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

% ***Judgment dated 19th May, 2016***

+ **W.P.(CRL) 1088/2016**

KAVITA GARG

..... Petitioner

Through: Ms.Rakhi Dubey, Advocate with
Mr.Kavita Garg and Mr.Ajay Garg
Ms.Shifa Nagar and Ms.Rashmi Verma,
Advocates with Ms.Kavita Garg and
Mr.Sanjay Garg

versus

THE STATE (NCT OF DELHI) & ANR Respondents

Through: Mr.Rahul Mehra, Standing Counsel with
Mr.Amrit Singh, Advocate for the State
with ACP S.A.Rashid, SEM, Seelampur,
Shahdara, Sub Insp. Rajender Dhama, PS
Shahdara

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.Sistani, J. (Oral)

1. Petitioner had approached this court by filing a petition under Article 226 of the Constitution of India read with section 482 Cr.P.C., *inter alia*, seeking a writ of Habeas Corpus against the illegal confinement of her husband under section 107/151 Cr.P.C.
2. It may be noted that upon mentioning, the petition was listed before the Special Bench on Saturday i.e., 2.4.2016.

3. In the writ petition, it has been averred that both husband of the petitioner and his brother who were staying in the same building, have been detained by the police. The brothers had an altercation on 01.4.2016 and accordingly husband of the petitioner Ajay Garg made a call on phone number 100. In the meanwhile, matter was settled but on arrival the police had demanded money for wasting their time and fuel charges. The husband of the petitioner refused to give money. In order to extort money, husband of the petitioner was asked to accompany police to the police station. The husband of the petitioner Ajay Garg and his brother Sanjay Garg were forcibly taken into custody. They were then produced before Mr.S.A.Rashid who was working as a Special Executive Magistrate. No copy of Kalandara was supplied to the husband of the petitioner or his brother. The husband of the petitioner produced a sound surety along with bail bond from his own daughter. However, the surety bond was not accepted and no order for grant of bail was passed and husband of the petitioner and his brother were sent to judicial custody till 5.4.2016 despite their pleading that matter stood resolved.
4. As already noticed, the matter was listed before this court on 2.4.2016 upon mentioning. The submissions made by counsel for the petitioner were noted in the order. We then directed SEM, Seelampur, Shahdara, Delhi to take up the matter for hearing on 2.4.2016 itself and in case surety furnished by the husband of the petitioner Ajay Garg and his brother Sanjay Garg was in order, it should be accepted. The matter was adjourned to 4.4.2016. On 4.4.2016, we were informed that petitioner's husband stood released. Learned counsel for the State and the Special Executive

Magistrate who were present in court, informed the court that petitioner had suppressed material facts as on two earlier occasions, the husband of the petitioner and his brother had furnished bonds and undertaking of good conduct but they had failed to adhere to the undertaking.

5. On 4.4.2016, Ms.Rakhi Dubey represented husband of the petitioner Ajay Garg and Mr.Rajat Aneja represented Sanjay Garg and both counsel prayed that matter may be referred before the Delhi High Court Mediation and Conciliation Centre and also suggested that mother of the parties be also requested to join the mediation proceedings. Such a direction was passed by this court. Thereafter, the matter was adjourned to 4.5.2016 and then on 19.5.2016.
6. We are informed by learned counsel for the parties that the parties have entered into an amicable settlement.
7. A copy of the settlement arrived at the Mediation Centre has been placed on record. The settlement agreement has been signed by Mr.Ajay Garg and his wife Mrs. Kavita Garg and Mr.Sanjay Garg and his Wife Mrs. Kavita Garg. They have also placed on record copies of two site plans which have also been duly signed by the parties. Learned counsel further submits that nothing further survives in this petition.
8. Both, Ajay Garg and Sanjay Garg, who are present in Court with their respective wives, submit that the settlement has been arrived at out of their own free will and without any coercion and pressure and they have signed the same after understanding the terms of the settlement. They also submit that they would remain bound by the terms of the settlement. They further submit that they have signed

each page of the settlement agreement and also on the site plan annexed with the settlement agreement.

9. Counsel for the State has prayed that the petitioner should be burdened with costs for suppressing material facts in the petition.
10. Reply has been filed. It would be useful to reproduce paras 3, 4 and 5 of the reply which read as under:-

“That on 01.04.2006, a PCR call regarding quarrel was received at PS Shahdara at 10.56 am regarding illegal construction of a wall at Ganesh Timber and the same was entrusted to SI Rajender Dhama. SI Rajender Dhama reached the spot and found both the brothers quarrelling with each other over construction of all. Both were bent upon to commit some cognizable offence. Having no option, both of them were arrested u/s 107/151 Cr.P.C. Allegations of demand of money are false, baseless and motivated. Prior to this, preventive action u/s 107/151 Cr.P.C was initiated against Sh.Ajay Garg vide DD No.3A dated 01.10.2015 PS Shahdara and was released on the same day by SEM/N.E.D. Thereafter, preventive action u/s 107/150 Cr.P.C was initiated against both the parties vide DD No.66B dated 03.10.2015 and during the proceeding of this Kalandra before S.E.M./NED on 02.12.2015 and 03.03.2016, both the parties were bound down for a period of six months to keep peace and good behaviour. It is evident from the above facts that both are habitual miscreants. It is humbly submitted that the present incident is not the first incident as the accused persons have previously also indulged in fight over the said shop on 01.10.2015 vide Kalandara dated 01.10.2015 u/s 107/151 Cr.P.C (Bail bond was accepted same day) and Kalandara dated 07.11.2015 u/s 107/150 Cr.P.C both kalandras of PS Shahdara.

4. That both the arrestee were produced before the court of S.E.M./N.E.District on the same day. As per the report of S.E.M. both the arrestee misbehaved in the S.E.M. court and did not produce any surety.

5. Keeping in view of the past conduct and 2 separate Kalandaras which are still pending in the court of S.E.M/NE

District and the incident of 01.04.2016 both were ordered to be sent to J/C. ”

11. We have heard learned counsel for the parties.
12. The first question which arises for consideration is whether the petitioner has approached this court with unclean hands or not.
13. The Supreme Court in ***Arunima Baruah Vs. Union of India and others***, reported at (2007) 6 SCC 120, has held as under:-

“12. It is trite law that so as to enable the court to refuse to exercise its discretionary jurisdiction suppression must be of material fact. What would be a material fact, suppression whereof would disentitle the appellant to obtain a discretionary relief, would depend upon the facts and circumstances of each case. Material fact would mean material for the purpose of determination of the lis, the logical corollary whereof would be that whether the same was material for grant or denial of the relief. If the fact suppressed is not material for determination of the lis between the parties, the court may not refuse to exercise its discretionary jurisdiction. It is also trite that a person invoking the discretionary jurisdiction of the court cannot be allowed to approach it with a pair of dirty hands. But even if the said dirt is removed and the hands become clean, whether the relief would still be denied is the question.

13. In Moody v. Cox 1917 (2) Ch 71, it was held:

It is contended that the fact that Moody has given those bribes prevents him from getting any relief in a Court of Equity. The first consequence of his having offered the bribes is that the vendors could have rescinded the contract. But they were not bound to do so. They had the right to say "No, we are well satisfied with the contract; it is a very good one for us; we affirm it". The proposition put forward by counsel for the defendants is: "It does not matter that the contract has been affirmed; you still can claim no relief of any equitable character in regard to that contract because you gave a bribe in respect of it. If there is a mistake in the contract, you cannot rectify it, if you desire to rescind the contract, you cannot rescind it, for that is equitable relief. With some doubt they said: "We do not think

*you can get an injunction to have the contract performed, though the other side have affirmed it, because an injunction may be equitable remedy." When one asks on what principle this is supposed to be based one receives in answer the maxim that any one coming to equity must come with clean hands. I think the expression "clean hands" is used more often in the text books than it is in the judgments, though it is occasionally used in the judgments, but I was very much surprised to hear that when a contract, obtained by the giving of a bribe, had been affirmed by the person who had a primary right to affirm it, not being an illegal contract, the courts of Equity could be so scrupulous that they would refuse any relief not connected at all with the bribe. I was glad to find that it was not the case, because I think it is quite clear that the passage in *Dering v. Earl of Win Chelsea* 1 Cox, 318 which has been referred to shows that equity will not apply the principle about clean hands unless the depravity, the dirt in question on the hand, has an immediate and necessary relation to the equity sued for. In this case the bribe has no immediate relation to rectification, if rectification were asked, or to rescission in connection with a matter not in any way connected with the bribe. Therefore that point, which was argued with great strenuousness by counsel for the defendant Hatt, appears to me to fail, and we have to consider the merits of the case.*

12. In Halsbury's Laws of England, Fourth Edition, Vol. 16, pages 874- 876, the law is stated in the following terms:

1303. He who seeks equity must do equity. In granting relief peculiar to its own jurisdiction a court of equity acts upon the rule that he who seeks equity must do equity. By this it is not meant that the court can impose arbitrary conditions upon a plaintiff simply because he stands in that position on the record. The rule means that a man who comes to seek the aid of a court of equity to enforce a claim must be prepared to submit in such proceedings to any directions which the known principles of a court of equity may make it proper to give; he must do justice as to the matters in respect of which the assistance of equity is asked. In a court of law it is otherwise: when the plaintiff is found to be entitled to judgment, the law must take its course; no terms can be imposed.

1305. He who comes into equity must come with clean hands. A court of equity refuses relief to a plaintiff whose conduct in regard to the subject matter of the litigation has been improper. This was formerly expressed by the maxim "he who has committed iniquity shall not have equity", and relief was refused where a transaction was based on the plaintiff's fraud or misrepresentation, or where the plaintiff sought to enforce a security improperly obtained, or where he claimed a remedy for a breach of trust which he had himself procured and whereby he had obtained money. Later it was said that the plaintiff in equity must come with perfect propriety of conduct, or with clean hands. In application of the principle a person will not be allowed to assert his title to property which he has dealt with so as to defeat his creditors or evade tax, for he may not maintain an action by setting up his own fraudulent design.

The maxim does not, however, mean that equity strikes at depravity in a general way; the cleanliness required is to be judged in relation to the relief sought, and the conduct complained of must have an immediate and necessary relation to the equity sued for; it must be depravity in a legal as well as in a moral sense. Thus, fraud on the part of a minor deprives him of his right to equitable relief notwithstanding his disability. Where the transaction is itself unlawful it is not necessary to have recourse to this principle. In equity, just as at law, no suit lies in general in respect of an illegal transaction, but this is on the ground of its illegality, not by reason of the plaintiff's demerits.

13. In Spry on Equitable Remedies, Fourth Edition, page 5, referring to Moody v. Cox (supra) and Meyers v. Casey (1913) 17 C.L.R. 90, it is stated:

...that the absence of clean hands is of no account "unless the depravity, the dirt in question on the hand, has an immediate and necessary relation to the equity sued for". When such exceptions or qualifications are examined it becomes clear that the maxim that predicates a requirement of clean hands cannot properly be regarded as setting out a rule that is either precise or capable of satisfactory operation.

Although the aforementioned statement of law was made in connection with a suit for specific performance of contract, the

same may have a bearing in determining a case of this nature also.”

14. In this case, the petitioner mentioned the matter for urgent hearing and the same was listed on 2.4.2016, being a Saturday. The matter came up for hearing on the same day. Keeping in view the averments made in the petition, the court passed immediate directions and posted the matter for hearing after one day i.e., on 4.4.2016. Non-disclosure of the fact that on two earlier occasions Kalandaras dated 1.10.2015 and 7.11.2015 had been issued and they had furnished an undertaking of good behavior in the proceedings u/s 107/151 Cr.P.C. is, in our view, a material suppression. These facts, in our view are material facts and should have been brought to the notice of the court. These facts, in our view, were intentionally suppressed from the court. Although the matter has had a happy ending to the extent that parties have arrived at an amicable settlement but having regard to falling standards, such a practice should be discouraged. A litigant must approach a court of law with clean hands especially when seeking a discretionary relief and must disclose all material facts.
15. The explanation rendered by the petitioner in not disclosing the material facts is that she was not aware of the same. We find this explanation to be unacceptable and highly improbable. Although, counsel for the petitioner has submitted that the parties have amicably settled the matter, no further orders are required to be passed, we dispose of this writ petition but imposed a cost of Rs.25000/- to be shared equally both by petitioner's husband Ajay Garg and his brother Sanjay Garg. Both Ajay Garg and Sanjay

Garg who are present in court agree to deposit the same with the Delhi Police Widow Welfare Fund within one month from today.

16. Petition is accordingly disposed of.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

MAY 19, 2016

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