

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(205)

CRM-M-6647-2019

Date of Decision: 05.04.2022

Nicky Vaid

--Petitioner

Versus

State of Haryana & another

--Respondents

CORAM:- HON'BLE MR. JUSTICE RAJESH BHARDWAJ.

Present:- Mr. Varun Chugh, Advocate for the petitioner.

Mr. B.S. Virk, D.A.G., Haryana.

Mr. Ajay Kalra, Advocate for the complainant.

RAJESH BHARDWAJ.J (Oral)

The present petition has been filed under Section 438 Cr.P.C for grant of pre-arrest bail to the petitioner in FIR No.158 dated 22.11.2018 registered under Sections 498-A, 406, 509, 342, 34 IPC at Women Police Station, Gurugram, District Gurugram.

This Court vide order dated 13.2.2019 after issuing notice in the case directed the petitioner to pay a sum of Rs.25,000/- towards litigation expenses to the complainant wife and referred the matter to the Mediation & Conciliation Centre of this Court. The arrest of the petitioner was stayed, however, the petitioner having not complied with the undertaking given on 13.2.2019, this Court enhanced the payment of the litigation expenses to the tune of Rs.50,000/- instead of Rs.25,000/- vide order dated 2.5.2019. The petitioner again failed to honor the order of this Court and hence this Court dismissed the petition vide order dated 17.7.2019. The petitioner approached the Hon'ble Supreme Court impugning the order dated 17.7.2019. The Hon'ble Supreme Court vide its order dated 25.9.2020 disposed of the SLP filed by the petitioner observing as follows:-

“Leave granted.

We have heard learned counsel for parties.

The impugned order dated 17th July, 2019 arose in a situation where the appellant before us failed to join the mediation proceedings and failed to pay the litigation cost resulting in dismissal of his petition before the High Court for non-compliance of the orders regarding payment of litigation expenses.

The amount now stands paid and learned counsel for respondent no.2 also submits that the appropriate course of action would be to restore the petition before the High Court and direct the parties to the mediation centre so that an endeavour could be made to reconcile differences inter se the parties. It is his submission that the parties cannot live together and thus the solution may be a divorce by mutual consent but on terms and conditions to the satisfaction of the respondent no.2.

In view of the aforesaid submission, we, in view of supervening circumstances of the compliance having taken place now, set aside the impugned order to the extent of dismissal of CRM-M-6647-2019 and restore the matter to its original number before the High Court. The parties will now join the mediation proceedings and the mediator will endeavour to find an amicable solution. It is open for the mediator to have even on-line mediation given the current scenario.

The appeal stands disposed of in the aforesaid terms.

Needless to say, the interim protection which was granted to the appellant earlier would stand restored and in the unforeseen eventuality of the mediation not being successful, the matter would be heard on its own merits.”

Thereafter, the case was taken up for hearing. The interim protection granted by this Court vide order dated 13.2.2019 remained in

operation. On 5.1.2022 when this case came up for hearing, it was brought to the notice of this Court that though this Court had granted interim protection to the petitioner but the petitioner in violation of the spirit of law has already left India without seeking permission of the court. The parties were granted time to verify the truth in the contentions raised before this Court.

Today when the case came up for hearing, learned counsel for the petitioner has submitted that the petitioner has already joined investigation and the challan already stands presented before the court of competent jurisdiction and hence the interim order dated 13.2.2019 vide which the arrest of the petitioner was stayed, may be made absolute.

On the asking of the court regarding the availability of the petitioner whether he is in India or abroad, it was submitted by counsel for the petitioner that petitioner had left for Nigeria after signing the necessary documents for the filing of this petition in January, 2019 itself. He further submits that the petitioner thereafter came back to India on 10.12.2021, joined the investigation and thereafter again left India on 14.3.2022. It was submitted that there was a theft in the house of the petitioner in Nigeria and therefore he left India.

On the asking of the Court whether the petitioner left India after seeking permission of the court, it was argued before this Court that the interim order dated 13.2.2019 was not made absolute and hence the same was without any terms and conditions and therefore the petitioner left India without seeking any permission from the court.

I have heard learned counsel for the parties and have gone through the record carefully.

It is apparent that in the facts and circumstance of the case, this Court had granted interim protection of stay of arrest to the petitioner vide order dated 13.2.2019 and directed the parties to appear before the Mediation Centre of this Court. The petitioner was directed to pay Rs.25,000/- as litigation expenses to respondent no.2 and when he failed to comply with the order, the court granted another opportunity by enhancing the litigation expenses from Rs.25,000/- to Rs.50,000/-. The conduct of the petitioner remained unchanged and finally this Court dismissed the petition for non-compliance of the order vide order dated 17.7.2019. The petitioner approached the Hon'ble Supreme Court by way of filing SLP. The Hon'ble Supreme Court granted another opportunity to the petitioner and restored the petition to its original number vide order dated 25.9.2020. From the facts of the case and the arguments advanced by counsel for the petitioner, it is apparent that at the time of granting interim protection on 13.2.2019 the petitioner was not available in India. On 25.9.2020 also when the Hon'ble Supreme Court disposed of the SLP petitioner was not in India. It has been specifically argued before this Court that thereafter the petitioner came back to India on 10.12.2021 and he left India on 14.3.2022 without seeking any permission from this Court. This Court is neither impressed with the conduct of the petitioner nor with the arguments advanced by the counsel for petitioner that the interim order dated 13.2.2019 was not an absolute order and hence there were no terms and conditions which the petitioner has violated. Needless to say that the terms and conditions are inherent in the interim order dated 13.2.2019 passed by the Court and the same could not have been treated as a blank cheque by the petitioner. The conditions of the anticipatory bail were inherent in the order passed by this Court. The

petitioner approached this Court for the grant of bail under Section 438 Cr.P.C and hence the interim protection granted was governed with the statutory provisions of Section 438(2) Cr.P.C. Admittedly the petitioner has left India without seeking permission of the Court. Time and again the petitioner has shown least regard to the majesty of law. The discretion of the Court under Section 438 Cr.P.C is an extraordinary jurisdiction which cannot be exercised in a cavalier manner. Petitioner has shown scant regard for the orders passed by this Court and hence he deserves no leniency.

The petition being devoid of any merit is hereby dismissed.

(RAJESH BHARDWAJ)
JUDGE

05.04.2022

lucky	Whether speaking/reasoned:	Yes/No
	Whether Reportable:	Yes/No