

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CIVIL APPLICATION [CAN] NO. 42/2022
IN CONTEMPT PETITION NO. 332/2019
IN CRIMINAL WRIT PETITION NO.656/2016.

Savita Prabhakar Rohankar.

-VERSUS-

Deepak Rajpalsingh Thakur and others.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Ms.S.V. Rohankar – Applicant – Inperson.
Shri S.S. Dhengale, Advocate for Non-applicant No.1.
Shri H.D.Dubey, A.P.P. for Non-applicant No.2.

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CORAM : VINAY JOSHI, J.

DATE : JUNE 06, 2022.

Heard.

2. This application is taken out by the original petitioner for revival of earlier order of this Court dated 29.11.2021, by which the Contempt Petition No.332/2019 came to be disposed of with a rider.

3. The proceeding bears a checkered history. Initially father of applicant namely Prabhakar has filed a criminal case against the non-applicant – Deepak (contemnor), which was

2

registered as Regular Criminal Case No.197/2013. The contemnor has filed a discharge application in said proceedings, which came to be rejected on merits vide order dated 13.05.2015. In discharge application inter alia the contemnor has raised a technical issue of sanction to prosecute. The said order of rejection was challenged by the contemnor in Revision Application, however, said revision came to be dismissed by the Sessions Court vide order dated 13.07.2016. Being aggrieved by the said rejection, the contemnor has approached this Court by filing Criminal Writ Petition No.656/2016. The said Writ Petition was withdrawn with a liberty to file fresh application for discharge only on merits of the case, meaning thereby the technical objection about sanction was precluded to be raised before the Magistrate.

4. In said background, the contemnor filed second discharge application raising a technical issue about sanction, which was again rejected by the learned Magistrate vide order dated 08.11.2017. Since the contemnor has raised the issue of sanction against the directions of this Court, the present applicant has preferred a Contempt Petition. In said proceedings the contemnor has admitted his mistake of raising the issue of

3

sanction despite earlier order of this Court, therefore, tendered an unconditional apology to this Court. Having regard to the fact that the contemnor has tendered unconditional apology, it was accepted and the contempt petition was disposed of.

5. The matter never ends, as after disposal of the contempt petition on 27.02.2018 once again the contemnor moved another application seeking discharge i.e. third application, on 05.11.2019. Pertinent to note that in the said application also once again the technical issue of sanction was raised. In view of that the present applicant has filed second Contempt Petition No.332/2019 contending that despite specific directions of this Court in Criminal Writ Petition No.656/2016, once again the technical issue has been raised, and therefore the contempt.

6. This Court on prima facie satisfaction of the contemptuous act on the part of the contemnor, has framed charge against him vide order dated 13.10.2021. Thereafter vide order dated 29.11.2021, the Contempt Petition was disposed of with certain observations. Though this Court has passed an order of sentence, however, considering that the contemnor was

4

a retired fellow, the order was kept in abeyance with a rider that if the contemnor commits further contemptuous act, then the order of sentence would be revived. Besides that, the contemnor was directed to pay costs of Rs.25,000/- within a stipulated period as he has repeatedly filed applications by which the applicant/lady was harassed.

7. Within stipulated time the amount of costs of Rs.25,000/- was not paid, however, later on with the permission of this Court the initial cost of Rs.25,000/- and additional cost of Rs.5000/- was deposited in this Court.

8. Virtually the contempt petition was disposed of, however, it was with a caveat to revive the sentence under certain contingencies. Taking thread of this, the present application is taken out by the applicant lady pointing out that after disposal of the second contempt petition on 21.11.2021, the contemnor has filed another application on 15.01.2022 in the Court of Magistrate stating that in discharge application he is seeking to delete the grievance about sanction and urged the Court to consider the application on merits. According to the applicant, already twice discharge application was rejected by

5

the Magistrate. The contemnor was cautioned by this Court for not to do any further contemptuous act, however, once again he has revived his prayer for discharge and therefore, a valid cause for revival of the earlier order.

9. It is contended on behalf of the contemnor that filing of discharge application to the Court of Magistrate would not ipso facto amount to contempt. Accused has right to apply for discharge as provided under the Code of Criminal Procedure. However, the facts of the case are some what different as the first discharge application was rejected on merits and the said order is maintained upto this Court. Thereafter, as liberty was granted by this Court, second discharge application was filed though precluded to raise issue of sanction, however, that point was also canvassed and it was rejected by the Magistrate. In the circumstances everything has come to an end. However, inspite of challenging the second rejection to the higher forum, once again third discharge application was filed before the same Court which was itself improper. However, this Court has taken note of the said fact while deciding the second contempt petition and therefore that needs no consideration once again.

6

10. After disposal of the second contempt petition, the contemnor has filed application [Exh.99] dated 15.01.2022 once again requesting the Magistrate to consider his third discharge application on merits. Infact there was no propriety to file such third discharge application for the same cause, which was nothing but, an abuse of the process of the Court. However, it is informed that the concerned Magistrate has also dealt with the third discharge application on merits, and ultimately it was rejected. The trial Court has also framed a charge and the matter is fixed for evidence, meaning thereby the issue of discharge is now closed.

11. Having regard to the said fact it is not necessary to consider whether the contemnors' third round of getting his discharge application once again decided on merits amounts to contemptuous act. Certainly the said act of contemnor of repeatedly approaching the same forum and requiring the Court to decide the same issue again and again is objectionable. The said act palpably demonstrates that the contemnor is intending to prolong the matter, harass the other side as well as to put taint on the system. In view of that the contemnor is directed to pay costs of Rs.10,000/- to the present applicant for his

7

subsequent acts. The amount shall be deposited in this Court within a period of two weeks from today, failing which it shall be recovered as arrears of land revenue. The applicant / lady is entitled to withdraw the said amount of cost towards compensation. It is informed by the applicant that she has not withdrawn the earlier costs of Rs.30,000/-, which was already deposited in this Court. She is at liberty to withdraw the said amount also.

12. In view of above, there is no propriety in keeping this application pending and the same is disposed of.

13. At this juncture, the applicant / lady submits that the original complaint was filed by her father, who is no more. She states that the learned Magistrate be directed that her evidence be recorded in the proceedings. In this regard, the applicant / lady is at liberty to move application before the Magistrate for said purpose, which shall be decided in accordance with law, by passing a reasoned order.

JUDGE.