

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 05th April, 2021

IN THE MATTER OF:

+ **CRL.M.C. 314/2015**

SOMBIR DAGAR & ORS

..... Petitioners

Through None

versus

THE STATE (GOVT OF NCT OF DELHI) & ANR..... Respondents

Through Ms. Meenakshi Chauhan, APP for the State.

Mr. Vipul Goel, Advocate for respondent No.2/Applicant.

AND

+ **CRL.M.C. 315/2015**

SOMBIR DAGAR

..... Petitioner

Through None

versus

THE STATE (GOVT OF NCT OF DELHI) & ANR..... Respondents

Through Ms. Meenakshi Chauhan, APP for the State.

Mr. Vipul Goel, Advocate for respondent No.2/Applicant.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

CRL.M.A.705/2021 (by respondent No.2) in CRL.M.C. 314/2015

CRL.M.A.678/2021 (by respondent No.2) in CRL.M.C. 315/2015

1. These applications have been filed for recalling of order dated

28.01.2015 passed in CRL.M.C. 314/2015 and CRL.M.C 315/2015.

2. CRL.M.C. 314/2015 is directed against F.I.R. No. 412/14 registered at Police Station Vasant Vihar, New Delhi for offences under Sections 498A/406/34 IPC.

3. CRL.M.C. 315 is directed against F.I.R. No. 601/14 registered at Police Station Saket, New Delhi for offences under Sections 323/328/506 IPC.

4. These petitions arise out of the matrimonial disputes between the petitioner No.1 and the respondent No.2. The marriage of the petitioner No.1 and the respondent No. 2 was solemnized according to Hindu Rites Customs and ceremonies at Katwaria Sarai, New Delhi on 30.04.2012 and a child was born on 23.09.2013. Disputes arose between the parties and F.I.R. No. 412/14 was registered at Police Station Vasant Vihar, New Delhi for offences under Sections 498A, 406, 34 IPC. Matter was referred to mediation and a settlement was arrived at between the parties. Both the parties amicably resolved their mis-understandings and decided to live together again as husband and wife. Noticing that the petitioner and the respondent are happily residing together since 27.08.2014, this Court by an order dated 28.01.2015, on the basis of the mediation settlement and after noticing the fact that the petitioners are living together, quashed the two FIRs i.e. FIR No.412/2014, under Sections 498-A/406/34 of IPC registered at Police station Vasant Vihar, Delhi [in CRL.M.C.314/2015] and FIR No.601/2014 under Sections 323/328/506 of IPC registered at P.S. Saket, New Delhi [in CRL.M.C.315/2015]. It was noted in the said order that if the marriage of respondent No.2 with petitioner-husband again runs into rough weather, then this order will not stand in her way to have recourse to law.

5. The instant applications have been filed for recalling the order dated 28.01.2015 in **CRL.M.C.314/2015** and in **CRL.M.C.315/2015** on the ground that after the compromise the applicant has been treated with utmost cruelty and the order dated 28.01.2015 has been obtained by the petitioners by giving false assurances to the Court.

6. It is stated in the present application that after the FIRs were quashed second child was born and soon after the delivery of second child, the applicant/respondent No. 2 was humiliated and was severely beaten up by the petitioners. Respondent No. 2 was given a severe beating on 01.10.2015 and was thrown out from her matrimonial house, MLC was conducted, FIR No. 0017/ 2016 dated 01.03.2016 under Sections 506 IPC at P.S. South Campus was registered on the complaint of the respondent No.2. The applicant/respondent No. 2 stayed for two years in her parental house as she had been thrown out of her matrimonial house by the petitioners. It is stated that with the intervention of Mediation Cell, Patiala House Courts the applicant/respondent No. 2 went back to her matrimonial house in the year 2017. The applicant/respondent No. 2 has filed a case under Protection of Women from Domestic Violence Act, 2005. A petition for maintenance was also filed by respondent No.2 against the petitioner. With the intervention of the family members, the applicant/respondent No. 2 was once again forced to compromise with the petitioner and the applicant/respondent No. 2 had to withdraw her complaints. It is stated that on 30.08.2019, the petitioner gave a severe beating to the respondent No.2. On 19.11.2019, petitioner No.1, petitioner No. 2 (father- in-law of the respondent No. 2), and petitioner No.3 Smt. Shakuntala started beating the applicant/respondent No. 2 mercilessly. MLC was conducted and FIR No.0671/2019 dated 19.11.2019 under

Sections 323/ 506 IPC was lodged at P.S. Sonipat City. The petitioner No. 1 was arrested on 19.11.2019. Thereafter, petitioner No.3 and petitioner No.2 along with the petitioner's brother-in-laws namely Sh Jagbir and Sh. Tarun Thakran forced the parents of the applicant/respondent No.2 to compromise once again in order to get bail for the petitioner. It is stated that on 29.02.2020, the applicant/respondent No. 2 was once again beaten up by petitioner Nos.1 to 3. The applicant/respondent No.2 filed a police complaint at Police Chowki Court Complex, Sonipat. On 29.02.2020, petitioner No.1 was enlarged on bail, petitioner Nos.2 & 3 forced the applicant/respondent No.2 once again to compromise and live with the petitioner. As per the compromise, it was agreed that the applicant/respondent No.2 alongwith the petitioner No.1 and children would stay on the first Floor. It is stated that on 01.03.2020, the petitioners and other in-laws alongwith some other persons abused and molested the applicant/respondent No.2 , tore her clothes in front of her children. It is stated that on 04.03,2020, the applicant/respondent No.2 along with her children had come to her maternal house in Delhi for vacation. The petitioner No.3 filed a false police complaint bearing No.1046P1 dated 06.03.2020, against the applicant/respondent No.2 and her parents at Crime Against Women Cell as petitioner No.2 is a Sub-Inspector posted at Sonipat, Haryana. The complaint was closed as all the allegations were found to be false. It is stated that on 11.03.2020, when the applicant/respondent No.2 went back home at Sonipat, she found that the petitioner No.3 had changed the locks and the applicant/respondent No.2 had to return back to Delhi as she was not permitted to enter her residence. It is stated that on 16.03.2020, in the bail proceedings, the applicant/respondent No.2 was informed by the learned Chief Judicial

Magistrate, Sonipat that in CRM-M-54815/2019, which is pending before the High Court of Punjab & Haryana, the High Court had directed the Trial Court to state whether the petitioner had filed a compromise deed for quashing of FIR No.0671/2019 dated 19.11.2019, under Sections 323/506 IPC registered at Police Station Sonipat City and whether the applicant/respondent No.2 has voluntarily signed on the quashing as well as compromise Deed. The applicant found that the petitioner had without the consent of the applicant filed an application for quashing of FIR No.0671/2019 dated 19.11.2019, under Sections 323/ 506 IPC registered at Police Station Sonipat City before High Court of Punjab and Haryana. The applicant/respondent No.2 informed the Chief Judicial Magistrate, Sonipat that the petitioner had forcefully made her to write certain lines on a paper, and made her sign on 4-5 blank papers, which is now being misused before the High Court of Punjab & Haryana. It is stated that the applicant/respondent No.2 came to know that one Ms. Surabhi Kaushik, Advocate had appeared and accepted notices on behalf of the applicant/respondent No.2 in the High Court of Punjab & Haryana. It is stated that the applicant/respondent No.2 has never authorized anyone to appear on behalf of her before the High Court of Punjab & Haryana. She was not even aware of the quashing petition filed by the petitioner No.1. It is stated that the petitioner and his father are constantly threatening the applicant. It is stated that on 02.06.2020, at around 06.30 P:M. six police officials from Women Cell, Sonipat City came to the applicant/respondent No.2's house and forcefully took the applicant/respondent No.2 into custody and gave the custody of two minor children, who are aged 6.5 years and 5 years respectively, to the petitioner No.1. It is stated that at around 10:00

PM, the applicant/respondent No. 2 was asked to leave the Women Cell on her own. It is stated that when the applicant/respondent No.2 refused to leave, the police officials arrested her and an FIR being FIR No.310/2020 was lodged against her at Police Station Sonipat City. On 03.06.2020, the applicant/respondent No.2 was enlarged on bail and all her jewellery and cash has been taken over by the petitioner. The applicant/respondent No.2's father emailed a complaint to the Hon'ble the Chief Justice of High Court of Punjab & Haryana on which a *suo motu* cognizance has been taken by the High Court of Punjab & Haryana and a writ of Habeas Corpus was registered vide CRWP-3813/2020.

7. In these circumstances, the applicant has filed the present applications on the ground that the order dated 28.01.2015 was obtained on false statements.

8. Mr. Vipul Goel, learned counsel for the applicant states that the applicant/respondent No.2 has been taken for ride. He would state that since the FIRs were quashed, the respondent No.2 has been beaten, humiliated and thrown out of her house. He would state that the petitioners have committed a fraud on the respondent No.2 and this Court by stating that all the disputes have been resolved. It is argued that the sole purpose of compromise was to get the FIRs quashed. The short question which arises for consideration is whether the application is maintainable in view of the bar under Section 362 Cr.P.C. Section 362 Cr.P.C reads as under:

“362. Court not to alter judgement. Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or

arithmetical error.”

9. Learned counsel for the applicant places reliance on Sanjeev Kapoor v. Chandana Kapoor, (2020) 13 SCC 172, wherein the Supreme Court while dealing with cases arising out of complaints made under Section 125 Cr.P.C observed as under:

“19. The legislative scheme as delineated by Section 369 of the Code of Criminal Procedure, 1898, as well as legislative scheme as delineated by Section 362 of the Code of Criminal Procedure, 1973 is one and the same. The embargo put on the criminal court to alter or review its judgment is with a purpose and object. The judgments of this Court as noted above, summarised the law to the effect that criminal justice delivery system does not clothe criminal court with power to alter or review the judgment or final order disposing of the case except to correct the clerical or arithmetical error. After the judgment delivered by a criminal court or passing of the final order disposing of the case the court becomes functus officio and any mistake or glaring omission is left to be corrected only by appropriate forum in accordance with law.

22. We need to first examine as to whether the orders passed in the present case are covered by the exception i.e. “save as otherwise provided by the Code”. Section 362 CrPC, thus, although put an embargo on the criminal court to alter or review its judgment or final order disposing of the case but engrafted the exceptions as indicated therein. The legislature was aware that there are and may be the situations where altering or reviewing of criminal court judgment is contemplated in the Code itself or any other law for the time being in force. We since in the present case are concerned only with Section 125 CrPC, we need to examine as to whether Section 125 CrPC in any

manner relaxed the rigour of Section 362 CrPC.

23. Before we proceed to look into the legislative scheme of Section 125 CrPC, we need to notice few rules of interpretation of statutes when the court is concerned with the interpretation of a social justice legislation. Section 125 CrPC is a social justice legislation which orders for maintenance for wives, children and parents. Maintenance of wives, children and parents is a continuous obligation enforced.....”

10. Learned counsel for the applicant also places reliance on a decision of single Judge of Madras High Court in **CRL.O.P. No.6231/2018, CRL.O.P. No.6232/2018 & CRL.O.P. No.6322/2018** titled as G. Sakthi Saravanan v. S. Arun wherein the Madras High Court while dealing with the powers of Section 362 Cr.P.C observed as under:

“28. Crime against the State and general public should be viewed differently from the crime against the individual. In this case, due to suppression of facts by the parties concerned, this Court has been misled to quash the criminal proceedings vide its order dated 01.03.2018. Therefore, this Court recalls the order passed in Crl.O.P. Nos. 6231, 6232 and 6322 of 2015 as void and non est in the eye of law.”

11. Learned counsel for the applicant also places reliance on the judgment of Kerala High Court in Sudheer Kumar @ Sudheer v. Manakkandi M.K. Kunhiraman & Anr., **2007 SCC OnLine Ker 147.**

12. The learned counsel for the applicant also relies on the judgment of Supreme Court in S. Ramesh & Ors. v. State Rep. by Inspector of Police & Ors., **CRIMINAL APPEAL No.585/2019**, wherein the Supreme Court upheld the order of the High Court exercising its power under Section 482

Cr.P.C in reopening the final judgments.

13. The present application has been filed on the basis of events which have transpired subsequent to the orders dated 28.01.2015. The judgment of the Supreme Court in Sanjeev Kapoor v. Chandana Kapoor (supra) does not apply to the facts of this case. That case arose in matrimonial proceedings arising under Section 125 Cr.P.C. An order under Section 125 Cr.P.C is not hit by Section 362 Cr.P.C for the reason that an order under Section 125 Cr.P.C fixing maintenance can be varied. The Supreme Court entertained the application on the ground that an order under Section 125 Cr.P.C is not a final order and that the Court after passing of the judgment or the final order in a proceeding under Section 125 Cr.P.C does not become *functus officio*. There is no discussion on Section 362 CrPC in S. Ramesh & Ors. v. State(supra) and cannot be relied on by the applicant.

14. A reading of Section 362 CrPC shows that it bars a Court from altering a judgment or final order except to correct a clerical or arithmetical error. Section 362 Cr.P.C itself provides the circumstances where petitions for review of orders which have attained finality can be entertained. Section 362 Cr.P.C begins with the words “*Save as otherwise provided by this Code or by any other law for the time being in force*”. The above expression shows that the rigor contained in Section 362 Cr.P.C can be relaxed only

- i. when it is provided by the Code itself;
- or
- ii. permitted by any other law for the time in force
- or
- iii. There is a clerical or arithmetical error

15. While dealing with the practice of entertaining miscellaneous petitions in criminal cases after disposal of main petition by the High Court while exercising jurisdiction under Section 226/227 or Section 482 Cr.P.C the Supreme Court in Nazma v. Javed, (2013) 1 SCC 376, observed as under:

“11. The practice of entertaining miscellaneous applications in disposed of writ petitions was deprecated by this Court in Hari Singh Mann [(2001) 1 SCC 169 : 2001 SCC (Cri) 113] . Reference to the following paragraph of that judgment is apposite: (SCC p. 173, para 8)

“8. We have noted with disgust that the impugned orders were passed completely ignoring the basic principles of criminal law. No review of an order is contemplated under the Code of Criminal Procedure. After the disposal of the main petition on 7-1-1999, there was no lis pending in the High Court wherein the respondent could have filed any miscellaneous petition. The filing of a miscellaneous petition not referable to any provision of the Code of Criminal Procedure or the rules of the court, cannot be resorted to as a substitute of fresh litigation. The record of the proceedings produced before us shows that directions in the case filed by the respondents were issued apparently without notice to any of the respondents in the petition. Merely because Respondent 1 was an advocate, did not justify the issuance of directions at his request without notice of the other side. The impugned orders dated 30-4-1999 and 21-7-1999 could not have been passed by the High Court under its inherent power under Section 482 of the Code of Criminal Procedure. The practice of filing miscellaneous

petitions after the disposal of the main case and issuance of fresh directions in such miscellaneous petitions by the High Court are unwarranted, not referable to any statutory provision and in substance the abuse of the process of the court.”

We are sorry to note that in spite of the clear pronouncement of law by this Court, still, the High Courts are passing similar orders, which practice has to be deprecated in the strongest terms. Of late, we notice that the High Courts are entertaining writ petitions under Articles 226 and 227 of the Constitution, so also under Section 482 CrPC and passing and interfering with various orders granting or rejecting request for bail, which is the function of ordinary criminal court. The jurisdiction vested on the High Court under Articles 226 and 227 of the Constitution as well as Section 482 CrPC are all exceptional in nature and to be used in most exceptional cases. The jurisdiction under Section 439 CrPC is also discretionary and it is required to be exercised with great care and caution.”

(emphasis supplied)

Even though the said judgment was pronounced while dealing with bail applications but the principle that was applied was regarding the power of the High Court to review its decisions and pass orders on matters which had attained finality.

16. In Sooraj Devi v. Pyare Lal, (1981) 1 SCC 500, the Supreme Court observed as under:

“5. The appellant points out that he invoked the inherent power of the High Court saved by Section 482 of the Code and that notwithstanding the prohibition imposed by Section 362 the High Court

had power to grant relief. Now it is well settled that the inherent power of the court cannot be exercised for doing that which is specifically prohibited by the Code (Sankatha Singh v. State of U.P. [AIR 1962 SC 1208 : 1962 Supp 2 SCR 817 : (1962) 2 Cri LJ 288]). It is true that the prohibition in Section 362 against the court altering or reviewing its judgment is subject to what is “otherwise provided by this Court or by any other law for the time being in force”. Those words, however, refer to those provisions only where the court has been expressly authorised by the Code or other law to alter or review its judgment. The inherent power of the court is not contemplated by the saving provision contained in Section 362 and, therefore, the attempt to invoke that power can be of no avail.” (emphasis supplied)

17. The Supreme Court in Simrikhia v. Dolley Mukherjee, (1990) 2 SCC 437, has observed as under:

“3. The learned counsel for the appellant contended before us that the second application under Section 482 CrPC was not entertainable, the exercise of power under Section 482, on a second application by the same party on the same ground virtually amounts to the review of the earlier order and is contrary to the spirit of Section 362 of the CrPC and the High Court was, therefore, clearly in error in having quashed the proceedings by adopting that course. We find considerable force in the contention of the learned counsel. The inherent power under Section 482 is intended to prevent the abuse of the process of the court and to secure ends of justice. Such power cannot be exercised to do something which is expressly barred under the Code. If any consideration of the facts by way of review is not permissible under the Code and is expressly barred, it is not for the court to exercise its inherent power to reconsider the matter and record a

conflicting decision. If there had been change in the circumstances of the case, it would be in order for the High Court to exercise its inherent powers in the prevailing circumstances and pass appropriate orders to secure the ends of justice or to prevent the abuse of the process of the court. Where there is no such changed circumstances and the decision has to be arrived at on the facts that existed as on the date of the earlier order, the exercise of the power to reconsider the same materials to arrive at different conclusion is in effect a review, which is expressly barred under Section 362.

xxxxx

5. Section 362 of the Code expressly provides that no court when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error save as otherwise provided by the Code. Section 482 enables the High Court to make such order as may be necessary 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. The inherent powers, however, as much are controlled by principle and precedent as are its express powers by statute. If a matter is covered by an express letter of law, the court cannot give a go-by to the statutory provisions and instead evolve a new provision in the garb of inherent jurisdiction.

xxxxx

7. The inherent jurisdiction of the High Court cannot be invoked to override bar of review under Section 362. It is clearly stated in Sooraj Devi v. Pyare Lal [(1981) 1 SCC 500 : 1981 SCC (Cri) 188] , that the inherent power of the court cannot be exercised for doing that which is specifically prohibited by the Code. The law is therefore clear that the inherent power cannot be exercised for doing that which cannot be done on account of the bar under other

provisions of the Code. The court is not empowered to review its own decision under the purported exercise of inherent power. We find that the impugned order in this case is in effect one reviewing the earlier order on a reconsideration of the same materials. The High Court has grievously erred in doing so. Even on merits, we do not find any compelling reasons to quash the proceedings at that stage. ”

(emphasis supplied)

18. The purpose of Section 362 Cr.P.C is that once a Court delivers the judgment that Court becomes *functus officio* and thereafter it cannot reconsider or modify the judgment (refer Sunil Kumar v. State of Haryana, (2012) 5 SCC 398).

19. By an order dated 28.01.2015, this Court had quashed the FIRs on the basis of a compromise. This Court had noted in the order that if the marriage of respondent No.2 with petitioner/husband again runs into rough weather, then the respondent No.2 herein can take appropriate recourse against him. A perusal of the facts narrated above would show that the applicant has taken appropriate steps and there are proceedings between the parties. The contention of the applicant that the compromise was only a ruse to get the proceedings quashed cannot be examined by this Court at this juncture. The instant proceedings arises out of matrimonial disputes. It is the word of the applicant against the word of the petitioner. No doubt the bar under Section 362 Cr.P.C cannot be used by a party if it has played fraud on the Court by producing false documents or when it has suppressed material facts which if had been disclosed, the Court would never have used its power under Section 482 Cr.P.C to quash the proceedings on the basis of a compromise. The present case does not fall in any of the exceptions given in Section 362

Cr.P.C. The fact that the applicant is alleging that she has been subjected to cruelty post compromise has to be proved in the proceedings initiated by her.

20. The judgment of the Madras High Court in G.Sakthi Saravanan (supra) will also not apply to the facts of this case because the High Court in that case found that there was suppression of facts because of which the High Court was misled in quashing the criminal proceedings. In the present case, the allegations are that pursuant to the order dated 28.01.2015 the applicant has been treated with cruelty. The judgment of the Kerala High Court in Sudheer Kumar (supra) would also not apply to the present case. In that case the question which arose was whether an offence under Section 138 of the Negotiable Instruments Act can be compounded after the confirmation of the conviction passed by the Magistrate Court, by the appellate court and High Court in revision? Whether an order passed by the High Court in the criminal revision petition confirming the conviction can be nullified by the High Court in a petition filed under Section 482 of Cr.P.C. noticing subsequent compromise of the case by the contesting parties?

21. A perusal of the application would show that it is yet to be established as to whether cruelty has been committed by the petitioners against the respondent No.2. It cannot be said that the petitioner has misled the Court or suppressed facts when both the parties came before the High Court and pleaded that they have settled all their disputes and the proceedings against the petitioner be quashed. As stated above the present proceedings are pending between both the sides. This application cannot be used to short-circuit other proceedings which are subsisting between the parties. In view

of the bar under Section 362 Cr.P.C the applications are not maintainable and are accordingly dismissed.

SUBRAMONIUM PRASAD, J.

APRIL 05, 2021

Rahul

