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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of hearing and Order : May 09, 2016

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**Crl. Rev. P. No. 284/2015
PRIYANKA NAGPAL**

..... Petitioner

Through: Mr. Sunil Kumar Jha, Mr. Amrendra
Kumar, Advocates

versus

ANIL KUMAR SHARMA & ANR.

..... Respondent

Through: Mr. Kamal Kumar Ghei, Additional
Public Prosecutor for the State

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

ORDER

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P.S.TEJI, J. (Oral)

Crl. M.A. No.7689/2016 (Exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

**Crl. M.A. No.7687/2016 (Restoration) & Crl. M.A. No. 7688/2016
(Exemption from surrender)**

1. By the application filed under Section 482 of Cr. P.C., the petitioner seeks restoration of the main revision petition, which was dismissed as withdrawn vide order dated 28.04.2016. By another application filed under Section 389(1) Cr. P.C., the

petitioner/applicant seeks exemption from surrendering before learned Metropolitan Magistrate, Karkardooma in CC No.429/2013.

2. The application for seeking exemption from surrendering before the learned Metropolitan Magistrate, will only be of consequence if the application for restoration (Crl. M.A. No. 7687/2016) is allowed. Therefore, it is basically the fate of the main application for restoration of the revision petition which shall decide the fate of the other application.

3. Counsel for the applicant/petitioner is heard at length.

4. Perusal of the order sheet reveals that the main revision petition came up for hearing before this Court on 14.05.2015 when, the counsel for revisionist stated that the petitioner shall pay the amount of Rs.6 lakhs as compensation to the complainant within a period of six months and apart from this, the counsel for the petitioner further stated that he shall deposit a fine of Rs.10,000/- as directed by the impugned order by the next date. It was further stated that the revisionist shall be depositing 15% of the cheque amount as costs with the Delhi State Legal Services Authority in terms of decision of the Hon'ble Supreme Court in ***Damodar S. Prabhu vs. Sayed Babalal H., (2010) 5 SCC 663***, within a period of one month. Accordingly, on the aforesaid submissions on behalf of the petitioner, the operation of the impugned orders was directed to be stayed.

5. On the next date of hearing i.e. on 28.05.2015, the counsel for the revisionist, on instructions submitted that the compensation amount of Rs.6 lacs shall be paid to the respondent No. 1 (complainant) in two installments. The first installment of Rs.3 lacs shall be paid on or before 31.08.2015 and the balance amount of Rs.3 lacs shall be paid by way of Demand Draft/Pay order, payable in Delhi on or before 30.11.2015. The said offer was duly accepted by respondent No. 1, who appeared in person on that day. The petitioner was directed to deposit 15% of the cheque amount by way of costs with Delhi State Legal Services Authority within a period of one week and the matter was adjourned to 01.12.2015.

6. On 31.08.2015, an application for seeking extension of time for making payment of first installment of Rs.3 lac to the respondent No. 1 was filed and vide order dated 01.12.2015, counsel appearing on behalf of the petitioner contended that because of extremely straightened financial circumstances, the schedule of payment as directed by this Court vide order dated 14.05.2015 and 28.05.2015 could not be fulfilled and assured that by the next date, up to date payment shall be made by the petitioner. Accordingly, considering the assurance, the case was adjourned to 28.01.2016 and interim orders were directed to continue.

7. When the matter came up for hearing on 07.04.2016, since the petitioner did not comply with the order dated 14.05.2015, the stay of operation of impugned orders passed by the Trial Court was directed

to be vacated. Copy of the order was directed to be sent to concerned Court as well as the appellate Court. Thereafter, on 28.04.2016, the counsel for petitioner sought to withdraw the main revision petition (Crl. Rev. P. No.284/2015) and accordingly, the petitioner was dismissed as withdrawn.

8. Now the petitioner has filed an application seeking restoration of the main revision petition (Crl. Rev. P. No.284/2015) to its original position.

9. The ground taken in the application for restoration of the main revision petition (Crl. Rev. P. No.284/2015) is enumerated in para 2 of the application, which reads as under:-

“That the applicant against the order dated 07.04.2016 passed in Crl. Rev. P. No. 284 of 2015 by this Court have approached the Hon’ble Supreme Court of India by filing S.L.P. (Crl.). But the order dated 28/04/2016 passed by this Court in which the Ld. Counsel representing the petitioner had withdrawn the Crl. Rev. P. No. 284 of 2015 does not permit the Petitioner to pursue before the Supreme Court and hence the present application for recalling of Order dated 28/04/2016 before this Court for kind consideration.”

10. Accordingly, the petitioner made a prayer for restoration of the revision petition. The extract of prayer (a) as made in the application is reproduced herein below:

“(a) Allow the Application of the Applicant/Petitioner and the order dated 28/04/2016 may be re-called and restore the Crl. Rev. P. No. 284 of 2015 to its Original Position.”

11. Learned counsel for the petitioner has further submitted that he has approached the Hon’ble Supreme Court against the order dated 07.04.2016 on the withdrawal of the main revision petition, i.e., on 28.04.2016.

12. After going through the contents of the application and the prayer made therein, this Court observes that the only ground which the petitioner has taken for recalling the order dated 28.04.2016, whereby the petitioner had withdrawn the main revision petition, is that it will affect the case of the petitioner before the Hon’ble Supreme Court. This Court is of the considered opinion that the moment when the revision petition is dismissed as withdrawn, this Court becomes *‘functus officio* over the revision petition. In such a scenario, this Court does not find any ground for restoring the main petition, particularly the prayer made for the recalling of the order dated 28th April 2016 and restoration of the criminal revision ‘to its original position’.

13. Accordingly, the application for seeking restoration of the main revision petition (Crl. M.A. No.7687/2016) is dismissed.

14. Resultantly, the application for seeking exemption from surrendering before learned Metropolitan Magistrate (Crl. M.A. No.7688/2016) is also dismissed as the main revision petition (Crl. Rev. P. No.284/2015) already stands dismissed as withdrawn on 28.04.2016.

15. A copy of this order be given dasti to counsel for the petitioner.

MAY 09, 2016
pkb

P.S.TEJI, J

