

Court No. - 7

Case :- APPLICATION U/S 482 No. - 1133 of 2025

Applicant :- Javed Ahmad @ Javed And 3 Others

Opposite Party :- State Of U.P. Thru Its Principal Sec. Deptt. Of Home And Another And

Counsel for Applicant :- Sajjad Husain,Eshan Garg,Prachi Arya

Counsel for Opposite Party :- G.A.,Mohd. Saud Khan,Prachi Arya

Hon'ble Saurabh Lavania,J.

(Order on I.A. No. 02 of 2025, Application for Recall of Order)

1. Heard Shri Sajjad Husain, learned counsel for the applicants and Ms. Ankita Tripathi, learned A.G.A. for the State-opposite party.

2. This is an application filed by the State for recall of final order passed by this Court in exercise of its inherent power under Section 482 Cr.P.C. dated 12.02.2025 whereby this Court quashed the entire criminal proceedings on the basis of the compromise entered between the parties i.e. the applicants namely Javed Ahmad @ Javed S/o Kurban Ali, Sartaj S/o Kurban Ali, Mo. Zafar @ Jafar S/o Mo. Nafees and Hameedan @ Hameeda W/o Kurbaan Ahmad and the opposite party no. 2 namely Mohammad Naseem @ Naseem S/o Chutkau.

3. Instant application has been filed on the ground that the applicants have played fraud on the Court for the purposes of getting the final order dated 12.02.2025 whereby this Court

quashed the criminal proceedings arising out of Case Crime No. 86 of 2017, Under Section 323, 504, 506, 452, 308, 324, 325, 304, 147, 148 IPC, Police Station Dewa, District- Barabanki which were pending as Session Trial No. 110 of 2017 (State vs. Kurban and Ors.), when the order in issue dated 12.02.2025 was passed.

4. To establish the aforesaid, it is stated that the applicants approached this Court by means of ***APPLICATION U/S 482 No. 11901 of 2024 in re: Javed Ahmad @ Javed And 3 Others Vs. State Of U.P. Thru Its Principal Sec. Deptt. Of Home And 3 others*** and same was disposed of by this Court vide order dated 03.01.2025 for the purposes of getting the compromise verified by the trial Court.

5. It is also stated that in compliance of the order of this Court, the trial Court verified the compromise on 27.01.2025.

6. It is also stated that a perusal of the verification report dated 27.01.2025 would indicate/show that injured persons namely Majrub, Mo. Salman, Mufidul, Mahboob, Shabnam Bano and Naseera (mother of the deceased) refused to enter into compromise and this fact was not brought to the notice of this Court intentionally or unintentionally but the fact remains that this fact was not brought to the notice of this Court by Shri Sajjad Hussain, Advocate, learned counsel who drafted the application Section 482 Cr.P.C. for the applicants. The verification report indicated is extracted herein-under:

"मा० उच्च न्यायालय खण्डपीठ लखनऊ में योजित प्रार्थना पत्र U/S 482 No-11901/2024 जावेद आदि V/S सरकार आदि में पारित आदेश दिनांक-3/01/2025 के अनुपालन में न्यायालय के समक्ष उपस्थित होकर प्रथम पक्ष मोहम्मद नसीम को उनके अधिवक्ता श्री विनीत कुमार द्वारा पहचान पर एवं फोटो को एवं द्वितीय पक्ष अभियुक्तगण जावेद अहमद उर्फ जावेद, सरताज, हमीदन व मो. जफर को उनके अधिवक्ता श्री आदित्य कुमार द्वारा पहचान पत्र एवं फोटो को सत्यापित किया। एवं यह भी उल्लेखनीय है कि मजरुब, मो० सलमान, मुफीदुल, महबूब, शबनम बानो एवं नसीरा (मृतक की मां) द्वारा शपथ पत्र दाखिल कर सुलह समझौता के तथ्य से इंकार किया।

तदनुसार प्रथम पक्ष नसीम व द्वितीय पक्ष अभियुक्तगण जावेद अहमद उर्फ जावेद, सरताज, हमीदन व मो० जफर के सुलह समझौता को तस्दीक किया जाता है।"

7. It is further stated that in the concerned incident to which the F.I.R dated 11.02.2017 was lodged against Accused Persons/Applicants by the Informant namely Salma for assaulting and inflicting grievous injuries to Taufiq (brother of Complainant) who succumbed to death due to the injuries sustained, and to other injured persons namely Mahboob (Brother-in-law of Complainant), Shanno (Sister of Complainant), Mohammad Salman (Nephew of Complainant), Mufidul (Sister in law of Complainant) Shanno (Sister of Complainant) and Mohammad Naseem (Husband of Complainant). However, all these victims were neither impleaded by Accused Persons/ applicants in Application under section 482 Cr.P.C. bearing No.11901 of 2024 (Javed Ahmad @ Javed and 3 others Vs State of U.P. and others) nor in present Application under section 482 Cr.P.C. bearing No. 1133 of 2025.

8. It is also stated that the applicants deliberately did not implead all the Victims in the array of parties thereby misleading the Court, though all the victims were/are the

necessary parties who were injured in the incident for which proceeding of ST No. 110 of 2017 (State Government Vs Kurban & Ors) registered as CNR No. UPBB010023332017, arising out of Case Crime No. 86/2017 under section 323, 504, 506, 452, 308, 324, 325, 204, 147 & 148 I.P.C Police Station Dewa District- Barabanki, was pending against accused persons/applicants before Additional District and Sessions Judge Barabanki.

9. It is also stated that in this view of the matter the order dated 12.02.2025 is liable to be recalled.

10. Opposing the prayer of the State to recall the final order dated 12.02.2025, Shri Sajjad Hussain, Advocate, learned counsel for the applicants in the application under Section 482 Cr.P.C. placed reliance on Section 362 Cr.P.C. and based upon the same, he stated that the final order passed in exercise of power under Section 482 Cr.P.C. cannot be recalled.

11. It would be apt to indicate that Shri Sajjad Hussain, Advocate could not dispute the aforesaid facts including that the injured namely Majrub, Mo. Salman, Mufidul, Mahboob, Shabnam Bano and Naseera (mother of the deceased) were not impleaded in the Application(s) under Section 482 Cr.P.C. as also that these injured persons refused to enter into the compromise with the applicants.

12. Considered the aforesaid and perused the records.

13. For the purposes of disposal of instant application for recall of final order dated 12.02.2025, this Court finds it appropriate to take note of the application preferred by the applicants under Section 482 Cr.P.C., drafted and signed by Shri Sajjad Hussain, Advocate, which is reproduced herein-under:-

"APPLICATION U/S 482 CR.P.C. No. OF 2025

(Now U/s 528 BNSS 2023)

*1. Javed Ahmad @ Javed S/o Kurban Ali, aged about 52 years
R/o Saidanpur, Saldanpur, Barabanki 225206*

*2. Sartaj S/o Kurban Ali, R/o lalapur, aged about 30 years
Dewan, PO: Dewa Sharif, Dist: Bara Banki 225301*

*3. MO. Zafar @Jafar S/o Mo.Nafees aged about 27 years R/o
VTC: Sipahiya, PO: Dewa Sharif, District: Barabanki 225301*

*4. Hameedan @Hameeda W/o Kurban Ahmad aged about 63
years R/o lalapur, Dewan, PO: Dewa Sharif, Dist: Bara Banki
225301*

.....APPLICANTS

VERSUS

*1. State of U.P. through its Principal Secretary Department of
Home, Civil Secretariat, Hazratganj, Lucknow UP*

*2. Mohammad Naseem @Naseem S/o Chutkau R/o Sipahiya PS
Dewa District Barabanki*

.....OPPOSITE PARTIES

APPLICATION U/S 482 CR.P.C.(528 BNSS)

To,

The Hon'ble Chief Justice and their accompanying Judges/Justice of High Court of Judicature Allahabad Lucknow Bench, Lucknow

THE APPLICANTS MOST RESPECTFULLY SHEWETH:

- 1. That Instant matter is not related to CBI/Prevention of Corruption Act/ED/matters relating to NRHM Scam/GPF Scam/matters of MP/MLA etc.*
- 2. That the present petition is being filed before this Hon'ble Court for quashing the Charge Sheet No. A 51/17 and cognizance order dt. 05.05.2017, summoning order dt. 10.05.2017 as well as entire proceedings ST No. 110 of 2017 (State Government Vs Kurban & Ors) registered as CNR No. UPBB010023332017 arising out of Case Crime No. 86/2017 U/s 323,504,506,452,308,324,325,304,147 & 148 IPC Police Station Dewa District- Barabanki for the pending before Addl. District and Sessions Judge Barabanki in terms of verified compromise for securing the ends of justice.*
- 3. That earlier the applicants have approached this Hon'ble Court vide application U/s 482 (528 BNSS) No. 11901 of 2024 (Javed Ahmad @Javed Vs State of UP & Ors) for quashing of Charge Sheet No. A 51/17 and cognizance order dt. 05.05.2017, summoning order dt. 10.05.2017 as well as entire proceedings ST No. 110 of 2017 (State Government Vs Kurban & Ors) registered as CNR No. UPBB010023332017 arising out of Case Crime No. 86/2017 U/s 323,504,506,452,308,324,325,304,147 & 148 IPC Police Station Dewa District - Barabanki for the pending before Addl. District and Sessions Judge Barabanki in terms of compromise, the Hon'ble Court has disposed of the application with direction to the applicants to appeal before the trial court for compromise verification and liberty to the applicants to approach this Hon'ble Court after compromise verification. Copy of the Hon'ble Court Order dt. 03.01.2025 in APPLICATION U/S 482 No.11901 of 2024 (Javed Ahmad @Javed And 3 Others Vs State Of U.P. Through Its Principal Secretary And 3 Others) is annexed herewith as Annexure No.1 to this application.*
- 4. That as per the order of the Hon'ble High Court Order dt. 03.01.2025 the applicants presented themselves along with the*

opposite party no.4 before the learned trial Court, who after all the legal process had verified the original compromise deed and prepared Its verification report on 27.01.2025. For perusal the certified copy of the verification report along with the certified copy of the compromise deed are collectively annexed as Annexure No. 2.

5. That Certified copy of Charge Sheet dt. 11.04.2017- Cognizance Order dt. 05.05.2017 & summoning order dt.10.05.2017 is collectively annexed herewith as Annexure No.3 to this application.

6. That now there's no fruitful purpose to continuing the proceedings in ST No. 110 of 2017 (State Government Vs Kurban & Ors) registered as CNR No. UPBB010023332017 pending before Addl. District and Sessions Judge Barabanki.

7. That as mentioned above both parties have already settled the dispute and do not want to prolong the matter therefore a compromise deed was already achieved.

8. That the Hon'ble Supreme Court in Glan Singh versus State of Punjab and Another reported In 2012 (SCC) CrI. Law Journal 4934 had stated "54. Where High Court quashes a criminal proceeding having regard to the fact that dispute between the offender and victim has been settled although offerices are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end is peace is restored, securing the ends of justice being the ultimate guiding factor. No doubt, crimes are acts which have harmful effect on the public and consist in wrong doing that seriously endangers and threatens well being of society and it is not safe to leave the crime doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without permission of the court. In respect of serious offences like murder, rape, dacoity, etc; or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between offender

and victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavor having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc or the family dispute where the wrong is basically to victim and the offender and victim have settled all disputes between them amicably, Irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or FIR if it is satisfied that on the face of such statement, there is hardly any likelihood of offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard and fast category can be prescribed."

9. That in the interest of justice the above mentioned criminal proceedings are liable to be quashed in the light of the judgments of the Hon'ble Supreme Court laid down in GIAN SINGH Vs. STATE OF PUNJAB AND ANOTHER 2012 (SCC) CrL. Law Journal 33; SHIJI AND OTHERS VERSUS RADHIKA AND OTHERS Manu/SC/1341/20011 NARINDER SINGH VERSUS STATE OF PUNJAB (2014) 6 SCC 466: YOGENDRA YADAV VERSUS STATE OF JHARKHAND (2014) 9 SCC 653, PARBATBHAI DAHIR @PARBATBHAI, BHIMSINGH BHAI KARMUR AND OTHERS VERSUS STATE OF GUJRAT (2017) 9 SCC 641.

10. That there is no remedy available to the applicant except to file this application U/sec 482 Cr.P.C (528 BNSS).

PRAYER

Wherefore it is humbly prayed May this Hon'ble Court be pleased to quash the entire proceedings of ST No. 110 of 2017(State Government Vs Kurban & Ors) registered as CNR No. UPBB010023332017 arising out of Case Crime No. 86/2017 U/s 323,504,506,452,308,324,325,304,147 & 148 IPC Police Station Dewa District-Barabanki, pending before Addl. District and Sessions Judge Barabanki on the basis of Compromise

Verification Report dated 27.01.2025 prepared by learned Trial Court, on the respective direction of the Hon'ble High Court passed in APPLICATION U/S 482 No. -11901 of 2024 (Javed Ahmad @Javed And 3 Others Vs State Of U.P. Through its Principal Secretary And 3 Others) in the interest of justice. certified copy of the verification report along with the certified copy of the compromise deed are collectively annexed as Annexure No. 2 to this application.

Any other order or direction which this Hon'ble Court may deem fit and proper under the circumstances of the case may also be pleased for securing the ends of justice."

14. No doubt that the final order in terms of Section 362 Cr.P.C. could not be recalled. However, in some circumstances the final order can be recalled, and the same can be deduced from the observations made in judgments referred herein-below.

15. Before referring the judgments, it would be apt to refer the maxim "*Actus Curiae neminem gravabit*", which indicates that the act of Court shall prejudice no one and in such a situation, the Court is under obligation to undo the wrong done to a party by the act of the Court.

16. In the case of **Smt. Sooraj Devi vs. Pyare Lal and another, (1981) 1 SCC 500**, the Hon'ble Apex Court took note of the expression "clerical or arithmetical error" indicated under Section 362 Cr.P.C. and in regard to the same observed as under:-

"A clerical or arithmetical error is an error occasioned by an accidental slip or omission of the court. It represents that which the court never intended to say. It is an error apparent on the face of the record and does not depend for its discovery on argument or disputation. An arithmetical error is a mistake of

calculation, and a clerical error is a mistake in writing or typing. Master Construction Co. (P) Ltd. v. State of Orissa [AIR 1966 SC 1047 : (1966) 3 SCR 99 : (1966) 17 STC 360]."

17. In the case of ***Hotel Balaji and others vs. State of A.P. and others***, AIR 1993 SC 1048, the Hon'ble Apex Court observed as under:-

"To perpetuate an error is no heroism. To rectify it is the compulsion of judicial conscience. In this, we derive comfort and strength from the wise and inspiring words of Justice Bronson in Pierce v. Delameter [A.M.Y. p. 18] : 'a Judge ought to be wise enough to know that he is fallible and, therefore, ever ready to learn: great and honest enough to discard all mere pride of opinion and follow truth wherever it may lead: and courageous enough to acknowledge his errors'."

18. In the case of ***State of Punjab vs. Davinder Pal Singh Bhullar*** (2011) 14 SCC 770, Hon'ble Apex Supreme Court observed and held that :-

“III. BAR TO REVIEW/ALTER- JUDGMENT

44. There is no power of review with the Criminal Court after judgment has been rendered. The High Court can alter or review its judgment before it is signed. When an order is passed, it cannot be reviewed. Section 362 Cr.P.C. is based on an acknowledged principle of law that once a matter is finally disposed of by a Court, the said Court in the absence of a specific statutory provision becomes functus officio and is disentitled to entertain a fresh prayer for any relief unless the former order of final disposal is set aside by a Court of competent jurisdiction in a manner prescribed by law. The Court becomes functus officio the moment the order for disposing of a case is signed. Such an order cannot be altered except to the extent of correcting a clerical or arithmetical error. There is also no provision for modification of the judgment. (See: Hari Singh Mann v. Harbhajan Singh Bajwa &

Ors., AIR 2001 SC 43; and *Chhanni v. State of U.P.*, AIR 2006 SC 3051).

45. Moreover, the prohibition contained in Section 362 Cr.P.C. is absolute; after the judgment is signed, even the High Court in exercise of its inherent power under Section 482 Cr.P.C. has no authority or jurisdiction to alter/review the same. (See: *Moti Lal v. State of M.P.*, (2012) 11 SCC 427; AIR 1994 SC 1544; *Hari Singh Mann* (2001) 1 SCC 169; 2001 SCC (Cri) 113; and *State of Kerala v. M.M. Manikantan Nair*, (2001) 4 SCC 752 : AIR 2001 SC 2145).

46. If a judgment has been pronounced without jurisdiction or in violation of principles of natural justice or where the order has been pronounced without giving an opportunity of being heard to a party affected by it or where an order was obtained by abuse of the process of court which would really amount to its being without jurisdiction, inherent powers can be exercised to recall such order for the reason that in such an eventuality the order becomes a nullity and the provisions of Section 362 Cr.P.C. would not operate. In such eventuality, the judgment is manifestly contrary to the audi alteram partem rule of natural justice. The power of recall is different from the power of altering/reviewing the judgment. However, the party seeking recall/alteration has to establish that it was not at fault. (Vide: *Chitawan & Ors. v. Mahboob Ilahi*, 1970 Cr.L.J. 378 (All); *Deepak Thanwardas Balwani v. State of Maharashtra & Anr.*, 1985 Cr.L.J. 23 (Bom); *Habu v. State of Rajasthan*, AIR 1987 Raj. 83 (F.B.); *Swarth Mahto & Anr. v. Dharmdeo Narain Singh*, AIR 1972 SC 1300; *Makapati Nagaswara Sastri v. S.S. Satyanarayan*, AIR 1981 SC 1156; *Asit Kumar Kar v. State of West Bengal & Ors.*, (2009) 2 SCC 703; and *Vishnu Agarwal v. State of U.P. & Anr.*, AIR 2011 SC 1232).

47. This Court by virtue of Article 137 of the Constitution has been invested with an express power to review any judgment in Criminal Law and while no such power has been conferred on the High Court, inherent power of the court cannot be exercised for doing that which is specifically prohibited by the Code itself. (Vide: *State Represented by D.S.P., S.B.C.I.D., Chennai v. K.V. Rajendran & Ors.*, AIR 2009 SC 46).

48. In *Smt. Sooraj Devi v. Pyare Lal & Anr.*, AIR 1981 SC 736, this Court held that the prohibition in Section 362 Cr.P.C. against the Court altering or reviewing its judgment, is subject to what is "otherwise provided by this Code or by any other law for the time being in force". Those words, however, refer to those provisions only where the Court has been expressly authorised by the Code or other law to alter or review its judgment. The inherent power of the Court is not contemplated by the saving provision contained in Section 362 Cr.P.C. and, therefore, the attempt to invoke that power can be of no avail.

49. Thus, the law on the issue can be summarised to the effect that the criminal justice delivery system does not clothe the court to add or delete any words, except to correct the clerical or arithmetical error as specifically been provided under the statute itself after pronouncement of the judgment as the Judge becomes functus officio. Any mistake or glaring omission is left to be corrected only by the appropriate forum in accordance with law."

19. It would be relevant to refer a judgment passed by Supreme Court in **Ganesh Patel vs. Umakant Raroria**, 2022 SCC OnLine SC 2050 wherein it was held that an application for recall of order was maintainable as it was an application seeking a procedural review and not a substantive review to which Section 362 Cr.P.C. would be attracted. Supreme Court has placed reference on the aspect of difference between recall and review by referring a judgment passed in **Budhia Swain vs. Gopinath Deb** (1999) 4 SCC 396.

20. In the case of **Mukesh Updhyay vs. State of U.P. and another**, 2019:AHC:42284, this Court at Allahabad observed as under :-

"This issue has been dealt by the Hon'ble Supreme Court in the following judgments :-

The Hon'ble Supreme Court in the matter of Soorja Devi vs. Pyare Lal and Another reported at (1981) 1 SCC 500 has held in paras No.4, 5, 6 and 7 that :-

"4. The sole question before us is whether the High Court was right in refusing to entertain Criminal Miscellaneous Application No. 5127 of 1978 on the ground that it had no power to review its order dated 1st September, 1970. Section 362 of the Code of Criminal Procedure declares :- "Save as otherwise provided by this Code or by any other law for the time being in force, 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 arithmetical error". It is apparent that what the appellant seeks by the application is not the correction of a clerical or arithmetical error. What she desires is a declaration that the High Court order dated September 1, 1970 does not affect her rights in the house property and that the direction to restore possession to Pyare Lal is confined to that portion only of the house property respecting which the offence of trespass was committed so that she is not evicted from the portion in her possession. The appellant, in fact, asks for an adjudication that the right to possession alleged by her remains unaffected by the order dated September 1, 1970. Pyare Lal disputes that the order is not binding on her and that she is entitled to the right in the property claimed by her. Having considered the matter, we are not satisfied that the controversy can be brought within the description "clerical or arithmetical error". A clerical or arithmetical error is an error occasioned by an accidental slip or omission of the court. It represents that which the court never intended to say. It is an error apparent on the face of the record and does not depend for its discovery on argument or disputation. An arithmetical error is a mistake of calculation, and a clerical error is a mistake in writing or typing. Master Construction Co. (P) Ltd. v. State of Orissa.

5. The appellant points out that he invoked the inherent power of the High Court saved by Section 482 of the Code and that notwithstanding the prohibition imposed by

Section 362 the High Court had power to grant relief. Now it is well settled that the inherent power of the court cannot be exercised for doing that which is specifically prohibited by the Code. Sankatha Singh v. State of U.P. It is true that the prohibition in Section 362 against the Court altering or reviewing its judgment is subject to what is "otherwise provided by this Code or by any other law for the time being in force". Those words, however, refer to those provisions only where the Court has been expressly authorised by the Code or other law to alter or review its judgment. The inherent power of the Court is not contemplated by the saving provision contained in Section 362 and, therefore, the attempt to invoke that power can be of no avail.

The Hon'ble Supreme Court in the matter of Narayan Prasad vs. State of Bihar reported at 2017 SCC Online SC 1738 has held that :-

6. In order to decide the controversy at hand, it would be useful to reproduce Sections 362 and 482 of The Code of Criminal Procedure, 1973 [hereinafter 'CrPC' for brevity]

362. Court not to alter judgment.- Save as otherwise provided by this Code or by any other law for the time being in force, 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 arithmetical error.

482. Saving of inherent powers of High Court.-Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

7. Plain reading of these Sections indicate that the prohibition under the Section 362 of Cr.P.C. is absolute; after the judgment is signed even the High Court in exercise of its inherent power under Section 482 of CrPC has no authority or jurisdiction to alter/review the same. The inherent power under Section 482 of CrPC was

purported to avoid the abuse of the process of the Court and to secure ends of justice. Such power cannot be exercised to do something which is expressly barred under the Code.

8. If any consideration of the facts by way of review is not permissible under the Code and is expressly barred, it is not for the Court to exercise its inherent power to reconsider the matter."

Co-ordinate Bench of this Court in a judgment dated 30.5.2016 passed in Criminal Misc. Recall Application No.126367 of 2016 in Application u/s 482 No.5938 of 2016 has held that :-

"Full Bench of five Judges in Mahesh Vs. State, 1971 ALJ page 668 held, "the legal position can be summarized by laying down that the High Court is not possessed of general power to review, revise or reconsider the judgment or order duly pronounced in criminal appeal or a criminal revision, though the judgment or order can be so reviewed, revised or reconsidered in exceptional circumstances in exercise of the inherent power under Section 561-A (presently section 482), Cr.P.C, provided that the inherent power is so exercised for one of the three purposes detailed therein".

There is no power of review with the criminal court after the judgment has been rendered. The High Court can alter or review its judgment before it is signed. When an order is passed, it cannot be reviewed. Section 362 Cr.P.C is based on an acknowledged principle of law that once a matter is finally disposed of by a court, the said court in the absence of a specific statutory provision becomes functus officio and is disentitled to entertain a fresh prayer for any relief unless the former order of final disposal is set aside by a court of competent jurisdiction in a manner prescribed by law. The court becomes functus officio the moment the order for disposing of a case is signed. Such an order cannot be altered except to the extent of correcting a clerical or arithmetical error. There is also no provision for modification of the judgment. (Vide Hari singh Mann Vs. Harbhajan Singh Bajwa, 2001 (1) SCC 169).

Moreover the prohibition contained in Section 362 Cr.P.C is absolute; after the judgement is signed, even the High Court in exercise of its inherent power under Section 482 CrP.C has no authority or jurisdiction to alter/review the same (vide Moti Lal Vs. State of M.P. (2012) 11 SCC 427).

If a judgement has been pronounced without jurisdiction or in violation of principle of natural justice or where the order has been pronounced without giving an opportunity of being heard to a party affected by it or where an order was obtained by abuse of the process of court which would really amount to its being without jurisdiction, inherent powers can be exercised to recall such order for the reason that in such an eventuality the order becomes a nullity and the provisions of Section 362 Cr.P.C would not operate. In such an eventuality, the judgment is manifestly contrary to the audi alteram partem rule of natural justice. The power of recall is different from the power of altering/reviewing the judgment. However, the party seeking recall/alteration has to establish that it was not at fault.(vide Chitawan Vs. Mahboob Ilahi, 1970 Cri. LJ 378(All), Asit Kumar Kar Vs. State of West Bengal (2009) 2 SCC 703)".

In view of the abovementioned judgments, the review petition is expressly barred under Section 362 Cr.P.C and applicant has not able to point out that impugned judgment was passed contrary to the rule of natural justice or passed without jurisdiction, therefore, even under power of 482 Cr.P.C., this review application cannot be entertained. Thus, the present review application is rejected being not maintainable.”

21. In the case of ***Kusha Duruka v. State of Odisha***, (2024) 4 SCC 432, Hon'ble Apex Court has noted and held as under: -

"2. About three decades ago, this Court in Chandra Shashi v. Anil Kumar Verma [Chandra Shashi v. Anil Kumar Verma, (1995) 1 SCC 421 : 1995 SCC (Cri) 239] was faced with a situation where an attempt was made to deceive the Court and interfere with the administration of justice. The litigant was held to be guilty of contempt of court. It was a case in which the husband had filed fabricated document to oppose the

prayer of his wife seeking transfer of matrimonial proceedings. Finding him guilty of contempt of court, he was sentenced to two weeks' imprisonment by this Court. This Court observed as under : (SCC pp. 423-24 & 427, paras 1-2 & 14)

"1. The stream of administration of justice has to remain unpolluted so that purity of court's atmosphere may give vitality to all the organs of the State. Polluters of judicial firmament are, therefore, required to be well taken care of to maintain the sublimity of court's environment; so also to enable it to administer justice fairly and to the satisfaction of all concerned.

2. Anyone who takes recourse to fraud, deflects the course of judicial proceedings; or if anything is done with oblique motive, the same interferes with the administration of justice. Such persons are required to be properly dealt with, not only to punish them for the wrong done, but also to deter others from indulging in similar acts which shake the faith of people in the system of administration of justice.

14. The legal position thus is that if the publication be with intent to deceive the court or one made with an intention to defraud, the same would be contempt, as it would interfere with administration of justice. It would, in any case, tend to interfere with the same. This would definitely be so if a fabricated document is filed with the aforesaid mens rea. In the case at hand the fabricated document was apparently to deceive the court; the intention to defraud is writ large. Anil Kumar is, therefore, guilty of contempt."

3. *In K.D. Sharma v. SAIL [K.D. Sharma v. SAIL, (2008) 12 SCC 481] it was observed by this Court : (SCC p. 493, para 39)*

"39. If the primary object as highlighted in Kensington Income Tax Commrs. [R. v. General Commissioners for the Purposes of the Income Tax Acts for the District of Kensington, ex p Princess Edmond De Polignac, (1917) 1 KB 486 : 86 LJKB 257 : 116 LT 136 (KB & CA)] is kept in mind, an applicant who does not come with candid facts and "clean breast" cannot hold a writ of the court with

"soiled hands". Suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, manoeuvring or misrepresentation, which has no place in equitable and prerogative jurisdiction. If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the court, the court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the court does not reject the petition on that ground, the court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of court for abusing the process of the court."

(emphasis supplied)

4. *In Dalip Singh v. State of U.P. [Dalip Singh v. State of U.P., (2010) 2 SCC 114 : (2010) 1 SCC (Civ) 324] , this Court noticed the progressive decline in the values of life and the conduct of the new creed of litigants, who are far away from truth. It was observed as under : (SCC pp. 116-17, paras 1-2)*

"1. For many centuries Indian society cherished two basic values of life i.e. "satya" (truth) and "ahimsa" (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of the justice-delivery system which was in vogue in the pre-Independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-Independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.

2. In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants,

the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final."

(emphasis supplied)

5. In *Moti Lal Songara v. Prem Prakash* [*Moti Lal Songara v. Prem Prakash*, (2013) 9 SCC 199 : (2013) 3 SCC (Cri) 872] , this Court, considering the issue regarding concealment of facts before the Court, observed that "court is not a laboratory where children come to play", and opined as under : (SCC p. 208, paras 19-20)

"19. The second limb of the submission is whether in the obtaining factual matrix, the order passed by the High Court discharging the respondent-accused is justified in law. We have clearly stated that though the respondent was fully aware about the fact that charges had been framed against him by the learned trial Judge, yet he did not bring the same to the notice of the Revisional Court hearing the revision against the order taking cognizance. It is a clear case of suppression. It was within the special knowledge of the accused. Anyone who takes recourse to method of suppression in a court of law, is, in actuality, playing fraud upon the court, and the maxim suppressio veri, expressio falsi i.e. suppression of the truth is equivalent to the expression of falsehood, gets attracted. We are compelled to say so as there has been a calculated concealment of the fact before the Revisional Court. It can be stated with certitude that the respondent-accused tried to gain advantage by such factual suppression. The fraudulent intention is writ large. In fact, he has shown his courage of ignorance and tried to play possum.

20. The High Court, as we have seen, applied the principle "when infrastructure collapses, the superstructure is bound to collapse". However, as the order has been obtained by practising fraud and suppressing material fact before a court of law to gain advantage, the said order cannot be allowed to stand."

(emphasis supplied)

6. It was held in the judgments referred to above that one of the two cherished basic values by Indian society for centuries is "satya" (truth) and the same has been put under the carpet by the petitioner. Truth constituted an integral part of the justice-delivery system in the pre-Independence era, however, post-Independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings. In the last 40 years, the values have gone down and now litigants can go to any extent to mislead the court. They have no respect for the truth. The principle has been evolved to meet the challenges posed by this new breed of litigants. Now it is well settled that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final. Suppression of material facts from the court of law, is actually playing fraud with the court. The maxim *suppressio veri, expressio falsi* i.e. suppression of the truth is equivalent to the expression of falsehood, gets attracted. It is nothing but degradation of moral values in the society, may be because of our education system. Now we are more happy to hear anything except truth; read anything except truth; speak anything except truth and believe anything except truth. Someone rightly said that: "Lies are very sweet, while truth is bitter, that's why most people prefer telling lies."

7. In a recent matter, this Court again came across a litigant who had tried to overreach the Court by concealing material facts in *Saumya Chaurasia v. Enforcement Directorate* [Saumya Chaurasia v. Enforcement Directorate, (2024) 6 SCC 401 : 2023 SCC OnLine SC 1674 : 2023 INSC 1073] . It was a case where the appellant before this Court had challenged the order [Saumya Chaurasia v. Directorate of Enforcement, 2023 SCC OnLine Chh 1907] passed by the High Court [High Court of Chhattisgarh at Bilaspur in Miscellaneous Crl. Case No. 1258 of 2023] rejecting his bail application. He was accused of committing various crimes under the Penal Code, 1860 and the Prevention of Money-Laundering Act, 2002. His bail application

was rejected by the High Court on 23-6-2023 [Saumya Chaurasia v. Directorate of Enforcement, 2023 SCC OnLine Chh 1907] . In the pleadings before this Court, it was mentioned that the High Court had committed gross error in not considering the charge-sheet dated 8-6-2023 and the cognizance order dated 16-6-2023, which clearly suggested that there was an error apparent on the face of it. The fact which was available on record was that an order in the bail application was reserved by the High Court on 17-4-2023 [Saumya Chaurasia v. Enforcement Directorate, 2023 SCC OnLine Chh 5838] and pronounced on 23-6-2023 [Saumya Chaurasia v. Directorate of Enforcement, 2023 SCC OnLine Chh 1907] . Having some suspicion, this Court directed the appellant to file an affidavit to clarify the aforesaid position. There was no specific reply given to the aforesaid query to the Court. Rather vague statements were made. Considering the facts available, this Court observed that there was a bold attempt by and on behalf of the appellant therein to misrepresent the facts for challenging the order [Saumya Chaurasia v. Directorate of Enforcement, 2023 SCC OnLine Chh 1907] impugned therein, regarding the conduct of the parties and the counsel, this Court made the following observations : (Saumya Chaurasia case [Saumya Chaurasia v. Enforcement Directorate, (2024) 6 SCC 401 : 2023 SCC OnLine SC 1674 : 2023 INSC 1073] , SCC para 13)

"13. It cannot be gainsaid that every party approaching the court seeking justice is expected to make full and correct disclosure of material facts and that every advocate being an officer of the court, though appearing for a particular party, is expected to assist the court fairly in carrying out its function to administer the justice. It hardly needs to be emphasised that a very high standard of professionalism and legal acumen is expected from the advocates particularly designated senior advocates appearing in the highest court of the country so that their professionalism may be followed and emulated by the advocates practising in the High Courts and the District Courts. Though it is true that the advocates would settle the pleadings and argue in the courts on instructions given by their clients, however their duty to diligently verify the facts from the record of the case, using their

legal acumen for which they are engaged, cannot be obliterated."

(emphasis supplied)

Finally, this Court dismissed the appeal with costs of Rs 1,00,000.

8. In Pradip Sahu v. State of Assam [Pradip Sahu v. State of Assam, (2024) 4 SCC 448] the accused who was found to be guilty of concealing material facts from the court and against him the High Court [Gauhati High Court] had directed [Pradip Sahu v. State of Assam, 2021 SCC OnLine Gau 2835] for taking appropriate legal action, had challenged the order passed by the High Court before this Court. In the aforesaid case, first bail application filed by the appellant there was dismissed [Pradip Sahu v. State of Assam, 2021 SCC OnLine Gau 2832] by the High Court [On 11-11-2021] , thereafter he moved a second bail application before the High Court in which notice was issued on 30-11-2021 [Pradip Sahu v. State of Assam, 2021 SCC OnLine Gau 2833] . During the pendency of the aforesaid application before the High Court, the appellant therein moved a fresh bail application before the trial court on 1-12-2021, which was granted on the same day. The aforesaid facts came to the notice of the High Court on 8-12-2021 [Pradip Sahu v. State of Assam, 2021 SCC OnLine Gau 2834] when a report of the Registrar (Judicial) was received, who was directed to conduct the enquiry in the matter. However, on an apology tendered by the appellant therein and also considering the facts as stated that he belonged to Tea Tribe community and his brother, a cycle mechanic, who was also pursuing the case, did not appreciate the intricacy of the law. As a result of which, the mistake occurred. This Court, having regard to the unqualified apology tendered by the appellant therein, had set aside the order passed by the High Court to file FIR/complaint against the appellant therein.

9. May be in the facts of Pradip Sahu case [Pradip Sahu v. State of Assam, 2021 SCC OnLine Gau 2834] , this Court had accepted unconditional apology tendered by the appellant therein and in the given fact situation accepted his apology but

it is established that there is a consistent effort by the litigants to misrepresent the Court wherever they can."

22. In the facts of the present case, this Court finds it appropriate to refer some paras of the judgment passed by High Court of Rajasthan in the case of **Hussain Vs. Gram Panchayat Roon Panchayat Samiti Mundwa, Dist-Nagaur Through Sarpanch and Another**, reported in 2025 SCC OnLine Raj 271, which are as under :-

28. In view of all the above observations and findings as recorded by this Court hereinabove, it is crystal clear that the Court was clearly misled by counsel for the appellants. All the submissions and arguments as raised by the counsel were/are totally incorrect and misleading.

29. In the present scenario, when the Courts are overloaded and overburdened with the number of listed cases where the daily cause list comprises of more than 300 matters per day and many a times, reaching to 600 matters per day, the Courts have no other option than to rely upon the submissions made by the counsels. In such a scenario, the Courts even pass orders relying upon the submissions as made by the counsels. It is the basic obligation of the litigant and his lawyer not to deceive or mislead the Court. This responsibility extends to every function including the presentation and interpretation of facts, drafting of pleadings and documents, legal argument and other submissions or communications with the Court. The duty not to intentionally mislead or deceive is only the bare minimum required of the advocate and solicitor. As an officer of the Court, he is expected to advance the public interest in the fair administration of justice even if this could jeopardise his client's interests. Hence, he is not only required to inform the Court of all relevant decisions and legislative provisions of which he is aware but also bound not to make any statements which are inaccurate, untrue and misleading.

30. As held by the Hon'ble Apex Court in the case of D.P. Chadha v. Triyugi Narain Mishra, (2001) 2 SCC 221,

professional misconduct is grave when it consists of betraying the confidence of a client and is gravest when it is a deliberate attempt at misleading the court or an attempt at practising deception or fraud on the court. Therein, the Court held as under:

“The client places his faith and fortune in the hands of the counsel for the purpose of that case; the court places its confidence in the counsel in case after case and day after day. A client dissatisfied with his counsel may change him but the same is not with the court. And so the bondage of trust between the court and the counsel admits of no breaking.

.....

24. It has been a saying as old as the profession itself that the court and counsel are two wheels of the chariot of justice. In adversarial system it will be more appropriate to say while the Judge holds the reigns, the two opponent counsel are the wheels of the chariot. While the direction of the movement is controlled by the Judge holding the reigns, the movement itself is facilitated by the wheels without which the chariot of justice may not move and may even collapse. Mutual confidence in the discharge of duties and cordial relations between Bench and Bar smoothen the movement of chariot. As a responsible officer of the court, as they are called - and rightly, the counsel have an over all obligation of assisting the courts in a just and proper manner in the just and proper administration of justice. Zeal and enthusiasm are the traits of success in profession but overzealousness and misguided enthusiasm have no place in the personality of a professional. Yet a counsel, in his zeal to earn success for a client, need not step over the well-defined limits of propriety, repute and justness. Independence and fearlessness are not licences of liberty to do anything in the court and to earn success to a client whatever be the cost and whatever be the sacrifice of professional norms.”

31. This Court also gets support of its view by observation made by the Hon'ble Apex Court in the case of Virender Singh v. State (Govt. of NCT of Delhi) Writ Petition(s) (Criminal) No(s). 296/2024 (decided on 10.09.2024) wherein the Court observed that, "it is not possible for Judges to go through each and every page of each and every case listed before the Court. Our system works on faith. We trust the members of the Bar when we hear cases. But, when we come across cases like this, our faith is shaken."

32. This Court is pained to observe that counsel for the appellants did not fairly state the facts before the Court but presented the same in such a way to mislead the Court as to the true facts and thereby, abused the process of law. The learned counsel not only made false and incorrect submissions but also withheld the true information which had a bearing in the matter. The counsel totally withheld the fact of the order dated 21.01.2025 passed in S.B. Writ Petition No. 9338/2024 whereby a Co-ordinate Bench of this Court had already directed the District Collector and Superintendent of Police, Nagaur to ensure the requisite police force and other help to the Gram Panchayat to remove the encroachments. Therein, the Court further observed that in case the encroachers resist the Encroachment Removal Drive, the Gram Panchayat shall note their names and move an application in the present writ petition as to enable the Court to initiate proceedings for contempt against them."

23. Also, fraud vitiates every solemn proceeding and no right can be claimed by a fraudster on the ground of technicalities. (See: **S.P. Chengalvaraya Naidu Vs. Jagannath and Others**, (1994) 1 SCC 1, **Ram Chandra Singh v. Savitri Devi**, (2003) 8 SCC 319 , **Jai Narain Parasrampuria v. Pushpa Devi Saraf** (2006) 7 SCC 756, **Madhukar Sadbha Shivarkar v. State of Maharashtra**, (2015) 6 SCC 557, **Jal Vidyut Nigam v. Raj Kumar Rajinder Singh**, (2019) 14 SCC 449).

24. Considered the aforesaid including undisputed facts of the case indicated in paras 6 to 8 of this judgment as also the following facts/reasons.

(a) based upon the compromise with one injured/victim the prayer was sought to quash the entire criminal proceedings;

(b) victim/injured persons namely Majrub, Mo. Salman, Mufidul, Mahboob, Shabnam Bano and Naseera (mother of the deceased) were not heard when the final order dated 12.02.2025 passed by this Court for the reason that they were not impleaded, to the view of this Court intentionally for this reason that they refused to enter into the compromise;

(c) non-impleadment of the victim/injured persons and concealing material facts from the Court for getting an order in favour of the applicants amounts to misconduct on the part of the Advocate;

(d) criminal proceedings related to Section 304 IPC cannot be quashed on the basis of compromise, which inadvertently relying upon the statement of counsel were quashed by this Court.

25. Upon due consideration of the aforesaid, I am of the firm view that it is a case of committing fraud with this Court and in this view of the matter, this Court finds that the instant application is liable to be allowed with cost.

26. Accordingly, the instant application for recall of order filed by the State is ***allowed***.

The application under Section 482 Cr.P.C. is restored to its original number.

Sessions Trial No. 110 of 2017 (State vs. Kurban and Ors.), arising out of Case Crime No. 86 of 2017, Under Section 323, 504, 506, 452, 308, 324, 325, 304, 147, 148 IPC, Police Station Dewa, District- Barabanki, is also restored to its original number.

27. List/put up the application under Section 482 Cr.P.C. ***before appropriate Court, at an early date, as fresh***.

28. Taking note of the aforesaid facts/reasons recorded for recalling of final order dated 12.02.2025 in para 24 of this judgment, this Court imposes cost of ₹ 25,000/- on each of the accused/applicants which shall be paid to the High Court Legal Services Lucknow within one month from today failing which the same shall be recovered as arrears of land revenue.

29. Office shall send a copy of this order to District Magistrate to take further steps in the matter in default of aforesaid.

30. The concerned Court is directed to do needful for ensuring the presence of the accused/applicants namely Javed Ahmad @ Javed S/o Kurban Ali, Sartaj S/o Kurban Ali, Mo.

Zafar @ Jafar S/o Mo. Nafees and Hameedan @ Hameeda W/o Kurbaan Ahmad for the purposes of concluding the trial.

31. Considering the unconditional apology tendered by Shri Sajjad Hussain, Advocate, and expressing remorse and promise made that in future such misconduct would not be repeated as also the request of members of the 'Bar', though the conduct of the advocate is not worthy of being pardoned for the reason that on account of pendency of the large number of cases this Court relies upon the statements of the Members of the Bar who are supposed to make correct statements before the Court, the unconditional apology of Mr. Sajjad Hussain, Advocate is accepted and he is warned of and directed to be careful in not repeating such type of misconduct in future.

32. Office is directed to communicate the certified copy of this order to the trial Court forthwith.

Order Date :- 28th April, 2025

Mohit Singh/-

E-Court

[Saurabh Lavania,J.]