

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.353 of 2019

In
Civil Writ Jurisdiction Case No.7486 of 2017

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Sweetty Kumari @ Rekha, Wife of Shailendra Kumar, Resident of Moh.
-Munnachak, P.S.-Patrakar Nagar (Kankarbagh), District-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Home Department, Govt. of Bihar, Old Secretariat, Patna.
2. The District Magistrate, Patna.
3. The Superintendent of Police, Patna.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s :	Mr.Kumar Binode Bariar, Advocate
For the Opposite Party/s :	Mr.Prabhat Kumar Verma (AAG-3)
	Dr. Mankeshwar Tiwari, AC to AAG-3

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date:09.11.2022

The present review petition has been filed seeking review of the order dated 26.09.2019 passed by this Court in CWJC No. 7486 of 2017, which is reproduced herein below:-

“After some arguments, the learned counsel for the petitioner seeks to withdraw the present writ petition with liberty to file fresh application for grant of arms licence before the District Arms Magistrate, Patna.

Accordingly, the present writ petition stands disposed of, however, with liberty to the petitioner to file fresh application for grant of arms licence, which shall be considered in accordance with law afresh on



merits.”

2. The learned counsel for the review petitioner has submitted that the present review petition has been filed only on the ground that the learned counsel for the petitioner was suffering from *Hypoglycemia*, hence he could not place all the facts before this Court and instead withdrew this writ petition and moreover, for the reason that since the petitioner has been agitating her grievances before this Court since the year 1998 by filing various writ petitions, it would be in the interest of the petitioner to pursue her remedy before this Court instead of availing the alternative remedy available under the law.

3. I have heard the learned counsel for the petitioner and gone through the materials on record from which it is apparent that the learned counsel for the petitioner had voluntarily sought to withdraw the present writ petition with liberty to the petitioner to file fresh application for grant of arms license, before the District Arms Magistrate, Patna in the following background:-

(i) The petitioner had filed a writ petition bearing CWJC No. 6851 of 2009, assailing the order dated



04.09.2001, passed by the District Magistrate, Patna, whereby and whereunder the case of the petitioner for grant of arms license had been rejected as also the appellate order dated 30.12.2008, passed by the Divisional Commissioner, Patna, by which the appeal of the petitioner had been rejected.

(ii) The aforesaid writ petition bearing C.W.J.C. No. 6851 of 2009, was allowed by an order dated 06.09.2011 and the aforesaid orders passed by the District Magistrate, Patna as also by the appellate authority were quashed and the matter was remanded back to the District Magistrate, Patna to dispose off the application of the petitioner for grant of arms license afresh within a period of two months.

(iii) The petitioner had then filed a contempt petition bearing M.J.C. No. 1123 of 2012, wherein a show cause was filed by the District Magistrate, Patna inter alia stating therein that he has passed the final order dated 14.08.2012, rejecting the case of the petitioner for grant of arms license.

(iv) The aforesaid contempt petition bearing M.J.C. No. 1123 of 2012 was disposed of by a coordinate Bench of this Court vide order dated 22.02.2017, granting liberty to the petitioner to avail remedy as is available in accordance with law, in case the petitioner is aggrieved with the order dated 14.08.2012.



(v) The petitioner instead availing the remedy of appeal provided for under Section 18 of the Arms Act, 1959, challenged the said order dated 14.08.2012, directly before this Court by filing a writ petition bearing C.W.J.C. No. 7486 of 2017.

(vi) A counter affidavit had been filed in the aforesaid writ petition bearing C.W.J.C. No. 7486 of 2017, wherein it was stated that again a police report was sought, vide letter no. 1210 dated 13.07.2017, from the S.S.P., Patna with regard to the case of the petitioner and the Officer-In-Charge, Patrakarnagar Police Station clearly stated in his report dated 09.08.2017, that it appears that the petitioner is not in a position to handle arms, there is possibility of threat to public peace, hence recommendation cannot be made for grant of arms license to the petitioner in view of the provisions contained under Section 14(1)(b)(i)(3) and 14(1)(b)(ii) of the Arms Act, 1959. In the said counter affidavit, it was also stated that accumulation of unnecessary arms is not in the interest of society or people as they are threat to public peace and security.

(vii) The case of the petitioner was again considered, after filing of the present writ petition and it has again been rejected by an order dated 11.08.2017, passed by the District Magistrate, Patna/District Arms Magistrate, Patna which has been annexed as Annexure-C to the counter affidavit but the petitioner did not seek to challenge the same and instead



consciously withdrew the writ petition to file a fresh application for grant of arms license, before the District Arms Magistrate, Patna in terms of the new Arms Rules, 2016, which postulates elaborate procedure and compliances for the purposes of applying and grant of arms license inasmuch as the petitioner had initially applied for grant of arms license on 09.08.1995 and the same had finally culminated into rejection of the case of the petitioner for grant of arms license vide orders dated 14.08.2012 and 11.08.2017, passed by the District Magistrate, Patna.

4. At this juncture, it would be relevant to reproduce herein below the relevant provision regarding review, as contained in Order 47 Rule (1) of the Code of Civil Procedure, 1908:-

“1. Application for review of judgment -

(1) Any person considering himself aggrieved-

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after



the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appearing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.”

5. A bare perusal of the aforesaid provision of review, as contained in the Code of Civil Procedure, 1908, would show that there are three grounds for review of a judgment i.e. (i) discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was made, (ii) on account of some mistake or error apparent on the face of the record, (iii) for any other sufficient reason.

6. It would also be relevant to refer to the Judgments rendered by the Hon'ble Apex Court, wherein principles of



law have been enunciated with regard to the issue under consideration, some of which are being detailed herein below:-

(i) In the case of ***Ramesh Chandra Sankla & Ors. vs. Vikram Cement & Ors.*** reported in ***(2008) 14 SCC 58***, paragraph no. 61 whereof, is reproduced herein below:-

“61. From the above case law, it is clear that it is open to the petitioner to withdraw a petition filed by him. Normally, a court of law would not prevent him from withdrawing his petition. But if such withdrawal is without the leave of the court, it would mean that the petitioner is not interested in prosecuting or continuing the proceedings and he abandons his claim. In such cases, obviously, public policy requires that he should not start a fresh round of litigation and the court will not allow him to reagitate the claim which he himself had given up earlier.”

(ii) In the case of ***Sarguza Transport Service vs. State Transport Appellate Tribunal, M.P. Gwalior & Ors.*** reported in ***(1987) 1 SCC 5***, paragraphs no. 8 & 9 whereof, are reproduced herein below:-

“8. The question for our consideration is whether it would or would not advance the cause of justice if the principle underlying Rule 1 of Order XXIII of the



Code is adopted in respect of writ petitions filed under Articles 226/227 of the Constitution of India 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. He may as stated in Daryao vs. State of U.P. AIR 1961 SC 1457 in a case involving the question of enforcement of fundamental rights file a petition before the Supreme Court under Article 32 of the Constitution of India because in such a case there has been no decision on the merits by the High Court. The relevant observation of this Court in Daryao case is to be found at page 593 and it is as follows:-

“If the petition is dismissed as withdrawn it cannot be a bar to a subsequent petition under Article 32, because in such a case there has been



no decision on the merits by the court. We wish to make it clear that the conclusions thus reached by us are confined only to the point of res judicata which has been argued as a preliminary issue in these writ petitions and no other.”

9. The point for consideration is whether a petitioner after withdrawing a writ petition filed by him in the High Court under Article 226 of the Constitution of India without the permission to institute a fresh petition can file a fresh writ petition in the High Court under that article. On this point the decision in Daryao case is of no assistance. But we are of the view that the principle underlying Rule 1 of Order 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 Article 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 Article 32 of the Constitution of India since such withdrawal does not amount to res judicata, the remedy under Article 226 of the



Constitution of India 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. We, however, make it clear that whatever we have stated in this order may not be considered as being applicable to a writ petition involving the personal liberty of an individual in which the petitioner prays for the issue of a writ in the nature of habeas corpus or seeks to enforce the fundamental right guaranteed under Article 21 of the Constitution since such a case stands on a different footing altogether. We, however, leave this question open.”

(iii) In the case of ***Upadhyay & Company vs. The State of U.P., reported in (1999) 1 SCC 81***, paragraphs no. 11, 12, 15 & 16 whereof are reproduced herein below:-

“11. We made a recapitulation of the events as above for the purpose of showing that the petitioner has absolutely no case in the present SLPs. He cannot, at any rate, now challenge the order of the High Court dated 3-5-1996 over again having withdrawn the SLP which he filed in challenge of the same order. It is not a permissible practice to challenge the same order



over again after withdrawing the special leave petition without obtaining permission of the court for withdrawing it with liberty to move for special leave again subsequently.

12. The above principle has been incorporated as a rule in the realm of suits. Order 23 Rule 1 of the Code of Civil Procedure deals with withdrawal of suit or abandonment of part of the claim. Sub-rule (3) says that the court may in certain contingencies grant permission to withdraw from a suit with liberty to institute a fresh suit in respect of the subject-matter of such suit. Sub-rule (4) reads thus:

“1. (4) Where the plaintiff—

(a) abandons any suit or part of a claim under sub-rule (1), or

(b) withdraws from a suit or part of a claim without the permission referred to in sub-rule (3),

he shall be liable for such costs as the court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.”

15. We have no doubt that the above rule of public policy, for the very same reasoning, should apply to special leave petitions filed under Article 136 of the Constitution also. Even otherwise, the order passed by the Division Bench of the High Court on 3-5-1998



does not warrant interference on merits as the learned Judges of the High Court have taken into account all the relevant facts and come to the correct conclusion.

16. We also agree with the Division Bench of the High Court that the order dated 3-5-1996 does not require any clarification. In fact the attempt of the petitioner was to get the order reviewed. Since there was no error apparent on the face of the record, the petitioner termed his petition as one for clarification. The Division Bench of the High Court has dismissed it rightly.”

7. Having regard to the facts and circumstances of the case, this Court is of the opinion that the present petition does not depict any ground for review of the order in question and moreover, the petitioner has failed to show any mistake or error apparent on the face of the record so as to warrant review of the order dated 26.09.2019. This Court also finds, taking into account the principles of law laid down by the Hon’ble Apex Court in the aforementioned cases, that once a writ petition has stood withdrawn, no further petition should be entertained on the ground of public policy inasmuch as withdrawal of a writ petition by the petitioner amounts to abandoning the remedy under Article 226 of the Constitution



of India, in respect of the cause of action relied on in the writ petition. Lastly, this Court is of the firm view that the present petition is a vexatious petition inasmuch as the aforesaid writ petition bearing C.W.J.C. No. 7486 of 2017 was withdrawn with liberty to file a fresh application for grant of arms license, consciously and voluntarily, in view of the fact that the case of the petitioner for grant of arms license had stood rejected not only vide order dated 14.08.2012 but also by an order dated 11.08.2017, pursuant to the application made by the petitioner on 09.08.1995, thus the petitioner, having reached a dead end, had consciously thought it proper to seek liberty to file a fresh application for grant of arms license in terms of the new Arms Rules, 2016. In such view of the matter, the present review petition is devoid of any merits so as to warrant review of the order dated 26.09.2019.

8. Under the circumstances, I find that the present review petition is not only sans merit but also frivolous and vexatious inasmuch as procrastination of litigation in this manner amounts to deceit and moreover, frivolous litigation clogs the wheels of justice making it difficult for the Courts to provide speedy justice to the genuine litigants.



9. Accordingly, the review petition stands dismissed with a cost of rupees one thousand (Rs. 1000/-), to be deposited by the petitioner with the Patna High Court Legal Services Committee.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	AFR
CAV DATE	N/A
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