AIR 2003 SUPREME COURT 3536 "Hindustan Construction Co. Ltd. v. Gopal Krishna Sengupta"
= 2003AIR SCW 2160
(From : Bombay)
Coram : 2 S. N. VARIAVA AND H. K. SEMA. JJ.
Crl. A. Nos. 640-642 of 2001, D/- 9 -4 -2003.
Hindustan Construction Co. Ltd. and another, Appellants v. Gopal Krishna Sengupta and others, Respondents.
(A) Criminal P.C. (2 of 1974), S.362, S.311 - REVIEW - Review - S. 362 does not permit the Court to alter or review its earlier order which was a final order - Summoning a person to lead additional evidence - Order as to, by High Court - High Court undoubtedly felt that it was in the interest of all parties that necessary evidence be recorded at the trial stage itself - But the application for this very relief has been rejected earlier - No appeal or revision was filed against that Order and it has, therefore, become final - Once such a relief has been refused and the refusal has attained finality, judicial propriety requires that it not be allowed to be reopened. (Paras 19, 24, 25)
(B) Criminal P.C. (2 of 1974), S.482 - CRIMINAL PROCEEDINGS - Powers of Court - Prayer to quash the proceedings and start trial afresh - There is no provision in the law which permits this. (Para 25)

Kapil Sibal, Ranjeet Kumar, Sr. Advocates, Mrs. Rakhi Ray, Ms. Bina Gupta, R.K. Sharma, Advocates with them, for Appellants; Respondent 1 in-person; Ravindra Adsure, Advocate for V. N. Raghupathy, Advfocate, for Respondent 2.
Judgement
S. N. VARIAVA, J. :- These Appeals are against orders of the Bombay High Court dated 19th October, 2000 in Criminal Revision Application No. 235 of 2000; 13th/22nd December, 2000 in Criminal Application
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No.3643 of 2000 in Criminal Revision Application No. 235 of 2000 and 22nd December, 2000 in Criminal Application No. 2645 of 2000 in Criminal Revision Application No. 235 of 2000.
2. Briefly stated the facts are as follows :
The 1st respondent was an employee of the appellant-Company. His services were terminated. The 1st respondent's challenge to his termination has been dismissed both by the Industrial Tribunal and the High Court.
3. On 5th September, 1988 the 1st respondent purchased 50 shares of the appellant-Company from one Mr. Ambalal Shah. On 1st November, 1988 the 1st respondent lodged the share certificate along with the share transfer form with the transfer agents of the appellant. They were returned to the 1st respondent on the ground that the signature of the transferor differed. On 4th August, 1989 the 1st respondent again lodged a fresh share transfer form, duly signed by Mr. Ambalal Shah, and share certificate with the transfer agents of the appellant. The appellants claim that as per their internal procedure one employee wrote down the name of the 1st respondent and his son on the share certificate for purposes of putting them up before the Board of Directors. The appellants claim that they thereafter realized that the transfer form was not sufficiently stamped, so the endorsement on the share certificate was cancelled without effecting a transfer of the

share certificate. The transfer form and the share certificate were again returned to the 1st respondent. On 19th September, 1989 the 1st respondent again lodged the share transfer form and the share certificate with the transfer agents of the appellants. These were again returned on 10th November, 1989 on the ground that some entries had been made in pencil instead of ink.

4. It is the 1st respondent's case that on this occasion, all that was received by him was the registered cover and a covering letter. It is the 1st respondent's case that the share certificate and the transfer form were not returned to him. He immediately wrote to the appellant pointing this out.

5. On 12th September, 1990 the 1st respondent lodged a petition, under Section 111 of the Companies Act, before the Company Law Board praying for rectification of the share register on the ground that the transfer in his name had been approved by the Board of Directors of the appellant and that the share should be registered in his name.

6. Whilst the above-mentioned complaint was pending before the Company Law Board, in August 1991, the appellants transferred this share certificate into the name of one Pritika Prabudesai. The appellants claim that they received the share certificate along with a duly signed transfer deed. The appellants claim that they addressed a letter to Mr. Ambalal Shah calling upon him to disclose whether he had any objection to such transfer. They claim that they transferred the share into the name of Pritika Prabhudesai as they did not receive any objection from Mr. Ambalal Shah. Admittedly the appellants knew, by August 1991, that 1st respondent had claimed that the shares were not returned to him. The appellants knew that 1st respondent had lodged a petition under Section 111 of the Companies Act for transfer of the share to his name. The appellants knew that this petition was pending. They well knew that there was a dispute in regard to this share certificate. Yet they did not address any letter or intimation to the 1st respondent informing him that some other person had lodged this share for transfer to their name. When asked why no intimation was given to the 1st respondent, the answer given was that there was no requirement in law to do so. To be remembered that there was no requirement in law to send any notice to Mr. Ambalal Shah. Such notice was sent as appellants were aware that there was a dispute in respect of this share. In such cases the most basic requirement was that a notice be given to the person who claimed that the appellant-Company had not returned the shares to him. Also the appellants knew that a petition under Section 111 of the Companies Act was pending in respect of this share. By transferring without notice to 1st respondent the appellants were in effect frustrating the proceedings before the Company Law Board.

7. On 8th May, 1992 the Company Law Board dismissed the petition filed by 1st respondent on the ground that the appellant-Company was right in not registering the transfer of shares in the name of 1st respondent as the transfer forms were not

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properly stamped. In its Order, the Company Law Board has recorded that they had called for and seen the records of the appellant-Company and found that no transfer had actually taken place into the name of 1st respondent even though the name was mistakenly entered on the share certificate.

8. The 1st respondent now filed a complaint under Sections 405, 420, 424, 467 read with Sections 34 and 114 of the Indian Penal Code. The complaint was against 7 accused persons. In this complaint process was issued, charges were framed. The 1st respondent

filed an application dated 9th March, 1995 to examine Pritika Prabhudesai as a witness. Even though that application was posted for orders on 15th March, 1995, no orders have been passed on that application till date. An application to delete accused No. 7 was made and granted on 7th February, 1996. On 15th February, 1996 the prosecution closed its case. Then statements of accused, under Section 313, Cr. P.C. were recorded. Both sides argued their respective cases and the case was posted for judgment.

9. 1st respondent then made an application which contained many irrelevant averments and allegations. The substance was that the proceedings were tainted with loss of integrity, collusion, illegalities and mala fides i.e.: (a) the discharge of accused No. 7 was illegal and improper, since he was one of the main accused. According to the 1st respondent his Advocate compelled him to consent to the deletion of accused No. 7 on an understanding that accused No. 7 was to be examined as a witness on his behalf. However accused No. 7 was not examined as such; (b) that the 1st respondent had filed before the actual hearing of the case started, an application dated 9-3-1995 praying for issue of witness summons to Pritika S. Prabhudesai for production of share certificate. However, the Court had not passed any order on that application till date. It was claimed that this had resulted in the 1st respondent not been able to produce relevant and necessary evidence; and (c) the Court had liberally granted exemption to the accused by dispensing with their personal attendance even though the charges made against them were of serious nature. It was, therefore, prayed that the entire proceedings be quashed and a fresh hearing take place. That application came to be rejected on 12th August, 1997 with the following order :

"On going through the application, it appears that irrelevant allegation to the charge framed against, are made in the application. Moreover, complainant himself conceded during the arguments that there is no provision of law to enable this Court to hold fresh trial by quashing the entire proceedings already taken place. Considering all above circumstances I do not find any substance behind this application. Hence Order Application is rejected."

10. On 1st September, 1997 the 1st respondent filed two applications as follows :- (1) that accused No. 7, against whom proceedings were dropped, be examined as a witness, and (2) that Pritika Prabudesai be examined as a witness. Both these applications were rejected on 6th November, 1997.

11. At this stage it must be mentioned that up to this stage the proceedings were going on in the 33rd Court, Ballard Estate, Mumbai. The applicant made a complaint to the High Court against the Magistrate. The High Court then transferred the proceedings to the 38th Court, Ballard Estate, Mumbai. After the transfer the 1st respondent moved an application again alleging illegalities and praying that the entire proceedings be quashed and a fresh proceedings take place. He also prayed that necessary witnesses be examined. This application was considered by the new Presiding Magistrate who, on 30th March, 1998, dismissed the application on the ground that such an application had earlier been dismissed and no revision was filed. It was held that this Court could not sit in Appeal over the earlier order or take a different view.

12. The 1st respondent then filed, on 24th April, 1998, Writ Petition No. 599 of 1998 wherein the Metropolitan Magistrate on the 33rd Court was included as respondent No. 10. In the Writ Petition various prayers seeking quashing of various Orders including Order dated 7th February, 1996 and Order granting exemption to accused from personal

hearing were sought. In this Writ Petition, a reference was made to the Order dated 12th August, 1997 but no prayer was made for setting aside or quashing that order. This Writ Petition came to be disposed of on 15th September, 2000 with
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the following order :
"Looking to the order passed by the learned Magistrate at page 99 and prayer clauses at page 34, it is obvious that the points raised therein are relating to the developments on different dates before the trial Court in a pending cases. The case has reached conclusion. Liberty is, therefore, reserved to raise all these points in a proceedings that the petitioner may have to take if at all the matter before the Court is decided against him.
Petition is disposed of accordingly. Rule is discharged."
13. It appears that 1st respondent also filed another Writ Petition bearing No. 1507 of 1998. That Writ Petition came to be disposed of by an Order dated 23rd November, 1998. It was held that the 1st respondent was at liberty to raise all points in a proceeding which he may have to take if the matter before the trial Court is decided against him in terms of the Order passed in Writ Petition 599 of 1998.
14. On 3rd February, 1998 the 1st respondent filed a complaint under Sections 204 and 474. On 25th March, 1999 the 1st respondent filed a third complaint. This time it was claimed that the offences under Sections 201, 361, 265, 213, 218 read with Sections 109 and 120(b) of the Indian Penal Code have been committed. In this complaint, on 4th October, 1999, a search warrant came to be issued against the appellant to recover the concerned share certificate and transfer form. The appellant filed a Writ Petition 2261 of 1999 seeking quashing of the process issued in this complaint. That Writ Petition is still pending. It appears that on 6th March, 2000 the 1st respondent has filed yet another complaint. All these complaints are pending. In all these subsequent complaints Pritika Prabudesai has been joined as an accused person.
15. The 1st respondent seems to have also filed a Writ Petition bearing No. 1381 of 2000 inter alia praying that a certified true copy of the transfer deed be made available to him. On 7th February, 2000 the High Court noticed that the copy of the transfer instrument had been produced by him in the Criminal Court and that it had been marked as an Exhibit. It was observed that it would be open for the Magistrate to call upon the appellants to produce the original and compare the same with what was produced by the 1st respondent in evidence.
16. The 1st respondent again moved some applications before the Metropolitan Magistrate, 30th Court, Ballard Estate, Mumbai which was disposed of by an order dated 5th July, 2000. This order reads as follows :
"1. Read all the applications referred above and perused the entire record carefully. Before considering the merits of the aforesaid applications, I feel that it would be proper to mention the chequered history of the case.
2. It is seen from the record that the complainant had filed the complaint on 15th May, 1992 against accused Nos. 1 to 6. By an order of the Court, the matter was found to have referred to the concerned Police authorities for investigation under Section 156(iii) of the Cr. P.C. Thereafter, this Court had passed an order dated 28-2-1983 for return of the complaint to the complainant for its proper presentation. The complainant appears to have preferred revision against that order and could succeed in the Revision. The then Court thereafter, issued the process against the accused Nos. 1 to 7 under Sections 405,

418, 420, 424, 467 read with Section 34 or 114 of the I.P.C. vide order dated 12-1-1994. The evidence of the complainant before the charge found to have been recorded in peacemeal on dated 23-5-1995 and 14-8-1995. The complainant was found to have been cross-examined on behalf of accused Nos. 1 to 6 before framing of the charge. The then Court, after having considered the evidence on record framed charge against the accused Nos. 1 to 6 under Sec. 406 r/w. 114; 420 r/w. 114; 424 r/w. S. 114 and 467 read with 114 of I.P.C. The evidence of the complainant after having framed the charge again sufficiently was cross-examined on behalf of the accused.

3. To my surprise, in fact, the complainant did not file the purshis of closing of his evidence, still the statements of the accused appears to have recorded on 1-10-95. The complainant had filed his written arguments dated 18-10-1996. The most crucial point in the present case which I could gather is that on the very day i.e. on 18-10-1996 the complainant moved an application for cancellation of the proceedings of the accused and for fresh hearing of the case contending

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some laches on the part of the Advocate and for examination of witnesses listed in the complaint. Unfortunately, the application of the complainant appears to have rejected by the then Judge vide Order dated 12-8-1997. The complainant, since then moved number of applications mostly on the same facts quoting almost similar circumstances. But those applications were found to have been rejected by the Court. The complainant is still filing similar types of applications mostly on each and every day. The present applications are also similar in nature, except the application for cancellation of the bail of the accused moved by the complainant.

4. Having considered all the aforesaid facts and circumstances, and for just decision, I would like to mention that it is the right of the complainant to produce the evidence supporting to his case, even after framing of the charge against the accused. But unfortunately, the complainant could not exercise his valuable rights. Complainant in fact, ought to have preferred the revision against the order dated 12-8-1997, but instead of availing appropriate forum, he started seeking redress before the same Court, which is not competent to pass any order on any applications of the complainant in view of the Order dated 12-8-1997 passed by the then Court, I earnestly feel that the complainant, in fact, by moving such applications desires to adduce additional evidence supporting to his case. If I allow the application referred above, that would amount to review of the Order dated 12-8-1997 passed below application dated 18-10-1996 for want of the powers of the Review, though I am convinced, but still I cannot pass any order. Therefore, it is the complainant, who can knock the doors of revisional Court challeging the order referred above and can seek the redress. Therefore, for the simple reasons stated above I am constrained not to allow the applications of the complainant so far as reliance of the additional evidence allowed to be placed on record as prayed by the complainant. However, by this order, I direct the accused to remain present before the Court on the dates given, failing which, their bail bonds will be cancelled. Hence, this is the order on the application referred above."

17. It is thus to be seen that a unique procedure appears to have been followed by the Metropolitan Magistrate, 33rd Court. He had allowed cross-examination of 1st respondent before framing of charges; then even without an application for closing evidence the Magistrate has recorded statement of the accused under Section 313, Cr.

P.C. This Order sets out that the rejection of the 1st respondent's application, by Order dated 12th August, 1997, was unfortunate. This records that this Court is convinced that additional evidence is required but this Court correctly does not pass any order as it would amount to review of the earlier orders.

18. Taking a clue from this order the 1st respondent now files a Review Application before the High Court challenging the order dated 12th August, 1997. On this Review Application the High Court passed the Order dated 19th October, 2000 (which is one of the impugned orders). It was not pointed out to the Court that the Revision was barred by limitation and/or by delay or laches. The High Court noticed that the application filed by the 1st respondent on 9th March, 1995 to examine Pritika Prabudesai was still pending and no order had been passed thereon. Thus it is clear that attention of the High Court was not drawn to the fact that subsequently on 5th September, 1997 the respondent had moved another application to examine Pritika Prabudesai and that that application stood rejected on 6th November, 1997. As the High Court was not aware of this fact and the High Court felt that it was absolutely necessary that the share transfer form and the share certificate be on record of the trial Court, the High Court passed the following operative Order :

"6. I have heard the petitioner, but he was unable to satisfy how his prayer is maintainable at law. He wants the whole proceedings to be quashed and a de novo trial to be started against all the accused. The impugned order shows that before the learned Magistrate the petitioner conceded that there was no such provision of law, which enabled the Court to hold a fresh trial against the accused. It is, therefore, not possible to grant the said prayer made by the petitioner in this petition. However, having regard to the above-mentioned facts and to secure ends of justice I think that it would be proper to direct the learned Magistrate to pass an appropriate order on the application dated 9-3-1995 filed by the petitioner praying for issue of summons to Pritika S. Prabhudesai.

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The learned Magistrate should allow the said application permitting the petitioner to lead additional evidence of Pritika S. Prabhudesai or her guardian in whose custody the said share certificate is after recording the additional evidence in terms of the application dated 9-3-1995, by giving opportunity to the accused to cross-examine the witness, the learned Magistrate shall proceed to decide the case on merits expeditiously and in any event not later than 31-12-2000."

19. The appellants then moved an application being Criminal Application No. 3643 of 2000 for recalling the Order dated 19th October, 2000. That application stood disposed of by an order dated 13th/22th December, 2000 (which is also one of the impugned orders). In this order it has been observed that during the hearing of the Revision Application no objection had been raised as to maintainability on the ground of limitation. The Court holds that Section 362 of the Criminal Procedure Code did not permit the Court to alter or review its earlier order which was a final order. In our view this finding is absolutely correct. It must be mentioned that the Court was convinced that 1st respondent had played a fraud upon it and, therefore, issued a show-cause notice to him to show cause why action should not be taken against him for having played such a fraud.

20. At the time when Criminal Application No. 3643 of 2000 was being heard it came to light that the 1st respondent had also filed an application for condonation of delay in filing the Criminal Revision Application No. 235 of 2000. No orders had been passed on

that application. Yet Criminal Revision Application No. 235 of 2000 had been numbered, listed on board and disposed of by the Order dated 19th October, 2000. As this application for condonation of delay was still pending the High Court by an Order dated 22nd December, 2000 correctly held that that application had become infructuous. This is the third order which has been impugned in these Appeals.

21. It must also be mentioned that the 1st respondent wrote letter/s to the Company Law Board complaining that appellants had filed a false and fabricated affidavit and seeking a review of order dated 9th May, 1992. As the Company Law Board took no action on that letter, the 1st respondent moved the High Court. The High Court directed the Company Law Board to consider the letter. The Company Law Board, therefore, considered the complaint made by the 1st respondent. It disposed of that complaint by an Order dated 17th May, 2002.

22. It needs to be noted that the appellants point out that the concerned share certificate has, in all these years, changed hands several times and now stand in the name of some other third party. The appellants also point out that the Advocate General, State of Maharashtra has filed a petition against 1st respondent under the Maharashtra Vexatious Litigation (Prevention) Act, 1971 and the 1st respondent had been declared a vexatious litigant.

23. In these appeals we are concerned with the 3 Orders which have been impugned. It could not be denied before us that when the Criminal Revision Application No. 235 of 2000 was originally argued the contention regarding limitation was not taken. In fact in the SLP no ground is taken that the Court has erroneously recorded that no such contention was taken. Therefore, no fault can be found with the Court in not considering limitation. It is the appellants themselves who have to blame for this lapse.

24. We find no infirmity in the Order dated 13th/22nd December, 2000 to the extent that it holds that Section 362 of the Code of Criminal Procedure was a bar to the Court reviewing or altering its earlier order dated 19th October, 2000 which was a final order. Undoubtedly, the Court has concluded that the 1st respondent had played a fraud upon it by not disclosing that he was aware of the Order dated 12th August, 1997 and for giving an impression that he only came to know about this order at a later date. The High Court has issued a show-cause notice against the 1st respondent which will be considered by the High Court on its own merit. We express no opinion on this aspect. It is also clear that the appellants did not point out to the High Court, before or during hearing of Criminal Revision Application No. 235 of 2000, the various subsequent orders passed. These were all within their knowledge at time Order dated 19th October, 2000 was passed. We thus see no infirmity in the Order dated 13th/22nd December, 2000 in Criminal Application No. 3643 of 2000. We also see no infirmity in the Order dated 22nd December, 2000 in Criminal Application No. 2645

of 2000 as by the time this application was brought to the notice of the Court it had become infructuous. Thus the Appeal against these two Orders stands dismissed.

25. The question still remains whether, on facts of this case, the direction given in the Order dated 19th October, 2000 can be maintained. In the application there was no prayer to examine Pritika Prabhudesai. The prayer was to quash the proceedings and start trial afresh. There is no provision in law which permits this. Thus the application could not be allowed. Undoubtedly the High Court has proceeded on the footing that this evidence is

essential and necessary. Section 311 of the Criminal Procedure Code permits taking of evidence at any stage. The High Court undoubtedly felt that it was in the interest of all parties that necessary evidence be recorded at this stage itself. But the fact remains that the applications for this very relief has been rejected on 6th November 1997. No appeal or revision was filed against that Order. The Order dated 6th November, 1997 has, therefore, become final. Once such a relief has been refused and the refusal has attained finality, judicial propriety requires that it not be allowed to be reopened. The High Court was obviously not informed of the Order dated 6th November, 1997. Thus the High Court cannot be blamed. However, as that order has been brought to notice of this Court we cannot ignore it. Another factor which we keep in mind are the Order dated 15th September, 2000 in Writ Petition No. 599 of 1998 and Order dated 23rd November, 1998 in Writ Petition No. 1507 of 1998. By these Orders it has been clarified by the High Court that the case has reached conclusion and liberty has been granted to 1st respondent to raise all the points in a proceeding the 1st Respondent may have to adopt if the Criminal case is dismissed against him. The Appellants are within their right to oppose the directions issued in the Order dated 19th October, 2000. However, in the long run this may prove disadvantageous to the appellants. It is possible that if the case is decided against the 1st respondent and the higher Court feels that application to lead necessary evidence has been wrongly rejected, the whole case may have to be sent back for leading this evidence. We, therefore, asked the appellants whether they wanted to still oppose the directions issued. We were told that they did. We, therefore, allow the appeal against the Order dated 19th October, 2000 and set aside the directions issued therein. The application filed by 1st respondent will stand rejected.

26. We, however, clarify that it will be open for the trial Court to follow the procedure indicated by the High Court in the Order dated 7th February, 2000 viz. to call for the originals and compare the same with what is produced in evidence, unless of course it is admitted that the copy in Court is correct.

27. Before we part with the Order, we must record what happened in Court. The 1st respondent, during his submissions in Court, refused all reasonable offers for settlement and said, in so many words, that he was bent on teaching the appellant-company a lesson. It was clear that the 1st respondent is acting out of vengeance. We must also record that Mr. Sibbal made, what we considered, to be very fair offers, including giving to 1st respondent 50 shares in the appellant-company. The offers were rejected outright.

28. The appeals stand disposed of accordingly. There will be no order as to costs.

Order accordingly.