

Civil Revision No. 8195 of 2015

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In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No. 8195 of 2015

Date of Decision: 11.11.2016

Ran Singh

---Petitioner

vs.

Umrao

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Shiv Kumar Goyal, Advocate
for the petitioner
Mr. G.S. Gandhi, Advocate
for Ms. Manjari Nehru, Advocate
for the respondent

Rekha Mittal, J.

The present petition directs challenge against order dated 11.8.2015 (Annexure P-11) passed by the Additional District Judge, Narnaul whereby application filed by the petitioner for recalling statement of the appellant, order dated 12.8.2016 and restoration of civil appeal titled "Ran

Singh vs. Umrao” decided on 12.8.2010, has been dismissed.

Counsel for the petitioner has submitted that Ran Singh petitioner filed a suit for specific performance of an agreement to sell executed between the petitioner and Umrao in respect of land measuring 3 kanals 1 marla. Umrao defendant was sued through his power of attorney Sh. Bhagwan Dass son of Shimbhu Dayal. The suit was dismissed by the trial court vide judgment and decree dated 1.12.2006. The petitioner preferred an appeal before the Court of District Judge, Narnaul that came to be dismissed as withdrawn on 12.8.2010 on the basis of statement of the petitioner (Annexure P-3) in view of compromise between the parties.

Sh. Bhagwan Dass, attorney of Umrao filed a complaint under Section 156(3) of the Criminal Procedure Code (in short “Cr.P.C.”) for registration of case in regard to the same agreement to sell propounded by the petitioner. FIR No. 123 dated 27.4.1993 for offence punishable under Sections 420, 466, 467, 468, 471, 474 and 120-B of the Indian Penal Code was registered in Police Station Mohindergarh against Shamsheer Singh and others including the present petitioner on the allegations that the accused hatched a conspiracy and got executed a forged and fabricated agreement to

sell in favour of Ran Singh son of Jai Lal (petitioner herein). The criminal proceedings culminated in conviction of the accused vide judgment dated 1.12.2006 (Annexure P-2) passed by the Sub Divisional Judicial Magistrate, Mohindergarh. The accused (convicts) preferred an appeal against their conviction and sentence. The parties to the litigation entered into a compromise and their statements were recorded in the criminal appeal that was pending in the Court of Sh.Narender Shura, Additional Sessions Judge, Narnaul. As per statements of the parties (Annexure P-4), the parties decided to settle their dispute both civil and criminal. On the basis of compromise and statements of the parties recorded in the criminal appeal on 12.8.2010, the petitioner made a statement dated 12.8.2010 (Annexure P-3) in the civil appeal and the appeal was ordered to be dismissed as withdrawn. It is argued with vehemence that despite Sh. Bhagwan Dass attorney of Umrao having made a statement with regard to compromise with Shamsher Singh and others in Civil Appeal No. RT 27 of 20.12.2006/8.4.2010 and Criminal Appeal No. RT-04 of 2006/2010, Sh. Bhagwan Dass neither co-operated in the proceedings initiated under Section 482 Cr.P.C. for quashing of criminal proceedings vide CRM No. 24472-M of 2010

“Shamsher Singh and others vs. State of Haryana and others” in which Bhagwan Dass was arrayed as respondent No. 2 nor made any statement before the Court of appeal at the time of hearing that the appellants/convicts be acquitted of the offence charged against them. On the contrary, counsel engaged by Sh. Bhagwan Dass complainant appeared before the appellate court and supported conviction of the accused when the case was argued by the public prosecutor for the State, duly reflected in para 12 of the judgment dated 10.4.2013(Annexure P-7) though the Court of Appeal set aside the judgment of conviction and order of sentence on merits. Not only this, Bhagwan Dass challenged the judgment of acquittal passed by the Court of Appeal by way of Criminal Revision No. 2383 of 2013 “Bhagwan Dass vs. State of Haryana and others” which was dismissed by this Court vide judgment dated 5.10.2015 (Annexure P-8). It is vehemently argued that in view of Sh. Bhagwan Dass having resiled from the compromise, on the basis whereof the petitioner had withdrawn the civil appeal filed by him against the judgment and decree dated 1.12.2006 passed by the trial court, statement made by the petitioner and order dated 12.8.2010 passed by the Court of Appeal are liable to be set aside and the appeal is required to be

restored for its decision on merits.

Counsel for the respondent, on the contrary, has not disputed the factum of compromise between the parties, recording of their statements both in the civil and criminal appeals and dismissal of the civil appeal on the basis of statement of petitioner Ran Singh in view of compromise between the parties. However, it is argued that at the time of hearing of the criminal appeal by the Additional Sessions Judge, Narnaul, no arguments were advanced by Sh. Karan Singh Yadav, Advocate counsel for the complaint, sufficient to show that Bhagwan Dass did not resile from the compromise between the parties. It is further argued that even the criminal revision preferred by Sh. Bhagwan Dass against acquittal of Shamsher Singh and others was later withdrawn by him. In the proceedings for quashing of FIR No 123 dated 27.4.1993 and judgment and order dated 1.12.2006, the court dismissed the petition by holding that the petitioners have been convicted by the trial court for offence punishable under Sections 420, 467, 468, 471 read with Section 120-B IPC, the appeal filed by the petitioners against their conviction and sentence is pending, no ground for interference by the Court is made out. According to counsel, as this Court

took an adverse view of conviction and pendency of appeal, the respondent cannot be blamed for the petitioner and others being unsuccessful in quashing proceedings.

Counsel has made a vain attempt to argue that in case prayer of the petitioner is accepted and the civil appeal is ordered to be restored for its decision on merits, judgment of acquittal passed by the Additional Sessions Judge, Narnaul also needs to be set aside for decision of both civil and criminal appeals afresh.

I have heard counsel for the parties, perused the paper book and the records of CRM- 24472-M of 2010.

It is an undisputed position of the case that parties to the civil and criminal litigation in respect of agreement to sell propounded by Ran Singh, arrived at a settlement by way of compromise and accordingly they got recorded their statements both in criminal and civil proceedings pending before the Court of Appeal. The question for consideration is whether “***Sh. Bhagwan Dass honoured the compromise and his statement recorded in the criminal appeal or back tracked.***”

Before proceeding further, it is appropriate to extract a relevant

part of the statement made by Sh. Bhagwan Dass, reads thus:-

“Now, I have entered into compromise with Shamsher and others in above mentioned appeals and doesn't want any kind of dispute. Statement of Shamsher and others have been heard, read and understood with whom I am agreed. After compromise, I want that their punishment be set aside and these four be acquitted from cases because there are few sections in the criminal cases which are non-compoundable, whose meaning I understand. I request that opportunity be given to Shamsher and others for filing 482 Cr.P.C. in High Court for their acquittal so that all of these four be acquitted. It is correct that they had withdrawn civil appeal. I will be agreed to file any kind of affidavit for high court in this regard so that they may be acquitted.”

Shamsher Singh and others filed quashing petition and Sh. Bhagwan Dass respondent No. 2 therein was represented by a counsel. Perusal of the zimni orders recorded in the case would make it evident that for the first time, Bhagwan Dass appeared in the proceedings through a

counsel on 16.2.2011. The case was adjourned umpteen number of times from February 2011 to January 2013 but the respondent did not file any response to the petition and eventually the petition was dismissed on 30.1.2013. As the respondent did not file his response supporting cause of Shamsher Singh and others for quashing of the criminal proceedings including judgment of conviction and order of sentence, he cannot be permitted to take advantage of the order of dismissal of the petition by the Court in view of its observations recorded in the order. The matter would have been different had the respondent filed his response in support of cause of Shamsher Singh and others but despite that the Court had not allowed the petition. The mala fide intention of the respondent in failing to file his response can be easily gathered from his conduct in the appeal proceedings that was decided in favour of Shamsher Singh and others on 10.4.2013. Had the respondent been interested that the criminal proceedings should end in acquittal of the accused, there was no reason for him to file a revision before this Court to express his grievance against acquittal of Shamsher Singh and others. The contention raised by counsel for the respondent that the revision was dismissed as withdrawn is patently

false in view of judgment dated 5.10.2015 passed by this Court wherein counsel for the respondent Sh. S.N.Yadav, Advocate argued the matter at length to assail the judgment of Court of Appeal regarding acquittal of the accused but eventually failed in his effort to seek reversal of order of acquittal. Keeping in view conduct of Sh. Bhagwan Dass borne out from the documentary evidence, there remains no doubt that Sh. Bhagwan Dass resiled from his commitment as per the compromise and statement made before the Court of law, therefore, the respondent cannot successfully challenge claim of the petitioner for revival of the civil appeal and its decision on merits, in the present scenario. The court below committed a gross error rather illegality by dismissing the application or accepting plea of the respondent who exhibited complete disrespect to his statement made before a court of law and infringed the compromise between the parties with impunity. In this view of the matter, the order impugned cannot be allowed to sustain and liable to be set aside, ordered accordingly.

So far as plea of the respondent for revival of the criminal appeal, the same is not only fallacious but highly misconceived and merits outright rejection. The criminal appeal was not decided on the basis of

compromise between the parties but the same was decided on merits. This apart, the judgment of acquittal recorded by the Court of Appeal has been subject to scrutiny by this Court in criminal revision preferred by Bhagwan Dass and has attained finality. Even otherwise, if such a plea is accepted, it would amount to putting premium over misdeeds of a litigant who had scant regard for the court proceedings.

For the foregoing reasons, the petition is allowed, the impugned order is set aside, the application filed by the petitioner for restoration of civil appeal is allowed. As a natural consequence, civil appeal titled “Ran Singh vs. Umrao” is ordered to be restored at the Board of Additional District Judge, Narnaul for its decision on merits. However, nothing stated in this order shall be construed as an expression of opinion on merits of the case.

(Rekha Mittal)
Judge

11.11.2016
paramjit

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No