

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-6093-2014 (O&M)

Date of decision: April 19, 2017.

Baljinder Singh @ Jinder Singh

... **Petitioner**

v.

State of Haryana and another

... **Respondents**

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

Present: Shri Saurabh Bajaj, Advocate for the petitioner.

Shri Chetan Sharma, Assistant Advocate General, Haryana.

Shri Yashwant Singh Rathore, Advocate for respondent No.2.

A.B. Chaudhari, J. (Oral):

Heard learned counsel for the rival parties.

By the present petition, Baljinder Singh @ Jinder Singh-present petitioner has put to challenge the criminal complaint dated 08.06.2006 (Annexure P-1) and order dated 17.07.2012 (Annexure P-3) along with summoning order dated 16.11.2006 (Annexure P-5).

It is not in dispute that the said criminal complaint as well as the aforesaid orders were put to challenge by the same petitioner, in this Court by filing CRM-M-43928 of 2007. This Court had made the following order, on 19.01.2010:-

“The counsel for the petitioner submits that he be permitted to withdraw the petition and be relegated to the remedy of filing revision petition. The prayer is allowed.

In view of the above, the petition is dismissed as withdrawn with liberty as aforesaid.”

It is clear from the above order that the petitioner was relegated to the remedy of filing revision before the Sessions Court. Petitioner, then had filed CRM-M-26754 of 2012 again challenging the aforesaid orders and this Court had made the following orders, on 03.09.2012:-

“After arguing for some time, the learned counsel for the petitioner seeks permission to withdraw the present petition.

Allowed to do so.

Dismissed as withdrawn.”

It is clear from the above order dated 3.9.2012 that the said CRM-M-26754 of 2012 was dismissed as withdrawn without obtaining any liberty to file fresh petition. As stated earlier, the petitioner had filed Crl. Revision No.16 of 2011 in the court of Sessions Judge, Karnal pursuant to the order made by this Court on 19.1.2010 which the petitioner was relegated to file revision before the Sessions Court and that revision was dismissed on 17.7.2012. The said revisional order dated 17.7.2012 made by Sessions Judge was challenged by the petitioner in the aforesaid CRM-M-26754-2012. The petitioner instead of pressing his challenge to the said revision order dated 17.7.2012 withdrew the said petition in this Court which dismissed the same on 3.9.2012 as withdrawn. It is pertinent to note that the petitioner did not obtain any liberty/permission to file the present fresh petition. 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 republicae ut sit finislitum*, 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 that the withdrawal of the revision petition cannot normally be allowed.

It is also noteworthy that the petitioner had then filed one more petition viz. CRM-M-4319-2014 which was decided on 10.2.2014 with the following order:-

“Learned counsel for the petitioner prays for withdrawal of the present petition with liberty to raise a challenge to the summoning order dated 16.11.2006, passed by the C.J.M., Karnal on all such grounds that may be available, strictly in accordance with law.

Prayer is allowed.

Dismissed as withdrawn with the liberty, as prayed for.”

It appears that earlier orders made by this Court were not brought to the notice of the learned Single Judge who passed the order on 10.2.2014. The petitioner does not appear to have in fairness disclosed the

same to this Court. However, as stated above, the revisional order dated 17.3.2012 that was made by the Sessions Judge, Karnal had already attained finality. This is the fourth petition in which the petitioner has again put to challenge the criminal complaint and the orders made therein.

In the result, I make the following order:-

ORDER

(i) CRM-M-6093-2014 is dismissed as not maintainable.

May 26, 2017.

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[A.B. Chaudhari]
Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No