

THE HON'BLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION No.1623 of 2016

ORDER:

The writ petition is posted under the caption 'For being mentioned' as it came to light that the petitioner had earlier filed Transfer Criminal Petition Nos.264 and 265 of 2014 before this Court under Section

407 Cr.P.C. in relation to the same cause of action.

The prayer of the petitioner/party-in-person in Transfer Criminal Petition No.264 of 2014 was as under:

“For the reasons stated in the accompanying Affidavit, it is prayed that this Hon'ble Court may be pleased to withdraw in CCNo 290/2010 now pending on the file of Additional JFCM Court, Miryalaguda, Nalgonda District and to committal the case to Court of Sessions for the trail and try with CCNo 364/2009 same is pending before the Additional JFCM Court, Miryalguda as for the Case Law of (2001) 2 SCC 688 in the interest of justice and to pass such other order or orders this Hon'ble Court deems fit and proper in the circumstances of the case.”

His prayer in Transfer Criminal Petition No.265 of 2014 was as under:

“For the reasons stated in the accompanying Affidavit, it is prayed that this Hon'ble Court may be pleased to withdraw in CCNo 364/2009 now pending on the file of Additional JFCM Court, Miryalaguda, Nalgonda District and to committal the case to Court of Sessions for the trail as for the Case Law of (2001) 2 SCC 688 in the interest of justice and to pass such other order or orders this Hon'ble Court deems fit and proper in the circumstances of the case.”

The prayer of the petitioner in the present writ petition was as under:

“For the reasons stated in the accompanying affidavit, it is prayed that this Hon'ble Court may be pleased to issue an appropriate Writ, Order or direction, more particularly one in the nature of Writ of Mandamus to declare the action of the 3rd Respondent is illegal, arbitrary for not clubbing the trial of CC

No 290 of 2010 along with CC No 364 of 2009 and also violates the Order passed by the Apex Court in (2001) 2 SCC 688 and Consequently direct the 3rd Respondent to club the CC No 290 of 2010 along with CC No 364 of 2009 and pass such other order or orders this Hon'ble Court deems fit and proper in the circumstances of the case."

Significantly, the petitioner did not choose to mention in the affidavit filed in support of the writ petition that he had earlier filed Transfer Crl.P.Nos.264 and 265 of 2014 in relation to the very same calendar cases which are the subject matter of this writ petition. Being unaware of this willful suppression of facts by the petitioner, this Court allowed the writ petition on 10.02.2016 directing the learned Additional Judicial First Class Magistrate, Miryalguda, to abide by the law laid down by the Supreme Court in **SUDHIR v. STATE OF M.P.**^[1] and club C.C.Nos.290 of 2010 and 364 of 2009 pending on the file of the said Court and render judgment in both the cases on the same day.

The afore-stated facts clearly demonstrate that the petitioner, having earlier approached this Court on the criminal jurisdiction side for the purpose of the clubbing of both the cases, failed to secure any order and willfully suppressing the factum of his having filed those cases, he filed the present writ petition. This willful suppression amounts to clear abuse of the process of this Court and disentitles the petitioner from seeking relief in the light of the law laid down by the Supreme Court in **K.D. SHARMA v. STEEL AUTHORITIES OF INDIA LTD.**^[2] and such abuse of process requires to be condemned in no uncertain terms.

The petitioner/party-in-person seeks to rely upon the observations of the Supreme Court in **MANI SUBRAT JAIN v. STATE OF HARYANA**^[3] in relation to his legal right to seek a Mandamus. This legal right is not in dispute. However, a litigant who approaches this Court for relief is expected to do so with clean hands. Willful suppression of facts by a litigant is a factor which would disentitle him

to relief despite having a legal right to maintain the case. The petitioner/party-in-person in the present case clearly abused the process of this Court by filing the present writ petition without disclosing his earlier attempts on the criminal jurisdiction side.

The order dated 10.02.2016 passed by this Court allowing the writ petition is accordingly recalled and the writ petition is dismissed. However, as the petitioner appears as a party-in-person, this Court does not deem it proper to impose costs though such imposition is warranted on facts.

Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

JUSTICE SANJAY KUMAR

23rd February, 2016

Note:-

Office is directed to communicate a copy of this order forthwith to the learned Additional Judicial First Class Magistrate, Miryalguda.

B/o

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[\[1\]](#) (2001) 2 SCC 688

[\[2\]](#) (2008) 12 SCC 481

[\[3\]](#) AIR 1977 SC 276