10. No other point is urged before me.

11. The result is that this appeal fails and is dismissed but without any order as to costs.

B. S. G.

REVISIONAL CRIMINAL

Before H. R. Sodhi, J.

MADAN LAL,—*Petitioner*

versus

THE STATE OF PUNJAB,—*Respondent*

Criminal Revision No. 189 of 1969

September 24, 1970

Code of Criminal Procedure (V of 1898)—Section 369—Bar of review under—Whether applies to interlocutory orders—Criminal Courts—Whether have inherent jurisdiction to review such orders.

Held, that section 369, Criminal Procedure Code prohibits review of a judgment only. Judgment in a criminal case means a judgment of conviction or acquittal or any final order passed at the conclusion of the trial resulting in disposal of the case. There are variety of orders required to be passed by a trial Court before the trial is concluded. The trial Court is not barred from subsequently reconsidering those orders and modifying the same, according to the circumstances as may come to light afterwards. To this extent, all criminal Courts have inherent powers though not given by any specific provision in the Code. The exercise of power to correct its own mistake is inherent in every judicial and quasi-judicial authority unless it amounts to reviewing a judgment which has finally adjudicated the rights of the parties. (Para 2).

Petition under section 439 of the Cr. P. C. for revision of the order of Shri C. S. Tiwana, Sessions Judge, Sangrur, dated 13th February, 1969 affirming that of Shri G. D. Hans, Judicial Magistrate, 1st Class, Sunam, dated 8th January, 1969 disallowing the accused for sending a sample for further chemical analysis of the opium u/s 251 A(9) of Cr. P. C. and allowing the accused to receive back the amount of Rs. 60 deposited by him as a fee of the Public Analyst.

ASHOK BHAN, ADVOCATE, for the petitioner.

N. S. BHATIA, ADVOCATE, FOR ADVOCATE-GENERAL, PUNJAB, for the respondent.

JUDGMENT

SODHI, J.—Madan Lal, petitioner was prosecuted under section 9 of the Opium Act, 1878, for the alleged unlawful possession of 1,250 grams of opium. After the accused had been arrested by the police, a sample taken from the opium recovered from him was sent by the police for chemical examination and the report Exhibit P. E., dated 30th of May, 1968, from the Chemical Examiner, Punjab, is on the record. It had been opined by him that the contents sent to him for report were opium. In his examination under section 342, Criminal Procedure Code, the accused denied possession of any opium or recovery of the same from him. He afterwards made an application to the Court that another sample out of the bulk produced in Court be sent to the Public Analyst, Calcutta, for chemical examination. This application, as it appears from the order, dated 30th of December, 1968, was allowed after hearing the Prosecuting Sub-Inspector appearing for the prosecution and also the accused, who was present in person. The accused was asked to deposit Rs. 60 immediately and the same was done. After this order, the Police made an application that it was futile to get the article recovered chemically analysed by the Public Analyst, as sample of that had already been examined by the Chemical Examiner of Punjab. The Prosecuting Sub-Inspector and the counsel for the accused were again heard on 8th of January, 1969. A reference was made by the prosecution to a judgment of this Court reported as *Karnail Singh* v. *The State* (1), where Shamsher Bahadur, J. has observed that 'where a representative sample of the opium recovered from an accused was sent to the Chemical Examiner and his report is before the Court, the accused is not entitled to ask that the remaining bulk ought to be examined by the Chemical Examiner.' The learned Magistrate relying on this judgment cancelled his previous order and disallowed the prayer of the accused for sending another sample to the Public Analyst of Calcutta. The amount of Rs. 60, which had been deposited by the accused as fee for the Public Analyst, was directed to be returned to him. The accused took the matter to the Sessions Judge for recommendation being made to this Court that the subsequent order of the Magistrate as made on 8th of January, 1969, be quashed. The learned Sessions Judge was of the view that the case was not fit to be recommended: hence the present revision petition.

(1) 1966 P.L.R. 657.

(2) Mr. Ashok Bhan, learned counsel for the petitioner, mainly relies on section 369 of the Criminal Procedure Code in support of his contention that the order passed by the Magistrate on 30th of December, 1968 could not be reviewed and sending of the sample to the Public Analyst, Calcutta, withheld. I am afraid there is no substance in this contention. Section 369, Criminal Procedure Code, prohibits review of a judgment only. There was no judgment passed in the present case as envisaged in section 369, Criminal Procedure Code. It is not every interlocutory order that is to be treated as a judgment which expression as used in section 369 *ibid* refers only to final orders passed at the conclusion of a trial resulting in the disposal of the case. There are variety of orders required to be passed by a trial Court before the trial is concluded as for instance summoning of witnesses, disposal of property, adjournment of the case and the like. It cannot possibly be said that the trial Court is barred from subsequently reconsidering those orders and modifying the same, according to the circumstances as may come to light afterwards. To this extent, all criminal Courts have inherent powers though not given by any specific provision in the Code of Criminal Procedure. The exercise of power to correct its own mistake is inherent in every judicial and quasi-judicial authority unless it amounts to reviewing a judgment which had finally adjudicated the rights of the parties. Reference in this connection may be made to a judgment of the Federal Court in *Dr. Hori Ram Singh* v. *Emperor* (2), where it has been laid down that judgment in a criminal case means a judgment of conviction or acquittal and that the term does not include an interlocutory order. The principles of this section may be extended to several other final orders made under the Code of Criminal Procedure, such as, under sections 107, 145 and the like. A Division Bench of Jammu and Kashmir High Court has also taken a similar view in *Mirza Mohd, Afzal Beg and others* v. *State of Jammu and Kashmir and others* (3), as also a learned Single Judge of the Madhya Bharat High Court in *Ramchandra and another* v. *Hastimal Jain* (4).

(3) The next contention that survives for consideration is as to whether the order passed on review should be sustained. I am inclined to think that the Magistrate was in error in setting aside his

(2) A.I.R. 1939 F.C. 43.
(3) A.I.R. 1960 J. & K. 1.
(4) A.I.R. 1956 M.B. 161.

earlier order permitting the despatch of a sample from the bulk produced before him to the Public Analyst of Calcutta. The two inconsistent orders passed by the Magistrate do not reflect well on him as well as the prosecution. The report, as already stated, was before him and it cannot be believed that the prosecution did not point out the same to him or he was in any way unaware of it. The request of the accused was completely different. He did not want the entire bulk to be examined, but only a sample taken out of the same and that too by the Public Analyst of Calcutta. The Magistrate, after hearing the arguments, allowed this prayer presumably because he wanted to have the opinion of another Expert with regard to the nature of the article recovered from the accused. The prosecution must have been aware of the judgment of this Court in *Karnail Singh's case* (1) (supra), but the same was not produced at that time. Reliance on this judgment was also misconceived. Shamsher Bahadur, J., has only observed that it was not necessary to get the whole of the bulk examined when a sample taken from the same had already been examined by the Chemical Examiner. The accused,as already observed, only wanted another sample to be tested chemically by the Public Analyst of Calcutta. In such a situation, the judgment in *Karnail Singh's case* (1), could not be pressed into service.

(4) For the foregoing reasons, the revision petition is allowed and the trial Magistrate is directed to adhere to his first order of 30th December, 1968. The report of the Public Analyst from Calcutta must be obtained without any further delay. The accused is ordered to appear before the trial Magistrate on 8th of October, 1970, and the office must also send back the records of the case without any loss of time.

B. S. G.

REVISIONAL CIVIL

Before P. C. Pandit, J.

RANJIT SINGH,—*Petitioner*

versus

DIRECTOR OF PANCHAYATS, PUNJAB, ETC.,—*Respondents.*

Civil Revision No. 1089 of 1968.

September 24, 1970.

Punjab Gram Panchayat Act (IV of 1953)—Sections 21, 23 and 97—Power to act under section 97—Whether extends to orders passed in judicial proceedings—Proceedings under sections 21 and 23—Whether judicial—Director of