

265-B

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-2212 of 2016

Date of decision: April 19, 2017

A.V. Patel

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present: Mr. G.S. Sawhney, Advocate for the petitioner.

Mr. Chetan Sharma, AAG Haryana.

A.B. CHAUDHARI, J

By the present petition, the petitioner has sought quashing of complaint No.377-11 dated 01.07.2008 (P-10) as well as summoning order dated 01.07.2008 (P-11) in the Court of Chief Judicial Magistrate, Hisar along with all consequential proceedings under Drugs and Cosmetic Act, 1940 and Rules, 1945.

It is not in dispute that the present petitioner had earlier filed CRM-M-16117 of 2012 in this Court putting to challenge the same above complaint (Annexure P-10) and summoning order (Annexure P-11) and that was dismissed as withdrawn without obtaining any liberty from the said Court. In other words, the said petition was simply withdrawn.

The present one is the second petition on the same subject matter. Learned counsel for the petitioner, however, submits that in the earlier petition, two points which are sought to be raised in the present petition, were not raised and that is why the present petition would be maintainable. I have, therefore, heard the present petition on the point of

maintainability thereof before this Court.

It is not in dispute that in the complaint No.377-11 dated 01.07.2008 (Annexure P-10), the petitioner was summoned vide summoning order dated 01.07.2008 (Annexure P-11). It is also not in dispute that the same was the challenge before this Court in the above noted petition without any success. The petition was withdrawn and was thus, dismissed as withdrawn. The order of dismissal as withdrawn does not show any grant of liberty to file fresh petition in the same subject matter in this Court. In other words, without obtaining any permission to file the present fresh petition, same has been filed.

The question that arises for consideration is whether this Court would be in a position to entertain present second petition when the earlier petition was withdrawn without any permission to file present fresh petition.

In my opinion, answer has to be in the negative. It is true that the principles enshrined in the Code of Civil Procedure in relation to procedure prescribed would have no application in so far as the matters in criminal law are concerned. However, in order to achieve the object of prohibiting the multifariousness of litigation and in the light of principle of *interest reipublicae ut sit finis litum*, I think the principles underlying Order 23 Rule 1 CPC should be extended in the interest of administration of justice to such cases of withdrawal of the criminal petitions on the ground of public policy. In so far as the writ jurisdiction under Article 226 of the Constitution of India is concerned, similar point fell for consideration of the Apex Court and the Apex Court extended the said principle on the ground of public policy and to discourage the litigants from indulging in

bench hunting tactics.

In the case of Sarguja Transport Service versus State Transport Appellate Tribunal, Gwalior and others, 1987 AIR SC Page 88, the Apex Court stated thus, in relation to such matters:-

“8. The question for our consideration is whether it would or would not advance the cause of justice if the principle underlying R. 1 of O. XXIII of the Code is adopted in respect of writ petitions filed under Art. 226/227 of the Constitution also. It is common knowledge that very often after a writ petition is heard for some time when the petitioner or his counsel finds that the Court is not likely to pass an order admitting the petition, request is made by the petitioner or by his counsel, to permit the petitioner to withdraw from the writ petition without seeking permission to institute a fresh writ petition. A Court which is unwilling to admit the petition would not ordinarily grant liberty to file a fresh petition while it may just agree to permit the withdrawal of the petition. It is plain that when once a writ petition filed in a High Court is withdrawn by the petitioner himself he is precluded from filing an appeal against the order passed in the writ petition because he cannot be considered as a party aggrieved by the order passed by the High Court.

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9. The point for consideration is whether a petitioner after withdrawing a writ petition filed by him in the High Court under Art. 226 of the Constitution without the permission to institute a fresh petition can file a fresh writ petition in the High Court under that Article.

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But we are of the view that the principle underlying R. 1 of O.

XXIII of the Code should be extended in the interests of administration of justice to cases of withdrawal of writ petition also, not on the ground of res judicata but on the ground of public policy as explained above. It would also discourage the litigant from indulging in bench-hunting tactics. In any event there is no justifiable reason in such a case to permit a petitioner to invoke the extraordinary jurisdiction of the High Court under Art. 226 of the Constitution once again. While the withdrawal of a writ petition filed in a High Court without permission to file a fresh writ petition may not bar other remedies like a suit or a petition under Art. 32 of the Constitution since such withdrawal does not amount to res judicata, the remedy under Art. 226 of the Constitution should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the writ petition when he withdraws it without such permission. In the instant case the High Court was right in holding that a fresh writ petition was not maintainable before it in respect of the same subject-matter since the earlier writ petition had been withdrawn without permission to file a fresh petition.”

In my opinion, there is no reason why the same principle of public policy should not be applied in the petitions arising out of criminal jurisdiction as well.

In the case of Madan Lal Kapoor v/s Rajiv Thapar and others, 2007 CrI. L.J. 4684, after citing the decision in the case of Bani Singh and others v/s State of U.P., (1996)4 SCC 720, the Apex Court stated thus in para 4:-

“4. The matter relates to administration of criminal justice. As held by this Court, a criminal matter cannot be dismissed for default and

it must be decided on merits. Only on that ground the appeal deserves to be allowed.”

It is thus, clear from the above dicta of the Apex Court that the second petition on the same subject matter would not lie.

The next submission that the present petition would be maintainable because two additional points have been taken in the present petition, which were not taken in the earlier petition, equally will have to be rejected. It is true that the principles enshrined in the Code of Civil Procedure would not be applicable in respect of the matters governed by Code of Criminal Procedure. However, as observed in the aforesaid judgment of the Apex Court in **Sarguja Transport Service's case** (supra), in the light of public policy and in order to prevent frivolous litigation over and over again, principles akin to the abandonment and relinquishment of particular plea or the ground would not entitle a party to file a fresh petition on the ground that two points were not taken in the earlier petition. Petition is deemed to have abandoned the two grounds which the counsel for the petitioner has made mention. In that event, the petitioner could have obtained liberty to file fresh petition on that score. I, thus, find that the present petition is clearly barred and consequently, is not maintainable.

In that view of the matter, CRM-M-2212 of 2016 is dismissed as not maintainable.

(A.B. CHAUDHARI)
JUDGE

April 19, 2017

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Whether speaking/ reasoned: **Yes**

Whether Reportable: **Yes**