

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRL. M.P. NO. 18324 OF 2014
IN
REVIEW PETITION (CRL.) NO. 395 OF 2014
IN
CRIMINAL APPEAL NO. 2227 OF 2010

SURENDRA KOLI

PETITIONER(S)

Versus

STATE OF U.P. AND ORS.

RESPONDENT(S)

O R D E R

1. This application has been filed by the petitioner before us with the prayer to reopen the Review Petition (Crl.) No. 395 of 2014 and grant the petitioner an open hearing before a three Judge Bench of this Court in light of the decision of this Court in *Mohd. Arif and others v. The Registrar, Supreme Court of India and Ors.* (Writ

Petition (Crl.) No. 77 of 2014) delivered on 02.09.2014.

2. The Constitution Bench of this Court in *Mohd Arif case (supra)* has carved out a separate niche of review petitions in cases where death penalty has been confirmed by this Court and held that limited oral hearing of such petitions is mandated by Article 21 of the Constitution of India. This Court in conclusion has observed as under:

"74. We make it clear that the law laid down in this judgment, viz., the right of a limited oral hearing in review petitions where death sentence is given, shall be applicable only in pending review petitions and such petitions filed in future. It will also apply where a review petition is already dismissed but the death sentence is not executed so far. In such cases, the Petitioners can apply for the reopening of their review petition

within one month from the date of this judgment. However, in those cases where even a curative petition is dismissed, it would not be proper to reopen such matters."

3. In the present application, keeping in view the urgency of matter, we had stayed the operation of Death Warrant of the petitioner/applicant which was to be executed on 08.09.2014 at 5 a.m., by order dated 08.09.2014 at 1 a.m. and posted the matter before us for consideration and decision.

4. In light of the aforesaid observations of this Court in *Mohd. Arif case (supra)*, the prayer sought for by the petitioner/applicant is allowed.

5. We have heard Shri Ram Jethmalani, learned senior counsel for the petitioner/applicant. Shri Jethmalani would

fervently contend that there exists a glaring error on the face of record in the instant case and therefore, this case requires to be treated as exceptional and extraordinary requiring interference by this Court in exercise of its review jurisdiction. Shri Jethmalani would state that had the accused person been provided with a well experienced advocate during the Trial, the present conviction and sentence would neither have been recorded by the Trial Court nor confirmed by the appellate Courts. The case, according to him, would have reached a different conclusion.

6. We have perused the judgment and order passed by this Court and other relevant documents before us as pointed out by the learned senior counsel.

7. It is well settled that the scope of a

Review Petition under Article 137 of the Constitution of India is very limited and cannot be equated to that of an appeal. The Review Petitions can be allowed by this court only on the ground that there is an error apparent on the face of the record subject to such an error being pointed out by the parties and this Court being satisfied that such an error is so manifest in the face of the order that it undermines its soundness or results in miscarriage of justice requiring consideration and interference by this Court. While considering scope of review petitions, in *Kamalesh Verma v. Mayawati & Ors.*, (2013) 8 SCC 320; *M/s Northern India Caterers (India) Ltd. vs. Lt. Governor of Delhi*, (1980) 2 SCC 167 and *Sow Chandra Kante v. Sheikh Habib*, (1975) 1 SCC 674 amongst others, this Court has cautioned that finality of the judgment delivered by the Court will not be reconsidered on the aforesaid ground unless the Court is satisfied that a glaring

omission or patent mistake or like grave error has crept in earlier by judicial fallibility.

8. Having gone through the judgment and order of this Court and having appreciated the arguments canvassed before us, we are satisfied that the arguments canvassed before us do not present compelling circumstances so as to indicate error apparent on the face of record. In respect of the submission made by Shri Jethmalani regarding lack of competent legal representation provided to the petitioner/applicant at trial stage, we are of the considered view that at this belated stage of review in the present proceedings, this argument would not come to the respite of the petitioner.

9. In light of the aforesaid, we are of the considered view that no case is made out within the meaning of Article 137 of the Constitution

requiring reconsideration of the impugned judgment and order and therefore, this Court in its appellate jurisdiction has not committed any error, whatsoever, which would persuade us to review the same.

10. In conclusion, we would only observe that the learned District Judges while assigning the defence counsel, especially in cases where legal aid is sought for by the accused person, must preferably entrust the matter to a counsel who has an expertise in conducting the Sessions Trial. Such assignment of cases would not only better preserve the right to legal representation of the accused persons but also serve in the ends of ensuring efficient trial proceedings.

11. With these observations, we reject the Review Petition.

12. Interim order granted by this Court on 08.09.2014 and further extended on 12.09.2014 stands vacated.

Ordered accordingly.

.....CJI.
(H.L. DATTU)

.....J.
(ANIL R. DAVE)

.....J.
(S.A. BOBDE)

NEW DELHI,
OCTOBER 28, 2014.

ITEM NO.301

COURT NO.1

SECTION II

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

CRLMP.NO.18324/2014 IN

R.P.(Crl.) No. 395/2014 In Crl.A. No. 2227/2010

SURENDRRA KOLI

Petitioner(s)

VERSUS

STATE OF U.P. AND ORS.

Respondent(s)

(Appln. for stay/directions and office report)

Date :28/10/2014 This petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE ANIL R. DAVE

HON'BLE MR. JUSTICE S.A. BOBDE

For Petitioner(s)

Mr. Ram Jethmalani, Sr. Adv.

Mr. Yug Chudhary, Adv.

Mr. S. Gowthaman, Adv.

Mr. S. Prabhu Ramasubramanian, Adv.

Mr. Sidhartha Sharma, Adv.

Mr. K. Paari Vendhan, Adv.

Ms. Ragini Ahuja, Adv.

For Respondent(s)

Ms. Pinki Anand, ASG

Mr. T.A. Khan, Adv.

Mr. B.V. Balram Das, Adv.

Mr. Ratnakar Dash, Sr. Adv.

Mr. Abhishth Kumar, Adv.

Mr. Raman Yadav, Adv.

Mr. Jasbir Singh Malik, Adv.

Mr. B.P. Singh Dhakray, Adv.

Mr. Shakti Singh Dhakray, Adv.

Mr. Abhishek Pareek, Adv.

for Mr. S.K. Sabharwal, Adv.

UPON hearing the counsel the Court made the following

O R D E R

The Review Petition is rejected in terms
of the signed order.

Interim order granted by this Court on 08.09.2014
and further extended on 12.09.2014 stands vacated.

Ordered accordingly.

[Charanjeet Kaur]
Court Master

[Vinod Kulvi]
Asstt. Registrar

[Signed order is placed on the file]