

Court No. - 10

Case :- CRIMINAL MISC. WRIT PETITION No. - 8646 of 2023

Petitioner :- Shri Pankaj Agarwal

Respondent :- State Of U.P. Thru. Prin. Secy. Home Lko. And Others

Counsel for Petitioner :- Pooja Agarwal, Aakash Srivastava, Manish Kumar Srivastava

Counsel for Respondent :- G.A., Amrendra Nath Tripathi

Hon'ble Mrs. Sangeeta Chandra, J.

Hon'ble Narendra Kumar Johari, J.

1. Heard learned counsel for the petitioner, learned A.G.A. for the State Respondents and Sri Amrendra Nath Tripathi, learned counsel for the opposite party no.4.
2. A short counter affidavit has been filed by learned counsel for the respondent no.4 today, which is taken on record.
3. A supplementary affidavit filed by learned counsel for the petitioner today, which is also taken on record.
4. Learned A.G.A. for the State Respondents have filed a short counter affidavit wherein it has been stated that Section 409 of the I.P.C. has been added and Section 406 of the I.P.C. has been deleted during the course of investigation, which is also taken on record.
5. From the contents of the writ petition, the respondent no. 4 has pointed out from paragraphs no. 4 and 8 of the writ petition, which are quoted herein below:-

"4. That since, 2018, Petitioner has not represented the company namely Brijwasi Bullions And Jewellers Private Limited which was incorporated in 2002 and to deal in gold transactions was one of its business nature. Since then he recused himself from any kind of business of the same nature of transactions on behalf of the above-mentioned company.

*8. That the facts, that the petitioner is no longer representing the company namely **Brijwasi Bullions And Jewellers Private Limited Company** since 2018 and has been running his separate business since then under his proprietorship of the firm **M/S Anandi Jewellers**, are very well-known to Respondent*

No.4."

6. Learned counsel for the respondent no. 4 has pointed out in his short counter affidavit that the petitioner has not come with clean hands. He has referred to paragraphs no. 5 to 8 of the short counter affidavit. He has also stated that the petitioner has deliberately concealed his criminal history, he has already an accused in F.I.R. No. 0233 of 2023 dated 14.10.2023 at Police Station- Chowk, District - Lucknow under Sections 188 and 448 of the I.P.C.

7. The contents of the paragraphs no. 5 to 8 of the short counter affidavit filed by the respondent no.4 are being quoted herein below:-

*"5. That, in Para 4 of the Writ Petition the Petitioner has stated that Petitioner has not represented the Company namely Brijwasi Bullions and Jewellers Private Limited which was incorporated in 2002 and in Para 8 of the Petition he has stated that Petitioner is no longer representing the above named company since 2018. In this regard, it is humbly submitted that the Petitioner has attended the Board meeting on 21.10.2020 and signed the Board Resolution as one of the Directors, which is available on the official website of Registrar of Companies, Kanpur, against the company namely Brijwasi Bullions and Jewellers Private Limited. Copy of the Board Resolution dated 21.10.2020 of the Company Brijwasi Bullions and Jewellers Private Limited, downloaded from the official website of ROC, Kanpur is annexed as **Annexure No.SCA-1;***

*6. That, in furtherance of the aforesaid resolution dated 21.10.2020, the Brijwasi Bullions and Jewellers Private Limited had taken car loan for model "Kia Carnival" from the HDFC Bank Ltd. and the Petitioner had signed the Loan cum Hypothecation Agreement dated 02.11.2020, as director of the said company, which is available on the official website of the Registrar of Companies, Kanpur. Even the hypothecation of car was shown as charge in the master data of the company on the official website of the Registrar of Companies. Copy of the Loan cum Hypothecation Agreement dated 02.11.2020 downloaded from the official website of Registrar of Companies, Kanpur is annexed as **Annexure No. SCA-2;***

*7. That, it is most humbly submitted that the Petitioner has 2,65,750 shares (25% of the total shares 10,65,000) of the Company Brijwasi Bullions and Jewellers Private Limited in his name along with other co-accused Lokesh Kumar Agarwal and Bhuvnesh Kumar Agarwal who also have equal number of shares. It would not be out of place to mention here that the same list has been signed by the petitioner, which is available on the official website of Registrar of Companies, Kanpur, against the company namely Brijwasi Bullions And Jewellers Private Limited. Copy of the List of Shareholders of the Company Brijwasi Bullions and Jewellers Private Limited, downloaded from the official website of ROC, Kanpur is being annexed as **Annexure No.SCA-3;***

8. That, the companies master data of the Company Brijwasi Bullions and Jewellers Private Limited which is available on the official website of the Registrar of Companies, Kanpur, shows that even till today the Petitioner

*is director of the said company since 27.09.2004 and is still continuing as the same, alongwith the other co-accused. Copy of the company master data of the Company Brijwasi Bullions and Jewellers Private Limited downloaded from the official website of the Registrar of Companies, Kanpur is annexed as **Annexure No. SCA-4;**"*

8. Learned counsel for the petitioner says that she has received the short counter affidavit filed by learned counsel for the respondent no. 4 only today and prays for time to file a reply to the same.

9. This Court after going through the annexures to the said short counter affidavit finds no good ground to show interference as the petitioner has clearly resorted to concealment in his representation. This Court cannot exercise its equitable and extraordinary jurisdiction for a litigant who does not come with clean hands.

10. This writ petition stands ***dismissed***.

Order Date :- 23.11.2023

Darpan Sharma