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Neutral Citation No. - 2023:AHC:236043

Court No. - 93

Case :- APPLICATION U/S 482 No. - 29005 of 2010

Applicant :- Smt.Indra Devi And Others

Opposite Party :- State Of U.P.And Another

Counsel for Applicant :- Deepak Singh Yadav

Counsel for Opposite Party :- Govt. Advocate,Gorakh
Yadav

Hon'ble Manoj Bajaj,J.

1. Applicants (Accused) had filed this application under Section 482 Code of Criminal Procedure for quashing of the Complaint Case No. 144 of 2008; titled *Patharu vs. Radhey Shyam and others*, instituted by opposite party no. 2 for alleged commission of offences punishable under Sections 323, 504, 506, 452, 427 IPC, Police Station Phoolpur, District Azamgarh as well as the summoning order dated 26th November, 2008 passed by the Judicial Magistrate, Azamgarh.

2. Learned counsel for the opposite party no. 2 has raised a preliminary objection relating to the maintainability of the petition, as the previous petition filed by the applicants-accused for the similar relief bearing Criminal Misc. Application No. 857 of 2009; titled *Radhey Shyam and 5 others vs. State of U.P. and another*, was dismissed by this Court on 29th January, 2009. In this regard, he has invited the attention of the Court to the said order appended with the counter affidavit filed by opposite party no. 2.

3. It is submitted by learned counsel for the opposite party no. 2/complainant that the accused have deliberately

concealed their previous unsuccessful attempt before this Court, and again filed the similar petition seeking quashing of the complaint, and vide order dated 17th September, 2010 passed by this Court, further proceedings before the trial court were stayed.

4. At this stage, Sri Deepak Singh Yadav, learned counsel for the applicants fairly states that the applicants had never informed him about the earlier case filed by them through Criminal Misc. Application No. 857 of 2009, therefore, the fact relating to the filing of the earlier petition on behalf of the applicants is not mentioned in the petition. Mr. Yadav, learned counsel further states that he was not the counsel in the previous case, therefore, he too had no knowledge of the order dated 29.1.2009, whereby the petition seeking quashing of subject complaint was dismissed on merits.

5. Upon hearing the learned counsel for the parties and considering the objection raised by the learned counsel for the complainant, it becomes clear that the issues raised in the petition have already been considered by this Court on merits and the claim of the applicants for quashing of the impugned criminal proceedings initiated by opposite party no. 2 through Complaint Case No. 144 of 2008; titled *Patharu vs. Radhey Shyam and others*, has already been dismissed on 29.1.2009.

6. The above background of the case clearly reveals dishonest conduct of the applicants who wilfully and deliberately concealed the filing of Criminal Misc. Application No. 857 of 2009 and the dismissal order dated

29.1.2009, while filing this petition again on the old cause of action.

7. By now, it is well settled law that a litigant who approaches the Court must come with clean hands, and if, the litigant plays mischief with the Court by concealing the material facts which have direct bearing on the case, such a conduct has to be condemned and punished in order to deter the litigants to not to toy with the process of law or the Courts. Further, a careful perusal of case file shows that the title *Radhey Shyam and 5 others vs. State of U.P. and another* contained in previous petition has been changed skillfully with the title *Smt. Indra Devi and 5 others vs. State of U.P. and another*, wherein initially Radhey Shyam was not impleaded as applicant, but subsequently, on 17.9.2010, his name was inserted by way of correction at serial no. 4 in the memo of parties.

8. At this juncture, it will be useful to refer the decision of the Hon'ble Supreme Court in ***Kishore Samrite vs. State of U.P. and other*** reported in ***(2013) 2 Supreme Court Cases 398***, wherein the Hon'ble Supreme Court while dealing with the issue of suppression of material facts by a litigant made the following observations:-

29. Now, we shall deal with the question whether both or any of the petitioners in Civil Writ Petition Nos. 111/2011 and 125/2011 are guilty of suppression of material facts, not approaching the Court with clean hands, and thereby abusing the process of the Court. Before we dwell upon the facts and circumstances of the case in hand, let us refer to some case laws which would help us in dealing with the present situation with greater precision. The cases of abuse of the process of court and such allied matters have been arising before the Courts consistently. This Court has had many occasions where it dealt with

the cases of this kind and it has clearly stated the principles that would govern the obligations of a litigant while approaching the court for redressal of any grievance and the consequences of abuse of the process of court. We may recapitulate and state some of the principles. It is difficult to state such principles exhaustively and with such accuracy that would uniformly apply to a variety of cases. These are:

(i) Courts have, over the centuries, frowned upon litigants who, with intent to deceive and mislead the Courts, initiated proceedings without full disclosure of facts and came to the courts with 'unclean hands'. Courts have held that such litigants are neither entitled to be heard on the merits of the case nor entitled to any relief.

(ii) The people, who approach the Court for relief on an ex parte statement, are under a contract with the court that they would state the whole case fully and fairly to the court and where the litigant has broken such faith, the discretion of the court cannot be exercised in favour of such a litigant.

(iii) The obligation to approach the Court with clean hands is an absolute obligation and has repeatedly been reiterated by this Court.

(iv) Quests for personal gains have become so intense that those involved in litigation do not hesitate to take shelter of falsehood and misrepresent and suppress facts in the court proceedings. Materialism, opportunism and malicious intent have over-shadowed the old ethos of litigative values for small gains.

(v) 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.

(vi) The Court must ensure that its process is not abused and in order to prevent abuse of the process the court, it would be justified even in insisting on furnishing of security and in cases of serious abuse, the Court would be duty bound to impose heavy costs.

(vii) Wherever a public interest is invoked, the Court must examine the petition carefully to ensure that there is genuine public interest involved. The stream

of justice should not be allowed to be polluted by unscrupulous litigants.

(vii) The Court, especially the Supreme Court, has to maintain strictest vigilance over the abuse of the process of court and ordinarily meddlesome bystanders should not be granted “visa”. Many societal pollutants create new problems of unredressed grievances and the Court should endure to take cases where the justice of the lis well-justifies it.

[Refer : *Dalip Singh v. State of U.P. & Ors.* (2010) 2 SCC 114; *Amar Singh v. Union of India & Ors.* (2011) 7 SCC 69 and *State of Uttaranchal v Balwant Singh Chaufal & Ors.* (2010) 3 SCC 402]

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*33. The party not approaching the Court with clean hands would be liable to be non-suited and such party, who has also succeeded in polluting the stream of justice by making patently false statements, cannot claim relief, especially under Article 136 of the Constitution. While approaching the court, a litigant must state correct facts and come with clean hands. Where such statement of facts is based on some information, the source of such information must also be disclosed. Totally misconceived petition amounts to abuse of the process of the court and such a litigant is not required to be dealt with lightly, as a petition containing misleading and inaccurate statement, if filed, to achieve an ulterior purpose amounts to abuse of the process of the court. A litigant is bound to make “full and true disclosure of facts”. (Refer : *Tilokchand H.B. Motichand & Ors. v. Munshi & Anr.* [1969 (1) SCC 110]; *A. Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam & Anr.* [(2012) 6 SCC 430]; *Chandra Shashi v. Anil Kumar Verma* [(1995) SCC 1 421]; *Abhyudya Sanstha v. Union of India & Ors.* [(2011) 6 SCC 145]; *State of Madhya Pradesh v. Narmada Bachao Andolan & Anr.* [(2011) 7 SCC 639]; *Kalyaneshwari v. Union of India & Anr.* [(2011) 3 SCC 287]).*

34. The person seeking equity must do equity. It is not just the clean hands, but also clean mind, clean heart

and clean objective that are the equi-fundamentals of judicious litigation. The legal maxim jure naturae aequum est neminem cum alterius detrimento et injuria fieri locupletiolem, which means that it is a law of nature that one should not be enriched by the loss or injury to another, is the percept for Courts. Wide jurisdiction of the court should not become a source of abuse of the process of law by the disgruntled litigant. Careful exercise is also necessary to ensure that the litigation is genuine, not motivated by extraneous considerations and imposes an obligation upon the litigant to disclose the true facts and approach the court with clean hands.

35. No litigant can play 'hide and seek' with the courts or adopt 'pick and choose'. True facts ought to be disclosed as the Court knows law, but not facts. One, 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 impermissible to a litigant or even as a technique of advocacy. In such cases, the Court is duty bound to discharge rule nisi and such applicant is required to be dealt with for contempt of court for abusing the process of the court. {K.D. Sharma v. Steel Authority of India Ltd. & Ors. [(2008) 12 SCC 481].

36. Another settled canon of administration of justice is that no litigant should be permitted to misuse the judicial process by filing frivolous petitions. No litigant has a right to unlimited drought upon the court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be used as a licence to file misconceived and frivolous petitions. (Buddhi Kota Subbarao (Dr.) v. K. Parasaran, (1996) 5 SCC 530).

9. Thus, the above noticed facts and circumstances of this case clearly establish that the applicants have adopted unfair means to make a repeat attempt to get the relief from this Court, which earlier stood rejected and this conduct of the applicants have delayed the trial of complaint for a long period of approximately 13 years. This

has added insult to the injury of the complaint, who all these years has been contesting this frivolous case, and is still waiting to pursue the trial of the complaint case, therefore, this Court finds it to be a fit case for imposing exemplary costs upon the applicants, in view of the decision in ***Kishore Samrite's case (Supra)***.

10. Resultantly, the application under Section 482 Cr.P.C. is dismissed with a costs of Rs. 1,00,000/- to be paid to the complainant within a period of one month. The Chief Judicial Magistrate, Azamgarh is directed to ensure the recovery of cost and payment to the complainant.

11. Further considering the delay in commencement of the trial, it is ordered that the trial be concluded expeditiously by avoiding unnecessary adjournments, preferably within a period of one year.

Order Date :- 13.12.2023
Brijesh