

ABC 2025(I) 753 (JKL)

ACQUITTAL & BAIL CASES

a HIGH COURT OF JAMMU & KASHMIR & LADAKH

(Sanjay Dhar, J.)

CRM(M) No. 463/2024

Decided on : 1 March 2025

b FERUZ AHMAD ZARGAR & OTHERS - Petitioner(s).

Versus

UT OF J&K & OTHERS - Respondent(s).

c Law Covered :- (A) Code of Criminal Procedure, 1973 - S. 362 (Bharatiya Nagarik Suraksha Sanhita, 2023 - S. 430) - Review of Judicial Orders - No Inherent Power to Recall or Modify - Trial court recalled its own orders directing the transfer of custody of the petitioners from Uttar Pradesh to Jammu & Kashmir - Held, Section 362 CrPC prohibits a criminal court from altering or reviewing its final orders except to correct clerical or arithmetical errors - Criminal courts have no power to review their own decisions - Orders of recall set aside. (Paras 12-18)

d (B) Code of Criminal Procedure, 1973 - S. 309 (Bharatiya Nagarik Suraksha Sanhita, 2023 - S. 344) - Custody of Undertrial Prisoners - No Right to Choose Place of Detention -- e Petitioners sought transfer from jails in Uttar Pradesh to Jammu & Kashmir after their preventive detention orders were quashed - Held, undertrial prisoners have no vested right to choose a specific place of incarceration - Government retains discretion to lodge them in any f jail as per administrative requirements - Reliance placed on Bashir Ahmad Mir vs. State (CRM(M) No. 210/2019). (Paras 8-11)

g (C) Constitution of India - Article 21 - Right to Fair & Speedy Trial - Custodial Hardship as a Consideration - Petitioners argued that continued detention in Uttar Pradesh was prejudicial to their fair trial rights - Held, while fair & speedy trial is a fundamental right, mere inconvenience of location does not per se violate Article 21 - Courts must balance security concerns with prisoner rights - No exceptional circumstances warranting transfer were established. h (Paras 19-22)

Facts :- The petitioners, undertrial prisoners, were ordered to be transferred to Jammu & Kashmir from Uttar Pradesh by the trial court. However, the same court later recalled its own order. The petitioners challenged this recall, citing Section 362 CrPC, which bars modification of final judicial orders. The High Court ruled that the trial court lacked the power to review its decision and set aside the recall order. Additionally, the

petitioners sought transfer on grounds of hardship and fundamental rights under Article 21. The court held that undertrials cannot claim a right to choose their place of detention and that no exceptional grounds warranted intervention. The government retains administrative discretion in jail placements. a

Law of Relief :- Review Prohibition - Orders Once Passed Cannot Be Modified - Section 362 CrPC bars review or recall of final judicial orders, except for clerical errors - Recall order set aside. b

Counsel :- For Appellant(s): Mr. Wajid Haseeb, Adv.

For Respondent(s): Mr. Syed Musalib, Adv.

Cases Referred :- c

1. *Nayeem Rasool vs. UT of J&K & Ors.: WP(c) No. 1991/2022 decided on 27th April 2023 (Para 5)*
2. *Bashir Ahmad Mir and another vs. State and others: CRM(M) No. 210/2019 decided on 15.07.2021 (Para 10)*
3. *Adalat Prasad vs. Rooplal Jindal and ors: (2004) 7SCC 338 (Para 12)* d
4. *K. M. Mathew vs. State of Kerala and anr: (1992) 1 SCC 217 (Para 12)*

JUDGMENT

Sanjay Dhar, J.:-

1. The petitioners have challenged common order dated 02.02.2024, passed by Special Judge Designated under N.I.A. Act, Anantnag, (hereinafter referred as the "trial court") whereby the said Court has allowed the application of the respondents for recall of orders dated 11.08.2023, 31.08.2023 and 17.08.2023 passed in three different cases arising out of three different FIRs in which the petitioners are facing trial before the said Court. e

2. It appears that petitioners No. 1 and 2 are facing trial before the learned trial court in a case arising out of FIR No. 514/2021 for offences under Section 307 IPC, 7/25 Arms Act, 18, 20, 38 ULAP Act registered by P/S Anantnag. Similarly, petitioners No. 3, 4 and 5 are facing trial in a case arising out of FIR No. 98/2020 for offences under Section 19, 20, 38 and 39 of ULAP Act registered with P/S Dooru Anantnag. Petitioner No. 6 is stated to be facing trial in FIR No. 27/2021 for offences under Section 7/25, 27 Arms Act, %, 5, 6 Explosive Substances Act and 307, 427 IPC registered with P/S Bijbehara. It also appears that during the pendency of the trial, petitioner No. 1 was detained under Public Safety Act in terms of order No. 1/DMA/PSA/DET/2022 dated 06.04.2022, petitioner No. 2 was detained under Public Safety Act in terms of order No. 12/ f

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a DMA/PSA/DET/2022 dated 10.04.2022, petitioner No. 3 was detained in terms of detention order No. 26/DMA/PSA/DET/2021 dated 30.06.2021, petitioner No. 4 was detained in terms of detention dated 08.04.2021, petitioner No. 5 was detained by virtue of detention order No. 27/DMS/PSA/DET/2021 dated 30.06.2021 and petitioner No. 6 was detained under Public Safety Act in terms of order No. 21/
b DMA/PSA/DET/2021 dated 27.05.2021. After the passing of these detention orders, the custody of the petitioners was shifted to different jails in the State of Uttar Pradesh.

c 3. The record further reveals that during pendency of the trial, the order of detention of petitioner No. 1 was quashed by this Court in terms of judgment dated 20.04.2023 passed in WP(Crl) No. 219/2022, the detention order in respect of petitioner No. 2 was quashed by this Court in terms of judgment dated 18.05.2023 passed in WP(Crl) No. 150/2022, detention order of petitioner No. 3 was
d quashed by this Court in terms of judgment dated 04.08.2022 passed in WP(Crl) No. 100/2021, detention order of petitioner No. 5 was quashed by this Court in terms of judgment dated 08.07.2022 passed in WP(Crl) No. 110/2021 whereas detention orders of petitioners No. 4 and 6 came to an end upon their expiry.

e 4. After the quashment/expiry of the detention orders of the petitioners, they filed applications before the trial court seeking change of their custody back to the judicial custody. The said applications were allowed by the trial court in terms of three different
f orders passed in three separate cases in which the petitioners are facing trial. By virtue of these three orders, a direction was issued to Superintendents of District Jails of the State of UP where the petitioners were lodged to handover their custody to Superintendent of District Jail, Mattan Anantnag. These orders came to be passed on
g 11.08.2023, 31.08.2023 and 17.08.2023.

h 5. The aforesaid three orders came to be challenged by the respondents before the trial court by filing an application for recall of the orders on the grounds that the learned trial, while passing direction for shifting of custody of the petitioners, had relied upon judgment of a Single Judge of this Court in the case titled "**Nayeem Rasool vs. UT of J&K & Ors.**" (WP(c) No. 1991/2022 decided on 27th April, 2023), which has been stayed by Division Bench of this Court vide order dated 10.07.2023 passed in LPA No. 115/2023. The learned trial court allowed the recall application of the respondents by virtue of the impugned order thereby rescinding the aforesaid three orders

passed by it whereby custody of the petitioners had been directed to be shifted back to District Jail, Anantnag.

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6. Heard and considered.

7. During the course of arguments, learned counsel for the petitioners has submitted that petitioners No. 3, 4 and 5 have been released on bail during the pendency of this petition. The petition to the extent of aforesaid three petitioners has, therefore, become infructuous.

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8. The question that is required to be determined in this case is as to whether it was legally permissible to the learned trial court to recall its orders dated 11.08.2023, 31.08.2023 and 17.08.2023, whereby custody of the petitioners was directed to be shifted to District Jail, Mattan Anantnag.

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9. Learned counsel for the petitioners has argued that it was not open to the learned trial court to recall its own orders as there is no provision in the Code of Criminal Procedure which vests jurisdiction with a criminal court to recall its own orders. He has further contended that even otherwise, once the preventive detention orders passed against the petitioners had come to an end, their custody was to be governed under the provisions contained in Section 309 of the Cr. P. C and, therefore, it was not open to the trial court to direct their lodgment in prisons outside the Union Territory of Jammu and Kashmir.

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10. Learned counsel for the respondents, on the other hand, has argued that an undertrial prisoner has no vested right to choose a particular jail and it is open to the government, in exercise of its administrative powers, to lodge an undertrial prisoner in any jail. In this regard, learned counsel for the respondents has placed reliance upon the judgment of this Court in the case titled "**Bashir Ahmad Mir and another vs. State and others**" (CRM(M) No. 210/2019 decided on 15.07.2021).

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11. Without going into the question as to whether it was open to the learned trial court to allow custody of the petitioners to remain in a prison beyond the territories of the Union Territory of Jammu and Kashmir, this Court needs to consider as to whether a criminal court has jurisdiction to review its own orders.

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12. Section 362 of the Cr. P. C. clearly provides that 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

a arithmetical error. This is, however, subject to any other provision of
the Code of Criminal Procedure or any other law for the time being in
force. Thus, Section 362 of Cr. P. C. places an embargo prohibiting the
Court to alter or review its judgment or final order and this embargo
is relaxed only in two conditions; one when the review of a judgment
of final order is provided under the Code or when the same is
b provided by any other law for the time being in force. The Supreme
Court has, in the case of **Adalat Prasad vs. Rooplal Jindal and others**,
(2004) 7 SCC 338, while overruling its earlier judgment in **K. M.
Mathew vs. State of Kerala and another**, (1992) 1 SCC 217, in clear
c terms held that a criminal court does not have power to review its
own orders. The aforesaid position of law still holds the field.

13. In the instant case, the learned trial court has, in the first
instance, finally disposed of the applications filed by the petitioners
by passing three separate orders directing shifting of their custody
d from various jails located in Uttar Pradesh to District Jail, Anantnag.
The learned trial court, while passing the said direction, has relied
upon the judgment passed by Single Judge of this Court in Nayeem
Rasool's case (supra). It is correct that the said judgment has been
staye d by the Division Bench of this Court but in spite of this position,
e it was not open to the learned trial court to review its own final orders
passed in the applications filed by the petitioners.

14. The only option available with the respondents was to
challenge the orders of the trial court before a superior forum i.e. the
f High Court. The learned trial court should have declined to recall/
review its own orders, leaving it open to the respondents to avail
appropriate remedy under law. Instead of doing so, the learned trial
court took it upon itself and passed the impugned order reviewing its
earlier orders, which is directly in conflict with the position of law
g declared by the Supreme Court as also contrary to the provisions
contained in Section 362 of the Cr. P. C. The impugned order passed
by the learned trial court is, therefore, not sustainable in law.

15. For the foregoing reasons, the impugned order passed by
h the learned trial court is set aside, leaving it open to the respondents
to avail appropriate remedy against orders dated 11.08.2023,
31.08.2023 and 17.08.2023 passed by the trial court.

16. A copy of this order be sent to the learned trial court for
information.

Result:- Impugned order set aside.