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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CRM-M-15429-2022 (O&M)
Date of Decision: 29.08.2022**

Ashok Kumar and another

..... Petitioners

Versus

State of Haryana and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Rajeev Sharma, Advocate,
for the petitioner.

Mr. Ranvir Singh Arya, Addl. A.G., Haryana.

JASGURPREET SINGH PURI, J. (ORAL)

The present petition has been filed under Section 482 of the Code of Criminal Procedure impugning the order dated 14.06.2018 (Annexure P-17) which was passed by the learned Chief Judicial Magistrate, Sonapat vide which charges were framed against the petitioners under Section 323/324 IPC in case CHI No.517 of 2018 titled as “State of Haryana Vs. Ashok and another” and also impugned order dated 14.08.2019 (Annexure P-20) passed by the learned Additional Sessions Judge, Sonapat in Criminal Revision No.187 of 2018 titled as “Ashok and another Vs. State of Haryana and another” and for quashing of all the consequential proceedings arising out of FIR No.243 dated 27.03.2018, under Section 323, 324, 34 IPC, registered at

Police Station City Sonapat.

Learned counsel for the petitioners has submitted that the present petition has been filed challenging the aforesaid two orders on the ground that both the orders were erroneous and the allegations against the petitioners were not only false but also based upon false complaints filed by the complainant.

When the matter earlier came up for hearing on 19.04.2022 before a Co-ordinate Bench of this Court, it was noticed that the petitioners had earlier filed a CRM-M-43689-2018, which was dismissed on 04.10.2018, granting liberty to the petitioners to file a revision. Thereafter, the petitioners filed second petition before this Court i.e. CRM-M-39431-2019, which was dismissed as withdrawn on 18.09.2019. Thereafter, the present petition has been filed without disclosing the withdrawal of the earlier petition in which the relief claimed was the same.

The facts with regard to the concealment and suppression made by the petitioners are noted as follows:-

The petitioners were facing prosecution in FIR No.243 dated 27.03.2018, under Section 323, 324, 34 IPC, registered at Police Station City Sonapat. They filed a petition before this Court for quashing of the FIR with all the consequential proceedings arising therefrom in CRM-M-43689-2018. When the matter came up for hearing on 04.10.2018, the petition was dismissed on the ground that the trial Court had framed charges against the petitioners vide order dated 14.06.2018 and since the petitioners had alternate remedy of filing revision challenging the order framing the charge, the petition was not maintainable and accordingly, without commenting on merits, the petition was dismissed. The said order dated 04.10.2018 is reproduced as

under:-

“Prayer in this petition, filed under Section 482 Cr.P.C., is for quashing the FIR No.243 dated 27.03.2018, under Section 323, 324 and 34 of the IPC, registered at Police Station City Sonapat, District Sonapat along with all consequential proceedings arising therefrom.

Heard.

Admittedly, the trial Court has framed charge against the petitioner vide order dated 14.06.2018. Since the petitioner has alternative remedy of filing revision challenging the order framing charge, this petition is not maintainable.

Accordingly, without commenting anything on the merits of the case, the instant petition is dismissed.”

Thereafter, the petitioners had filed revision petition before the learned Additional Sessions Judge, Sonapat, which was dismissed on 14.08.2019. Thereafter, the petitioners filed a petition under Section 482 of the Code of Criminal Procedure challenging the orders dated 14.06.2018, by which the charges were framed against the petitioners and also the order dated 14.08.2019, whereby the revision petition was dismissed and all the consequential proceedings arising out of the FIR No.243 dated 27.03.2018.

This petition came up for hearing before this Court on 18.09.2019, whereby the learned counsel for the petitioners, after arguing for some time, sought permission from this Court to withdraw the petition with a liberty to

raise all the pleas/defences during the course of trial and the petition was dismissed as withdrawn with liberty. The aforesaid order dated 18.09.2019 passed in CRM-M-39431-2019 is reproduced as under:-

“After arguing the case for some time and finding that this Court is not convinced with the arguments raised, learned counsel for the petitioners seeks permission to withdraw the present petition with liberty to the petitioners to raise all the pleas/defences during the course of trial.

Dismissed as withdrawn with liberty, as prayed for.”

Thereafter, the present petition has been filed under Section 482 of the Code of Criminal Procedure seeking the same prayer i.e. Challenging the orders dated 14.06.2018 by which the charges were framed, the order dated 14.08.2019, whereby the revision petition was dismissed and all the consequential proceedings arising out of the same FIR.

When the present petition came up for hearing on 19.04.2022, it was noticed that the petitioners had concealed the fact with regard to his earlier withdrawing of the petition, which is a glaring concealment of fact. Therefore, this Court on 22.08.2022, directed the Registry to tag the earlier petition with the file of the present case to verify the factual position.

A perusal of both the petitions would show that the relief claimed for both the petitioners were identical. The prayer made in CRM-M-39431-2019 and CRM-M-15429-2022 are similar and prayer clause in both cases can be shown in a tabulatory form:-

CRM-M-39431-2019	CRM-M-15429-2022
Petition under Section 482 Cr.P.C. Praying for quashing of charge dated 14.06.2018(P-3) framed by Ld. CJM, Sonapat as well as order dated 14.08.2019 (P-6) passed by the ld. Additional Sessions Judge, Sonapat vide which revision petition filed by the present petitioners was dismissed, as the Hon'ble Court declined to interfere with the order dated 14.06.2018 (P-3) passed by the Ld. CJM vide which charges under Sections 323, 324 & 34 IPC arising out of FIR No.243 dated 27.03.2018 P.S. City Sonipat, have been framed and all consequential proceedings arising therefrom. Or It is further praying that during the pendency of instant petition further proceedings before the trial Court may kindly be stayed. Or Any other order, which this Hon'ble Court may deem fit and appropriate, keeping in view the facts and circumstances of the present case.	Petition under Section 482 Cr.P.C. against the impugned order dated 14.06.2018 (Annexure P-17) vide which the Ld. Chief Judicial Magistrate, Sonapat has framed charges against the petitioners under Sections 323/324 IPC in case CHI No.517 of 2018 titled as "State of Haryana Vs. Ashok and another", and also against the impugned order dated 14.08.2019 (Annexure P-20) passed by the learned Additional Sessions Judge, Sonapat in Criminal Revision No.187 of 2018 titled as "Ashok and another Vs. State of Haryana and another" and for quashing of all the consequential proceedings arising out of FIR No.243 dated 27.03.2018, under Section 323, 324, 34 IPC, Police Station City Sonapat (Annexure P-1). Or Any other order, which this Hon'ble Court may deem fit, keeping in view the facts and circumstances of the present case, may kindly be passed, in the interest of justice. Or It is further respectfully prayed that during the pendency of the present petition before this Hon'ble Court, the further proceedings before the Ld. Trial Court, may kindly be stayed in the interest of justice.

A perusal of the present petition would show that the petitioners have mentioned CRM-M-43689-2018 as the first petition, which was dismissed in order to invoke the alternate remedy by filing the revision but the petitioners have actively concealed the second petition i.e. CRM-M-39431-2019, which was on the same cause of action and seeking same relief. In Para No.15 of the present petition rather the petitioners have specifically stated that no such or similar petition has been preferred by the petitioners either before this Hon'ble Court or Hon'ble Apex Court of India. Para 15 of the present petition is reproduced as under:-

“That no such or similar petition has been preferred by the petitioner either before this Hon'ble Court or Hon'ble Apex Court of India.”

The present petition is also supported by joint affidavit of both the petitioners and a perusal of the same would show that again in the affidavit it has been stated that no such or similar petition has earlier been filed by the deponents either before this Hon'ble Court or Hon'ble Supreme Court and the affidavit has been duly verified by the petitioners. The affidavit is a duly sworn affidavit before a Notary and is at Page 16 of the Paper-book.

Now the petitioners have filed an application bearing CRM-30400-2022 seeking withdrawal of the present petition on the ground that it was due to inadvertent mistake that the fact with regard to the withdrawal of the earlier petition could not be informed to learned counsel and for the mistake which has happened, the petitioners tender their unconditional apology and they may be permitted to withdraw the present petition.

From the facts and circumstances of the present case, the apology which has been tendered by the petitioners cannot be accepted since it is a case

where the petitioners have taken third round of litigation before this Court and it cannot be said or presumed that the petitioners were not aware of the fact that earlier they had filed a petition for the same cause of action and it cannot be presumed that the petitioners were not aware that they were supposed to come to the Court with clean hands and not with soiled hands. Therefore, the prayer for withdrawal of the present petition is not being made by way of a *bona fide* intention is hereby rejected. The unconditional apology tendered by the petitioners is also rejected.

The Hon'ble Supreme Court in “*Kishore Samrite Vs. State of U.P. and others*”, 2013(2) SCC(Cri) 655, has observed that with the passage of time, it has been realised that people used to feel proud to tell the truth in the Courts, irrespective of the consequences but that practice no longer proves true, in all cases. The Court does not sit simply as an umpire in a contest between two parties and declare at the end of the combat as to who has won and who has lost but it has a legal duty of its own, independent of parties, to take active role in the proceedings and reach at the truth, which is the foundation of administration of justice. It further observed that to enable the Courts to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, prevarication and motivated falsehood, must be appropriately dealt with. It further observed that the party not approaching the Court with clean hands would be liable to be non-suited and such party, who has also succeeded in polluting the stream of justice by making patently false statements, cannot claim relief, especially under Article 136 of the Constituion of India.

The Hon'ble Suprme Court in “*M/s Sciemed Overseas Inc. Vs.*

BOC India Limited and others”, 2016(1) RCR (Criminal) 835, has also observed that a global search of cases pertaining to the filing of a false affidavit indicates that the number of such cases that are reported has shown an alarming increase in the last fifteen years as compared to the number of such cases prior to that.

In “**Mary Angel Vs. State of Tamil Nadu**”, 1999(2) RCR (Criminal) 736, the Hon'ble Supreme Court observed that while exercising inherent jurisdiction under Section 482 of the Code of Criminal Procedure, the Court has power to pass 'such orders' (not inconsistent with any provision of the Code) including the order for costs in appropriate cases, (i) to give effect to any order passed under the Code or (ii) to prevent abuse of the process of any Court or (iii) otherwise to secure the ends of justice.

A perusal of both the petitions filed by the petitioners and after hearing the learned counsel for the petitioners, it is crystal clear that the petitioners have deliberately and actively concealed the fact with regard to filing of the earlier petition on the same cause of action seeking same relief and actively concealed the same from this Court while filing the second petition. There is no justification coming forward from the learned counsel for the petitioners or in the application filed except for the unconditional apology. Therefore, this Court is of the view that it is a fit case where the exemplary costs are required to be imposed upon the petitioners. The petitioners have not come to this Court with clean hands and have rather come to the Court with soiled hands. They cannot be permitted to pollute the system of administration of justice. They have filed a petition for quashing of the orders passed by the learned Magistrate as well as the learned Additional Sessions Judge and

withdrew the petition and thereafter, again filed a petition on the same cause of action for the same relief by concealing that they had earlier come to this Court for the same reason and did not even refer to those orders.

In view of the aforesaid reasons, this Court is satisfied that the petition deserves to be dismissed with costs. Consequently, the present petition is dismissed with Rs.1,00,000/- (Rupees one lac only) as costs, which shall be shared by both the petitioners. The costs shall be deposited in the Saving Account No.65046207476 (IFSC Code-SBIN0050719) of the Bar Council of Punjab and Haryana (Insurance Fund), SBI, District Court Branch, Sector-43, Chandigarh. The said costs shall be deposited within a period of three months from today. In case, the said costs are not deposited within the aforesaid period, then the same can be recovered as arrears of land revenue.

Post this case on 06.12.2022, for compliance purposes.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is only meant for the purpose of decision of present petition.

29.08.2022

Bhumika

(JASGURPREET SINGH PURI)
JUDGE

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| 1. Whether speaking/reasoned: | Yes |
| 2. Whether reportable: | Yes |