

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.07.2015

DATED : 28.07.2015

CORAM:

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.A.No.957 of 2015

Er.V.Kanakarajan

... Appellant

Vs.

1. Mr.Ramanathan
then Judicial Magistrate,
Alandur, Chennai-600 016.
2. Mrs.Thirumagal,
Then IX Metropolitan Magistrate,
Saidapet, Chennai-600 015.
3. The Superintendent of Police,
Central Bureau of Investigation,
Shastri Bhawan, Chennai-600 006.

... Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent Act, against the order dated 30.04.2015 and made in W.P.SRNo.28426 of 2015 by the learned Judge of this Court.

W.P.SRNo.28426 of 2015 : This Writ Petition SR filed under Article 226 of the Constitution of India, to set aside the aforesaid impugned order passed on 30.04.2015 by learned Hon'ble Judge in W.P.SR.No.28426 of 2015 and to kindly issue a Writ of Mandamus or any other Appropriate Writ or Direction or Order directing the 3rd Respondent to conduct a High Level C.B.I Enquiry and for taking appropriate actions under Sections 193, 196, 420, 465 and 120-B IPC and punish the aforesaid persons involved in the aforesaid frauds committed on the Hon'ble Courts including on this Hon'ble High Court in this Case and this Victim - Petitioner and his family members and pass such further order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of this Case, in the interests of Justice and for upholding the integrity, dignity and majesty of the Hon'ble High Court and for safe-guarding the lives of this petitioner and his family members.

For Appellant : Mr.V.Kanakarajan
Party-in-Person

J U D G M E N T

M.VENUGOPAL, J.

The Appellant has preferred the present intra Court Writ Appeal as against the order dated 30.04.2015 passed by the Learned Single Judge in W.P.SRNo.28426 of 2015.

2.The Learned Single Judge while passing the impugned order on 30.04.2015 in W.P.SRNo.28426 of 2015 in para 3 had observed the following:

"3.The petitioner-in-person has filed the application, resubmitting the papers, without properly answering the queries raised by the Registry. He also demanded that the matter may be placed 'For Maintainability' before this Court. The petitioner-in-person strenuously argued before me that the two Judicial Officers had passed illegal orders in the year 2009 and had accepted surety bonds without testing the genuineness in accordance with Section 441-A of the Code of Criminal Procedure. This Court gave a patient hearing to the petitioner. It is seen that the petitioner/party-in-person is aggrieved with certain judicial orders that were passed by the respondents in the year 2009 and for that, he wants CBI enquiry to be done, which is not tenable. The objections raised by the Registry is upheld. Accordingly, this petition stands dismissed."

and resultantly, dismissed the Petition.

Appellant's Contentions:

3.According to the Appellant/Petitioner (Party-in-Person), the prayer sought for in the Writ Petition was incorrectly and incompletely quoted by the Learned Single Judge while passing the impugned order in W.P.SR.28426 of 2015.

4.The Appellant in person submits that the Registry's return of Petition with regard to maintainability was suitably answered and the relevant papers were re-submitted stating that the Writ Petition filed by him was perfectly maintainable in Law.

5.The Appellant/Party-in-Person contends that the Learned Single Judge while passing the impugned order in W.P.SR.No.28426 of 2015 had not considered the notes of arguments, affidavit and petition and the citations of the Hon'ble Supreme Court and further, ignored the same without proper reasons or justification.

6.The Appellant/Petitioner urges before this Court that the Learned Single Judge had committed an error while making an observation in the impugned order in W.P.SR.No.28426 of 2015 to the effect that "he is challenging the illegal order passed during the year 2009 belatedly in the year 2015".

7.At this stage, it is the plea of the Appellant that he was diligently and continuously challenging the aforesaid three bogus counterfeit bail bonds, six bogus surety affidavits, six fraudulent and bogus surety memos and the illicit acceptance of the aforesaid bogus counterfeit bail bonds, bogus surety affidavits and fraudulent surety memos by the Respondents 1 and 2 on 21.12.2009 and 29.10.2012 respectively.

8.The Appellant projects an argument that the Learned Single Judge while dismissing the W.P.SR.28426 of 2015 had failed to consider the fact that serious fraud, collusion and conspiracy was committed on this Court, himself and on his family members despite several documentary proofs and prima-facie proofs recorded by the lower Court etc.

9.Further, the Appellant takes an emphatic stand that only CBI high level enquiry and its report is only reliable assistance to this Court to render justice because of the fact that Respondents 1 and 2 are powerful and influential.

10.The prime stand of the Appellant is that he argued before the Learned Single Judge about the illegal orders passed in the year 2009 only and not for testing the genuineness of the surety bonds.

11.The Appellant strenuously submits that because of the fraud committed by the Respondents 1 and 2, the accused and his associates had played fraud which were already proved by him with documentary proofs. Also that the Learned Single Judge should have taken Suo Moto proceedings to prosecute the above said persons under Sections 193, 196, 420, 465, 120-B of IPC and punish them in the interests of justice in administration.

12.The Appellant submits that the accused, his so-called two sureties, his Advocates, then Assistant Public Prosecutor, Inspector of Police, Pazhavanthangal Police Station and the then

Judicial Magistrate, Alandur are of very powerful and influential persons involved in the fraud on Court, himself and his family members and as such, an impartial high level enquiry of CBI will only pinpoint the aforesaid frauds etc. In this connection, the plea of the Appellant is that in case of frauds committed on Courts, no technical reasons or excuses such as limitation, other order in collateral proceedings or earlier proceedings should be entertained. Moreover, the basic principle is a party who secured a judgment by fraud should not be able to enjoy the fruits thereof and in support of this proposition, the Appellant cites the decision of the Hon'ble Supreme Court in Hamza Haji V. State of Kerala and another reported in AIR 2006 Supreme Court 3028 and at Special page 3029 wherein it is observed and held as follows:

"The High Court, as a Court of record, has exercised its jurisdiction to set at naught the order of the Forest Tribunal thus procured by the appellant by finding that the same is vitiated by fraud. There cannot be any doubt that the Court in exercise of its jurisdiction under Art. 215 of the Constitution of India has the power to undo a decision that has been obtained by playing a fraud on the Court. When the order secured by appellant is vitiated by fraud, the Supreme Court declined to come to his aid by refusing the exercise of its discretionary jurisdiction under Art. 136.

Thus the plea that the second review was not maintainable, that the Division Bench could not have ignored the earlier orders of the High Court dismissing the appeal at the state of admission and the dismissing of the petition for condonation of delay in filing the first review, are all of no avail to the appellant."

13.The Appellant contends that any order or judgment, if obtained by playing fraud on the Court is a nullity and non-est in the eyes of Law. Further, he has no other equally efficacious remedy other than the Writ of Mandamus in ordering for CBI enquiry and prosecution proceedings against the persons who had indulged in the frauds in question. As such, he prays for allowing the present Writ Appeal by setting aside the impugned order dated 30.04.2015 in W.P.SR.No.28426 of 2015 passed by the Learned Single Judge.

Appellant's Citations:

14.The Appellant in support of the contention that the existence of an alternate adequate remedy is no bar to the exercise of jurisdiction refers to the decision of the Hon'ble Supreme Court

in Himmatlal Harilal Mehta v. State of Madhya Pradesh and others reported in AIR 1954 Supreme Court at page 403 and at special page 404, whereby and where-under it is observed and held as under:

"The contention that because a remedy under the impugned Act is available to the assessee, he is disentitled to relief under Art. 226 stands negatived by the decision in AIR 1953 SC 252 of this Court in the State of Bombay V. The United Motors (India) Ltd. The principle that a Court will not issue a prerogative writ when an adequate alternative remedy was available does not apply where a party has come to the Court with an allegation that his fundamental right had been infringed and sought relief under Art. 226. Moreover, since the remedy provided by the C.P. and Berar Sales Tax Act is of an onerous and burdensome character and before the assessee can avail of it he has to deposit the whole amount of the tax, such a provision can hardly be described as an adequate alternative remedy".

15. He relies on the decision of the Hon'ble Supreme Court in State of Uttar Pradesh V. Mohammad Nooh reported in AIR 1958 Supreme Court at page 86 wherein it is observed as follows:

"There is no rule, with regard to certiorari as there is with mandamus, that it will lie only where there is no other equally effective remedy. Provided the requisite grounds exist, certiorari will lie although a right of appeal has been conferred by statute. The fact that the aggrieved party has another and adequate remedy may be taken into consideration by the superior court in arriving at a conclusion as to whether it should, in exercise of its discretion, issue a writ of certiorari to quash the proceedings and decisions of inferior courts subordinate to it and ordinarily the superior court will decline to interfere until the aggrieved party has exhausted his other statutory remedies, if any. But this rule requiring the exhaustion of statutory remedies before the writ will be granted is a rule of policy, convenience and discretion rather than a rule of law. The superior court will readily issue a certiorari in a case where there has been a denial of natural justice before a court of summary jurisdiction.

If therefore, the existence of other adequate

legal remedies is not per se a bar to the issue of a writ of certiorari and if in a proper case, it may be the duty of the superior court to issue a writ of certiorari to correct the errors of an inferior court or tribunal called upon to exercise judicial or quasi judicial functions and not to relegate the petitioner to other legal remedies available to him and if the superior Court can in a proper case exercise its jurisdiction in favour of a petitioner who has allowed the time to appeal to expire or has not perfected his appeal, e.g., by furnishing security required by the statute, it cannot then be laid down as an inflexible rule of law that the superior court must deny the writ when an inferior court or tribunal by discarding all principles of natural justice and all accepted rules of procedure arrived at a conclusion which shocks the sense of justice and fair play merely because such decision has been upheld by another inferior court or tribunal on appeal or revision".

16.He also cites the following decisions of the Hon'ble Supreme Court:

(i)A.V.Venkateswaran, Collector of Customs, Bombay V. Ramchand Sobhraj Wadhvani and another reported in AIR 1961 Supreme Court 1506 wherein it is observed and held that "a relief may be refused to be granted where alternative remedy is available, is only a rule of discretion and not a rule of Law".

(ii)Tata Engineering and Locomotive Co. Ltd., V. The Assistant Commissioner of Commercial Taxes and another reported in AIR 1967 Supreme Court 1401 wherein in para 8 it is held as follows:

"8.The power and jurisdiction of the High Court under Article 226 of the Constitution has been the subject of exposition from this Court. That it is extraordinary and to be used sparingly goes without saying. In spite of the very wide terms in which this jurisdiction is conferred, the High Courts have rightly recognised certain limitations on this power. The jurisdiction is not appellate and it is obvious that it cannot be a substitute for the ordinary remedies at law. Nor is its exercise desirable if facts have to be found on evidence. The High Court, therefore, leaves the party aggrieved to take recourse to the remedies available under the ordinary law if they

are equally efficacious and declines to assume jurisdiction to enable such remedies to be by-passed. To these there are certain exceptions. One such exception is where action is being taken under an invalid law or arbitrarily without the sanction of law. In such a case, the High Court may interfere to avoid hardship to a party which will be unavoidable if the quick and more efficacious remedy envisaged by Article 226 were not allowed to be invoked. In our judgment the present is an example of the exceptional situation above contemplated just as *Himmat Lal V. State of Madhya Pradesh* [1954 SCR 1122 (AIR 1954 SC 403) was another instance which came before this Court".

(iii) *U.P. Junior Doctors' Action committee V. Dr.B.Sheetal Nandwani and others* reported in AIR 1991 Supreme Court 909 wherein it is held that "a direction was issued to the authorities to hold selection examination as admission on the basis of MBBS results could not stand. Further, a direction was issued for taking appropriate investigation should be done by the Central Bureau of Investigation and persons behind such deep-seated would be brought to book without any delay".

(iv) *ABL International Ltd., and another Vs. Export Credit Guarantee Corporation of India Ltd., and others* reported in 2004 (3) SCC 553 and at special page 555 wherein it is observed and held that "in an appropriate case, the Writ Court has jurisdiction to entertain a writ petition involving disputed questions of fact and there is no absolute bar for entertaining a writ petition even if the same arises out of a contractual obligation and/or involves some disputed questions of facts".

(v) *Union of India and another Vs. S.B.Vohra and others* reported in AIR 2004 Supreme Court 1402 wherein it is observed as follows:

"No standard can be laid down exhaustively as to in what situation a writ of mandamus will issue and in what situation it will not. In other words, exercise of its discretion by the Court will also depend upon the law which governs the field, namely, whether it is a fundamental law or an ordinary law".

(vi) *Hamza Haji Vs. State of Kerala and another* reported in AIR 2006 Supreme Court 3028 and at special page 3029 wherein it is held as under:

"The High Court, as a Court of record, has exercised its jurisdiction to set at naught the order of the Forest Tribunal thus procured by the appellant by finding that the same is vitiated by fraud. There cannot be any doubt that the Court in exercise of its jurisdiction under Article 215 of the Constitution of India has the power to undo a decision that has been obtained by playing a fraud on the Court. When the order secured by appellant is vitiated by fraud, the Supreme Court declined to come to his aid by refusing the exercise of its discretionary jurisdiction under Article 136".

(vii) Mansukhlal Vithaldas Chauhan V. State of Gujarat reported in AIR 1997 Supreme Court at page 3400 and at special page 3401 where it is observed as follows:

"Mandamus which is a discretionary remedy under Article 226 of the Constitution is requested to be issued, inter alia, to compel performance of public duties which may be administrative, ministerial or statutory in nature. Statutory duty may be either directory or mandatory. Statutory duties, if they are intended to be mandatory in character, are indicated by the use of the words "shall" or "must". But this is not conclusive as "shall" and "must" have; sometimes, been interpreted as "may". What is determinative of the nature of duty, whether it is obligatory, mandatory or directory, is the scheme of the Statute in which the "duty" has not been set out. Even if the "Duty" is not set out clearly and specifically in the Statute, it may be implied as correlative to a "Right". In the performance of this duty, if the authority in whom the discretion is vested under the Statute, does not act independently and passes an order under the instructions and orders of another authority, the Court would intervene in the matter, quash the order and issue a mandamus to that authority to exercise its own discretion".

17. It is the stand of the Appellant that he is the De-Facto complainant in Cr.Nos.68/2004, 1549/2005 and 1538 of 2005 registered by the Inspector of Police, S9, Pazhavanthangal Police Station, Nanganallur, Chennai-61 against the accused who had committed the offences punishable under Sections 420, 448 and 506 (ii) of IPC in Cr.No.68 of 2004 registered on 12.04.2004. Further, the accused had also committed offences punishable under Sections

323, 294(b), 427 and 506(i) of IPC in Cr.No.1549 of 2005 registered on 07.12.2005. Further, the accused had committed offences under Section 384 and 387 of IPC in Cr.No.1583 of 2005 registered on 16.12.2005.

18.The further plea of the Appellant is that the accused Natarajan is one of his five children who was disowned by him and his wife and all members of his family before 32 years for his extremely ferocious, terrorising dubious activities etc. Also, the said son is bent upon murdering him, his family members and looting away by burglary all his properties and his family members. Moreover, it is represented by the Appellant that the said accused is an habitual offender etc., which can be seen from the Court Records.

19.In regard to the W.P.SRNo.28426 of 2015 filed by the Appellant/Petitioner seeking for an issuance of direction to the Third Respondent therein to conduct high level CBI enquiry and to take action and to prosecute under Sections 193, 196, 420, 465 and 120-B of IPC and punish the persons concerned, involved in the frauds, committed on the Courts including this Court and himself. The Registry had raised the under mentioned queries:

"1.It may be stated as to how this writ petition is maintainable under Article 226 of the Constitution of India seeking action against the issues and findings of the Court proceedings through CBI enquiry when there is remedy available through Appellate Forum.

2.Cause title and prayer need revision."

For the queries aforesaid raised by the Registry, the Appellant/Petitioner had furnished reply by referring the citations and also stating that the Writ Petition is maintainable.

20.The real grievance of the Appellant is that "Respondents 1 and 2/Judicial Officers had passed an erroneous order during the year 2009 which is against the ingredients of the Code of Criminal Procedure". It appears that the Appellant/Petitioner is dissatisfied with the Judicial Orders passed by the Respondents 1 and 2 during the year 2009. Further, his case is that no bail or acceptance of bail bonds, surety bonds and surety memos ought to be granted to habitual absconder, habitual offender and habitual cheat (his son accused) having no valid address etc.

21.Furthermore, it is the Appellant's plea that when the accused had misused the bail on two occasions and made four murder attempts including two murder attempts made on him etc., and in such circumstances, filing of the present Writ Petition by him seeking CBI enquiry is perfectly maintainable.

22.It is pointed out that Section 441 of the Criminal Procedure Code speaks of 'Bond of accused and sureties'. Indeed, the ingredients of Section 441 lays down the nature and contents of the bail bonds to be executed by the accused before a person is released on bail. Really speaking, the provisions of Section 441 of the Criminal Procedure Code are imperative in character and ought to be strictly followed. As a matter of fact, the contract of the surety and the contract of the person released on bail are independent to each other. Added further, Section 443 of the Code of Criminal Procedure deals with the power of Court to order sufficient bail when that first taken is insufficient. In fact, the word 'otherwise' must be interpreted ejusdem generis as per decision in Leela Daulatram Uttamchandani V. Assistant Collector of Customs, [1986 (1) Crimes 683, 686 (Bom)].

23.It cannot be forgotten that Courts exist to administer law as well as justice in conformity with law. It cannot be gainsaid that a 'Bail Bond' in a criminal case is penal in nature and has to be strictly construed. Section 442 of the Criminal Procedure Code refers to 'Discharge from custody'. Section 443 of the Criminal Procedure Code speaks of 'Power of Court to order sufficient bail when that first taken is sufficient'. Section 444 of the Criminal Procedure Code speaks of 'Discharge of sureties'. Section 446 of the Criminal Procedure Code enjoins 'Procedure when bond has been forfeited'.

24.It is needless for this Court to point out that the provisions of Section 444 of the Criminal Procedure Code shall apply to all bonds taken under the Code whether executed by principals, sureties or witnesses. The object of taking sureties is for the purpose of to ensuring of availability of the accused before the Court by the surety whenever the dates of trial are fixed. As such, it is his look out as he has solemnly undertaken before the Court to keep the accused present. If the undertaking is violated, the law itself provides for taking stringent action against the surety as if he is instrumental in allowing the accused to abscond. Further, the surety shall be liable for the appearance of the accused in the Court not only on one hearing but on all subsequent hearings fixed by the Court. In fact, a surety exposes himself to the penalty of forfeiture for non appearance of the accused. Further before visiting him with such a penalty, a surety must be provided with an opportunity of hearing. But a haste in ordering forfeiture is not required. After all, a Court of Law is to find out if there was any sufficient cause for non appearance of accused or non production of accused by a surety on a given date. It is to be remembered that after cancellation of bail, it is not legally permissible to proceed under Section 446 of the Criminal Procedure Code against the surety.

25.In this connection, this Court relevantly points out as per Section 449 of the Criminal Procedure Code that all orders passed under Section 446 of the Criminal Procedure Code shall be appealable, (i) in the case of an order made by a Magistrate, to the Sessions Judge; and (ii) in the case of an order made by a Court of Session, to the Court to which an appeal lies from an order made by such Court.

26.Be that as it may, on a careful consideration of contentions advanced on behalf of the Appellant/Petitioner, this Court comes to an irresistible and inevitable conclusion that the Appellant/Petitioner as an aggrieved person in law has an effective, efficacious and alternative remedy of approaching the Competent Appellate Forum in the manner known to law and in accordance with law as against the order passed by the Respondents 1 and 2 during the year 2009 and their acceptance of surety bonds etc., viewed in that perspective, filing of the Writ Petition by the Appellant in W.P.SR.No.28426 of 2015 is legally per se not maintainable in the eye of Law. Therefore, the view taken by the Learned Single Judge in dismissing the W.P.SR.No.28426 of 2015, thereby upholding the objections of Registry is flawless. Consequently, the Writ Appeal fails.

27.In the result, the Writ Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

DP
To

1. Mr.Ramanathan
then Judicial Magistrate,
Alandur, Chennai-600 016.
2. Mrs.Thirumagal,
Then IX Metropolitan Magistrate,
Saidapet, Chennai-600 015.
3. The Superintendent of Police,
Central Bureau of Investigation,
Shastri Bhawan, Chennai-600 006.

+3cc's to Mr.V.Kanakarajan, Party-in-Person, S.R.No.38323

W.A.No.957 of 2015

PUR(CO)CA(11/08/2015)