

**SPECIAL LEAVE PETITION PREFERRED AGAINST THE ORDER AND REGISTERED AS  
SLP(CRI.) NO.5344/11 HAS BEEN DISMISSED BY THE APEX COURT ON 01.08.2011.**

**MCrC No.9088/2009.**

**28.04.2011.**

Shri Satyendra Jain, Advocate for the petitioner-complainant.

Ms. Renu Agrawal, Advocate for the respondent-accused.

I.A. No.6848/2011 for taking on record copy of statement of the accused, under Section 313 of the Code of Criminal Procedure (for short 'the Code'), is allowed.

Arguments heard.

This is a petition, under Section 482 of the Code, for recalling of the order-dated 10.08.2009 passed in MCrC No.11194/2008 whereby the petitioner's application for grant of leave to appeal against the appellate order of acquittal in respect of the offence punishable under Section 138 of Negotiable Instruments Act, 1881, was dismissed.

According to the petitioner, - on 10.08.2009, when the matter came up for hearing before this Court, his counsel Satyendra Jain, being adjusted, could not appear and due to default on the part of Registry, a list of all adjusted advocates was not placed before this Court in accordance with Rule 18(4) of Chapter 12 of the High Court of Madhya Pradesh Rules, 2008. In such a situation, the matter was decided on merits only after hearing the arguments advance on behalf of the respondent.

Placing reliance on the decision of the Apex Court in **G. Raj Mallaiah v. State of A.P. AIR 1998 SC 2315** as well as that of a co-ordinate Bench of this Court in **Gulam Ahmed v. Haji Maulana Mohammad Zahoor 1997(2) M.P.L.J. 703**, learned counsel for the petitioner has submitted that this Court has inherent powers to recall the order in question. According to him, in the light of the decision rendered by Kerala High Court in **Kunjuvarkey v. State of Kerala 2001 (2) Crimes 342**, the order-dated 10.08.2009 (supra) passed on merits without affording opportunity of hearing to the petitioner deserves to be recalled. Reference has also been made to the judgment passed by the Supreme Court in **Minu Kumari v. State of Bihar AIR 2006 SC 1937**, to buttress the contention that the powers possessed by this Court, under Section 482 of the Code, are very wide.

While opposing the prayer, learned counsel for the respondent has submitted that all the relevant aspects of the matter, whether legal or factual, as highlighted by the petitioner in the application, were duly considered while declining the leave.

Adverting to the record of the case, it may be observed that motion hearing of leave application, that was initially filed in the form of Criminal Revision as early as on 03.10.2008, had to be adjourned on 29.04.2009 and 17.07.2009 as the petitioner had remained un-represented. Against this backdrop, on 10.08.2009, when learned counsel for the petitioner again failed to appear, matter was heard and the leave application was dismissed on merits after taking into account the factual scenario as reflected in the judgment of the trial Court as well as the appellate Court and the grounds projected in the application.

A bare perusal of the order would reveal that the finding of not guilty was not interfered with by this Court for the following reasons –

- (i) It was based on the principle laid down by the Apex Court in **M.S. Narayana Menon v. State of Kerala AIR 2006 SC 3366** that was followed in all subsequent judgments including the one rendered in **Krishna Janardhan Bhat v. Dattatraya G. Hegde AIR 2008 SC 1325**.
- (ii) The view taken by learned ASJ was apparently a possible view.

Still, learned counsel for the petitioner, while making reference to the defence of the respondent as pleaded in the statement under Section 313 of the Code, has submitted that the aspect of liability for which cheques in question were given was not taken into consideration. However, the fact remains that the plea taken by the respondent, who is none other than the real brother of the petitioner, was found to be reasonably probable. In this view of the matter, there is no justification for recalling the order-dated 10.08.2009 (supra).

Further, facts of the present case do attract applicability of the decision of the Apex Court in **Mohd. Yaseen v. State of U.P. (2007) 7 SCC 49** wherein the principle that this Court has no jurisdiction even under the inherent powers to alter its judgments in view of Section 362 of the Code, was reaffirmed.

For these reasons, the prayer for recall of the order is not acceptable. In the result, the petition stands dismissed.

**(R.C. MISHRA)**  
**JUDGE**