafter on 28.04.2021, the High Court took up the matter suo moto and recalled the order dated 20.04.2021. Challenging the same, this appeal by way of special leave petition has been filed.

We have heard the learned counsel for the parties at length and perused the record.

Learned counsel for the parties do not dispute the fact that in view of Section 362 Cr.P.C. the Court does not have the power to alter the judgment and order once passed, except to correct the clerical or arithmetical error. In the present case, by a judgment and order dated 20.04.2021 FIR had been quashed by the High Court by a detailed reasoned order, which has been recalled by the

impugned order dated 28.04.2021. There is no power, except under Section 362 Cr.P.C., which only provides for correction of any clerical or arithmetical error. The same does not empower the court to recall the earlier order passed after contest and that too suo moto.

In view of the aforesaid, we are of the opinion that the impugned order dated 28.04.2021 could not have been passed and the earlier order dated 20.04.2021 has wrongly been recalled by the High Court. Accordingly, the appeal is allowed. The judgment and order dated 28.04.2021 is set aside.

.....J.
[VINEET SARAN]

.....J.
[ANIRUDDHA BOSE]

NEW DELHI;
NOVEMBER 22, 2021

ITEM NO.37

Court 9 (Video Conferencing)

SECTION II-B

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 (Crl.) No(s). 5362/2021

(Arising out of impugned final judgment and order dated 28-04-2021 in CRLMC No. 5866/2020 passed by the High Court Of Kerala At Ernakulam)

XXX

Petitioner(s)

VERSUS

THE STATE OF KERALA & ORS.

Respondent(s)

(FOR ADMISSION and I.R. and IA No.87162/2021-EXEMPTION FROM FILING O.T. and IA No.87164/2021-EXEMPTION FROM FILING AFFIDAVIT and IA No.87168/2021-APPLICATION FOR FILING THE PETITION WITHOUT DISCLOSING THE IDENTITY OF THE PETITIONER/RESPONDENT)

Date : 22-11-2021 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE VINEET SARAN
HON'BLE MR. JUSTICE ANIRUDDHA BOSE

For Petitioner(s) Mr. Rajit, Adv.
Mr. Vaibhav Niti, AOR
Mr. Abraham Mathan, Adv.
Mr. Justine George, Adv.
Ms. Madhavi Agrawal, Adv.
Mr. Divyanshu Agrawal, Adv.

For Respondent(s) Mr. G. Prakash, AOR
Ms. Priyanka Prakash, Adv.
Ms. Beena Prakash, Adv.

Mr. Anand Kalyanakrishnan, Adv.
Mr. Vedant Singh, AOR
Mr. Vishisht Singh, Adv.

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 reportable order.

Pending application(s), if any, stands disposed of accordingly.

(ARJUN BISHT)

(PRADEEP KUMAR)

(ASHWANI THAKUR)

(COURT MASTER (SH)

(BRANCH OFFICER)

AR-CUM-PS

(Reportable signed order is placed on the file)