

**P L D 1970 Supreme Court 335**

**Present: Hamoodur Rahman, C. J., Muhammad Yaqub Ali, Sajjad Ahmad, M. R. Khan and Wahiduddin Ahmad, JJ**

**GULZAR HASSAN SHAH-Appellant**

**Versus**

**GHULAM MURTAZA AND 4 OTHER -Respondents**

Criminal Appeal No. 4 of 1970, decided on 18th March 1970.

(On appeal from the judgment and order of the High Court of West Pakistan, Lahore, dated the 21st August 1969, in Criminal Miscellaneous No. 4768 of 1969).

**(a) Criminal Procedure Code (V of 1898)-----**

---Ss. 497 & 498 read with S. 561-A-Bail-Special leave to appeal-Granted by Supreme Court to consider whether (i) High Court could in its inherent jurisdiction recall or reverse an order made by it and (ii) bail had been granted in disregard of principles laid down by Supreme Court.

**(b) Criminal Procedure Code (V of 1898)-----**

----Ss. 369, 498 & 561-A-Section 369 does not control S. 498-Section 561-A can be invoked in suitable cases.

Section 369 of the Cr. P. C. does not control section 498 and in suitable cases section 561-A of the Criminal Procedure Code can be invoked. In the first place, an order passed under section 498, Cr. P. C. is not a judgment within the meaning of section 369, Cr. P. C. Moreover, section 369 of the Criminal Procedure Code is in the Chapter relating to original trial and unless it is specifically applied to other proceedings under the Criminal Procedure Code, it cannot be said to have any application to other proceedings.

Sankatha Singh and others v. State of Uttar Pradesh A I R 1962 S C 1208 distinguished.

Muhammad Salimullah Khan and another v. The State P L D 1961 Lah. 227 and Emperor v. Atta Muhammad A I R 1945 Lah. 130 ref.

**(c) Criminal Procedure Code (V of 1998)-----**

---S. 561-A---Inherent powers of High Court-When can `be invoked.

General principles of finality of judgment attaches to the decision or order of the High Court passed in criminal cases. But it will not apply to cases where an order is passed without jurisdiction or without giving any opportunities to the parties of being heard. In such cases section 561-A, Cr. P. C. can be invoked for the purpose of doing justice between the parties and for seeing that the act of the Court does no injury to any of the parties. This is an inherent power of the Court and has been preserved by the above provision of law. In rare and exceptional cases the High Court has inherent power to revoke, review or alter its own earlier decisions in cases which are not governed by sections 369, 424 and 430, Cr. P. C. with a view to give effect to any order under the Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. It is, however, not possible to enumerate the circumstances in which this provision can be invoked.

**(d) Criminal Procedure Code (V of 1898)----**

----S. 561-A read with Ss. 498 & 369-Order cancelling bail passed in absence of accused-Nullity in eye of law-Application under S. 561-A for recalling such order-Held, competent.

**(e) Criminal Procedure Code (V of 1898)-----**

----S. 497-Bail, cancellation of-Courts below entering into merits of case and making observations tending to prejudice case of prosecution and also failing to notice that investigation of case was made by a person inimical towards prosecution-Bail cancelled in circumstances.

Farid v. Ghulam Hassan and others 1969 S C M R 924 and Muhammad Aslam v. The State P L D 1967 S C 539 ref.

Mahmud Ali Qasuri, Senior Advocate Supreme Court (Ghulam Mohammad, Advocate with him) instructed by M. Siddiq, Advocate-on-Record for Appellant.

M. Anwar, Senior Advocate Supreme Court instructed by Mahmud A. Qureshi, Advocate-on-Record for Respondents Nos. 1-4.

Malik Muhammad Jafar, Advocate Supreme Court instructed by Ijaz Ali, Advocate-on-Record for Respondent No. 5.

Dates of hearing: 17th and 18th March 1970.