

27.01.2021
SL No.4
AP/ss

CRM 139 of 2021

Shisu Pal @ Sisu Pal @ Raju

... Petitioner.

Vs.

The State of West Bengal

... Respondent.

Mr. Husen Mustafi

...for the Petitioner present in virtual mode.

M/s. Kallol Acharjee and
Sourav Ganguly, Advocates

...for the respondent present in Court.

1. The present application has been filed for grant of bail to the petitioner in North Jalpaiguri Police Station Case No.929 of 2018 dated 22.12.2018 registered under Sections 392/395/412 of the Indian Penal Code and Section 25(1)(a) of the Arms Act.

2. Learned counsel for the petitioner submitted that the petitioner has no past criminal track record. He was not arrested from the spot. No test identification parade was undertaken to establish his identity in the crime. He is in custody since 23rd December, 2018. The trial is not progressing, hence he should be granted bail.

3. On the other hand, learned counsel for the respondent submitted that the present petition should be dismissed on the ground of concealment of material facts from this Court namely filing of an earlier application for grant of bail by the petitioner i.e. CRM No.110 of 2019, which was dismissed on April 5, 2019. In para No.01 of the petition, the statement made by the petitioner is that he had not filed any bail

application before this Court earlier and his bail application was last rejected on December 3, 2019 by the Trial Court.

4. He has further submitted that it is a case in which recovery of mobile, cash of ₹8,200/- and Bolero vehicle which was shown to be an ambulance was recovered on the statement of the petitioner. The sticker of ambulance used in Bolero vehicle, which was in fact was not an ambulance, was recovered from another accused. They are all part of the gang who indulge in robberies.

5. In response, learned counsel for the petitioner submitted that he has no knowledge of filing of the earlier bail application by the petitioner. Hence, could not mention this fact in the petition. The petitioner had not informed him about this fact. He tenders apology for not mentioning this fact in the petition.

6. Heard learned counsels for the parties and perused the relevant record.

7. In para No.01 of the petition, specific statement made by the petitioner is that he never filed any bail application before this court earlier. The bail application filed before the trial court was dismissed vide order dated December 3, 2019.

8. Learned counsel for the respondent has produced before this court an order dated April 5, 2019 passed by this Court in CRM No110 of 2019 (Sishu Pal @ Sisu Pal @ Raju & Ors. Vs. The State of West Bengal) whereby earlier bail application filed by the petitioner was rejected. To

that extent there is concealment of material fact by the petitioner in the petition.

9. As to how a litigant, who approaches the Court and conceals material facts or misleads the Court, has to be dealt with, has been considered by the Hon'ble Supreme Court on number of occasions.

10. In **Abhyudya Sanstha v. Union of India**, (2011) 6 SCC 145, Hon'ble the Supreme Court, while declining relief to the petitioners, who did not approach the court with clean hands, opined as under:

“18. In our view, the appellants deserve to be non suited because they have not approached the Court with clean hands. The plea of inadvertent mistake put forward by the learned senior counsel for the appellants and their submission that the Court may take lenient view and order regularisation of the admissions already made sounds attractive but does not merit acceptance. Each of the appellants consciously made a statement that it had been granted recognition by the NCTE, which necessarily implies that recognition was granted in terms of Section 14 of the Act read with Regulations 7 and 8 of the 2007 Regulations. Those managing the affairs of the appellants do not belong to the category of innocent, illiterate/uneducated persons, who are not conversant with the relevant statutory provisions and the court process. The very fact that each of the appellants had submitted application in terms of Regulation 7 and made itself available for inspection by the team constituted by WRC, Bhopal shows that they were fully

aware of the fact that they can get recognition only after fulfilling the conditions specified in the Act and the Regulations and that WRC, Bhopal had not granted recognition to them. Notwithstanding this, they made bold statement that they had been granted recognition by the competent authority and thereby succeeded in persuading this Court to entertain the special leave petitions and pass interim orders. The minimum, which can be said about the appellants is that they have not approached the Court with clean hands and succeeded in polluting the stream of justice by making patently false statement. Therefore, they are not entitled to relief under Article 136 of the Constitution. This view finds support from plethora of precedents. (***emphasis supplied***)

11. In **Hari Narain v. Badri Das** AIR 1963 SC 1558, G. **Narayanaswamy Reddy v. Govt. of Karnataka** (1991) 3 SCC 261 and large number of other cases, Supreme Court denied relief to the petitioner/appellant on the ground that he had not approached the Court with clean hands. In **Hari Narain v. Badri Das's** case (supra), the Court revoked the leave granted to the appellant and observed as under:

“It is of utmost importance that in making material statements and setting forth grounds in applications for special leave made under Article 136 of the Constitution, care must be taken not to make any statements which are inaccurate, untrue or misleading. In dealing with applications for special leave, the Court naturally takes statements of fact and grounds of fact contained in the

petitions at their face value and it would be unfair to betray the confidence of the Court by making statements which are untrue and misleading. Thus, if at the hearing of the appeal the Supreme Court is satisfied that the material statements made by the appellant in his application for special leave are inaccurate and misleading, and the respondent is entitled to contend that the appellant may have obtained special leave from the Supreme Court on the strength of what he characterises as misrepresentations of facts contained in the petition for special leave, the Supreme Court may come to the conclusion that in such a case special leave granted to the appellant ought to be revoked.”

12. In **G. Narayanaswamy Reddy v. Govt. of Karnataka** (1991) 2 SCC 261, the Court noted that the appellant had concealed the fact that the award could not be made by the Land Acquisition Officer within the time prescribed under Section 11A of the Land Acquisition Act because of the stay order passed by the High Court and observed:

“.....Curiously enough, there is no reference in the special leave petitions to any of the stay orders and we came to know about these orders only when the respondents appeared in response to the notice and filed their counter-affidavit. In our view, the said interim orders have a direct bearing on the question raised and the non-disclosure of the same certainly amounts to suppression of material facts. On this ground alone, the special leave petitions are liable to be rejected. It is well settled in law that the relief under Article 136 of the Constitution is discretionary and a petitioner

who approaches this Court for such relief must come with frank and full disclosure of facts. If he fails to do so and suppresses material facts, his application is liable to be dismissed. We accordingly dismiss the special leave petitions.”

13. In **Dalip Singh v. State of U.P.** (2010) 2 SCC 114, the Court noticed the progressive decline in the values of life and observed.

“For many centuries Indian society cherished two basic values of life i.e. “satya” (truth) and “ahinsa” (nonviolence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of the justice-delivery system which was in vogue in the pre-Independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-Independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings. In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who

touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.”

(emphasis supplied)

14. In **Moti Lal Songara v. Prem Prakash @ Pappu and another**, (2013) 9 SCC 199, Hon'ble the Supreme Court, considering the issue regarding concealment of facts before the court, while observing that “court is not a laboratory where children come to play, opined as under:

“18. The second limb of the submission is whether in the obtaining factual matrix, the order passed by the High Court discharging the accused-respondent is justified in law. We have clearly stated that though the respondent was fully aware about the fact that charges had been framed against him by the learned trial Judge, yet he did not bring the same to the notice of the revisional court hearing the revision against the order taking cognizance. It is a clear case of suppression. It was within the special knowledge of the accused. Any one who takes recourse to method of suppression in a court of law, is, in actuality, playing fraud with the court, and the maxim supressio veri, expressio falsi, i.e., suppression of the truth is equivalent to the expression of falsehood, gets attracted. We are compelled to say so as there has been a calculated concealment of the fact before the revisional court. It can be stated with certitude that the accused- respondent tried to gain advantage by such factual suppression. The fraudulent intention is writ large. In fact, he has shown his courage of ignorance and tried to play possum. The High Court, as

we have seen, applied the principle “when infrastructure collapses, the superstructure is bound to collapse”. However, as the order has been obtained by practising fraud and suppressing material fact before a court of law to gain advantage, the said order cannot be allowed to stand.”

(emphasis supplied)

15. Similar view was expressed by Hon’ble the Supreme Court in **Amar Singh v. Union of India and others**, (2011) 7 SCC 69, **Kishore Samrite v. State of Uttar Pradesh and others**, (2013) 2 SCC 398, **Zarina Siddiqui v. A. Ramalingam alias R. Amarnathan**, (2015) 1 SCC 705, High Court of Punjab & Haryana in **M/s Manu Sharma and Company v. State of Haryana and others**, reported as 2017(1) RCR (Civil) 608 and High Court of Jammu and Kashmir in **Mani Ram v. Janak Singh & Ors**, reported as 2019 (2) JKJ 565.

16. In a recent judgment in **ABCD v. Union of India & Ors.**, (2020) 2 SCC 52, Hon’ble the Supreme Court in a matter where material facts had been concealed, while issuing notice to the petitioner therein, exercising its suo-motu contempt power observed as under :

“15. Making a false statement on oath is an offence punishable under Section 181 of the IPC while furnishing false information with intent to cause public servant to use his lawful power to the injury of another person is punishable under Section 182 of the IPC. These offences by virtue of Section 195(1)(a)(i) of the Code can be taken cognizance of by any court only upon a proper complaint

in writing as stated in said Section. In respect of matters coming under Section 195(1)(b)(i) of the Code, in ***Pushpadevi M. Jatia v. M.L.Wadhawan etc., (1987) 3 SCC 367*** prosecution was directed to be launched after prima facie satisfaction was recorded by this Court.

16. It has also been laid down by this Court in ***Chandra Shashi v. Anil Kumar Verma, (1995) 1 SCC 421*** that a person who makes an attempt to deceive the court, interferes with the administration of justice and can be held guilty of contempt of court. In that case a husband who had filed a fabricated document to oppose the prayer of his wife seeking transfer of matrimonial proceedings was found guilty of contempt of court and sentenced to two weeks imprisonment. It was observed as under:

"1. The stream of administration of justice has to remain unpolluted so that purity of court's atmosphere may give vitality to all the organs of the State. Polluters of judicial firmament are, therefore, required to be well taken care of to maintain the sublimity of court's environment; so also to enable it to administer justice fairly and to the satisfaction of all concerned.

2. Anyone who takes recourse to fraud, deflects the course of judicial proceedings; or if anything is done with oblique motive, the same interferes with the administration of justice. Such persons are required to be properly dealt

with, not only to punish them for the wrong done, but also to deter others from indulging in similar acts which shake the faith of people in the system of administration of justice.

14. The legal position thus is that if the publication be with intent to deceive the court or one made with an intention to defraud, the same would be contempt, as it would interfere with administration of justice. It would, in any case, tend to interfere with the same. This would definitely be so if a fabricated document is filed with the aforesaid mens rea. In the case at hand the fabricated document was apparently to deceive the court; the intention to defraud is writ large. Anil Kumar is, therefore, guilty of contempt."

In ***K.D. Sharma v. Steel Authority of India Limited and others, (2008) 12 SCC 481*** it was observed:

"39. If the primary object as highlighted in ***Kensington Income Tax Commrs., (1917) 1 KB 486 : 86 LJKB 257 : 116 LT 136 (CA)*** is kept in mind, an applicant who does not come with candid facts and "clean breast" cannot hold a writ of the court with "soiled hands". Suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, manoeuvring or misrepresentation, which has no place in equitable and prerogative jurisdiction. If the applicant does not disclose all the material facts fairly

and truly but states them in a distorted manner and misleads the court, the court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the court does not reject the petition on that ground, the court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of court for abusing the process of the court."

In ***Dhananjay Sharma v. State of Haryana and others, (1995)***

3 SCC 757 filing of a false affidavit was the basis for initiation of action in contempt jurisdiction and the concerned persons were ***punished.***"

17. It was held in the judgments referred to above that one of the two cherished basic values by Indian society for centuries is "satya" (truth) and the same has been put under the carpet by the petitioner. Truth constituted an integral part of the justice-delivery system in the pre Independence era, however, post-Independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings. In the last 40 years, the values have gone down and now a litigant can go to any extent to mislead the court. They have no respect for the truth. The principle has been evolved to meet the challenges posed by this new

breed of litigants. Now it is well settled that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final. Suppression of material facts from the court of law, is actually playing fraud with the court. The maxim *supressio veri, expressio falsi*, i.e. suppression of the truth is equivalent to the expression of falsehood, gets attracted. Its nothing but degradation of moral values in the society, may be because of our education system. Now we are more happy to hear anything except truth; read anything except truth; speak anything except truth and believe anything except truth. Someone rightly said that ***'Lies are very sweet, while truth is bitter, that's why most people prefer telling lies.'***

18. Keeping in view the aforesaid principles of law laid down by Hon'ble the Supreme Court any litigant who approaches the court with unclean hands is not entitled to be heard on merits.

19. Keeping in view the aforesaid enunciation of law regarding concealment of material facts by a litigant approaching the court with unclean hands, we do not find this to be a fit case where apology of the petitioner can be accepted for misleading the Court. Hence, the present application deserves to be dismissed on that ground alone.

20. However, we still deem it to be appropriate to consider the case of the petitioner on merit as well. Case was registered under Sections 392/395/412 of the Indian Penal Code and Section 25(1)(a) of the Arms Act where a dacoity took place at the petrol pump during midnight.

Though, learned counsel for the petitioner submitted that only mobile phone was recovered from him, however, from the statement made by the petitioner in addition to that cash amounting to ₹8,200/- and a Bolero vehicle, which was used in crime, was also recovered.

21. This is enough to prima facie link the petitioner with the crime at this stage when the statements of material witnesses are yet to be recorded by the trial court.

22. For the reasons mentioned above, we do not find any merit in this case. The present petition is accordingly dismissed.

(Rajesh Bindal, J.)

(Saugata Bhattacharyya, J.)