IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No.3560 of 2023

Subhash Kumar Singh, aged about 44 years, Son of Late J.N. Singh, Resident of Flat No.31, Urmila Niwas, Mansarover Colony, Hatia Tupudana, P.O. + P.S.- Tupudana, District- Ranchi- 834003 (Jharkhand)

… Petitioner

Versus

1. The State of Jharkhand
2. Jyoti Tiwary @ Jyoti Singh, aged about 38 years, Wife of Subhash Kumar Singh, Resident of C3/3 Mangala Apartment IP Extension, Patparganj, P.O. Patparganj, P.S.- Madhu Vihar, District- East Delhi, State- Delhi.

… Opposite Parties

CORAM: HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

For the Petitioner : Ms. Anjali Kumari, Advocate
For the State : Mr. Vineet Kr. Vashistha, Spl.P.P.
For the O.P. No.2 : Ms. Jyoti Kumari, In Person

Order No:-07 Dated:-13-12-2024

I.A. No.13020 of 2024

Heard the parties.

Learned counsel for the petitioner submits that this interlocutory application has been filed with a prayer for physical appearance of the child of the petitioner and the opposite party No.2, namely Aayan Pratap Singh. It is next submitted by the learned counsel for the petitioner that the petitioner has not met his son for the last two and half years. It is next submitted that this Cr.M.P. has been filed with a prayer for review/recall the order dated 24.07.2023 passed in Cr.M.P. No.1155 of 2023 by this court whereby and where under this court quashed the entire criminal proceeding in connection with complaint case No.6016 of 2022 including the order taking cognizance dated 31.03.2023. Hence, it is submitted that the prayer as prayed for in this interlocutory application be allowed.

Learned Spl.P.P. appearing for the State and the opposite party No.2 appearing in person submit that the name of the son of the petitioner and the opposite party No.2 has wrongly been mentioned and his actual name is

Aayansh Pratap; as his name has been changed at the request of the son himself to the opposite party No.2, as the minor son of the petitioner and the opposite party No.2 was facing bullying from his classmates in the class. It is next submitted that the prayer for making physical appearance of the minor child is in no way related to the main prayer made in this Cr.M.P. Opposite party No.2 in person further submits that the Cr.M.P. has been filed by the petitioner himself and the contents of the Cr.M.P. has been supported by the affidavit of the petitioner himself but this interlocutory application is supported by the affidavit of one Aman Mirdha who claims to be *pairvikar* of the petitioner but opposite party No.2 has personal knowledge that the Aman Mirdha is a body guard of the petitioner and when the petitioner himself is hale and hearty, in no way his body guard could have been made his *pairvikar* as mentioned in the affidavit sworn in support of this interlocutory application and the opposite party No.2 in person also submits that the opposite party No.2 reserves her right to sue the petitioner and Aman Mirdha for Aman Mirdha falsely claiming to be the *pairvikar* of the petitioner. Hence, it is submitted that this interlocutory application, being without any merit, be dismissed.

Having heard the submissions made at the Bar and after carefully going through the materials available in the record, it is pertinent to mention here that the subject matter of the criminal miscellaneous petition in no way relates to the son of the petitioner and the opposite party No.2.

Under such circumstances, this court is not inclined to make any direction for appearance of the minor son of the petitioner and the opposite party No.2 for any counseling as the same is not required so far as this criminal miscellaneous petition is concerned.

Accordingly, this interlocutory application, being without any merit, is dismissed.

(Anil Kumar Choudhary, J.)

Cr.M.P. No.3560 of 2023

This Criminal Miscellaneous Petition has been filed invoking the jurisdiction of this court under Section 482 of the Code of Criminal Procedure with a prayer to review/recall the order dated 24.07.2023 passed by this court in Cr.M.P. No.1155 of 2023 by which this court has quashed and set aside the

entire criminal proceeding in connection with Complaint Case No.6016 of 2022 including the order taking cognizance dated 31.03.2023 involving the offences punishable under Section 506 and 385 of the Indian Penal Code by the court of learned Judicial Magistrate First Class-IV, Ranchi.

Learned counsel for the petitioner submits that the opposite party No.2 being a corrupt practicing advocate has knowingly, wilfully and intentionally mislead and misrepresented the Hon'ble High Court of Delhi and has got several orders fraudulently in her favour. It is next submitted that several orders has been passed by the Hon'ble Apex Court of India for reviewing/recalling the order of its own and submits that in para-11 of this Cr.M.P., the date of judgment of the Hon'ble Supreme Court of India has been mentioned but neither the case number of the said criminal appeal nor the name of the parties has been mentioned anywhere. It is further submitted that if the order dated 24.07.2023 passed in Cr.M.P. No.1155 of 2023 by this court is not reviewed; the petitioner shall suffer irreparable loss. Hence, it is submitted that the prayer as prayed for in this Cr.M.P. be allowed.

Learned Spl.P.P. appearing for the State and the opposite party No.2 appearing in person submit that there is no provision in law for review of an order passed by this court in exercise of its power under Section 482 of the Code of Criminal Procedure as the moment this court passes an order under Section 482 of the Code of Criminal Procedure, this court becomes *functus officio* in respect of the case concerned. Hence, it is submitted that this Cr.M.P., being without any merit, be dismissed.

Having heard the submissions made at the Bar and after carefully going through the materials available in the records, it is pertinent to mention here that it is a settled principle of law as has been held by the Hon'ble Supreme Court in the case of **Nazma vs. Javed @ Anjum** reported in **(2013) 1 SSC 376**, para-11 and 12 of which reads as under:-

> *"11. The practice of entertaining miscellaneous applications in disposed of writ petitions was deprecated by this Court in Hari Singh Mann [(2001) 1 SCC 169 : 2001 SCC (Cri) 113] . Reference to the following paragraph of that judgment is apposite: (SCC p. 173, para 8)*
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> > *"8. We have noted with disgust that the impugned orders were passed completely ignoring the basic principles of criminal law. No review of an order is contemplated under*

the Code of Criminal Procedure. After the disposal of the main petition on 7-1-1999, there was no lis pending in the High Court wherein the respondent could have filed any miscellaneous petition. The filing of a miscellaneous petition not referable to any provision of the Code of Criminal Procedure or the rules of the court, cannot be resorted to as a substitute of fresh litigation. The record of the proceedings produced before us shows that directions in the case filed by the respondents were issued apparently without notice to any of the respondents in the petition. Merely because Respondent 1 was an advocate, did not justify the issuance of directions at his request without notice of the other side. The impugned orders dated 30-4-1999 and 21-7-1999 could not have been passed by the High Court under its inherent power under Section 482 of the Code of Criminal Procedure. The practice of filing miscellaneous petitions after the disposal of the main case and issuance of fresh directions in such miscellaneous petitions by the High Court are unwarranted, not referable to any statutory provision and in substance the abuse of the process of the court."

We are sorry to note that in spite of the clear pronouncement of law by this Court, still, the High Courts are passing similar orders, which practice has to be deprecated in the strongest terms. Of late, we notice that the High Courts are entertaining writ petitions under Articles 226 and 227 of the Constitution, so also under Section 482 CrPC and passing and interfering with various orders granting or rejecting request for bail, which is the function of ordinary criminal court. The jurisdiction vested on the High Court under Articles 226 and 227 of the Constitution as well as Section 482 CrPC are all exceptional in nature and to be used in most exceptional cases. The jurisdiction under Section 439 CrPC is also discretionary and it is required to be exercised with great care and caution."

"12. We are of the view that the High Court has committed a grave error in not only entertaining the criminal miscellaneous application in a disposed of writ petition, but also passing an order not to arrest the first respondent till the conclusion of the trial. Grant of bail or not to grant, is within the powers of the regular criminal courts and the High Court, in its inherent jurisdiction, is not justified in usurping their powers. Once the criminal writ petition has been disposed of, the High Court becomes functus officio and cannot entertain review petitions or miscellaneous applications except for carrying out typographical or clerical errors. In the instant case, the High Court has entertained a petition in a disposed of criminal writ petition and granted reliefs, which is impermissible in law."

that a High Court cannot entertain a review petition or miscellaneous applications after disposing of the Cr. Miscellaneous Petition except for carrying out the typographical or clerical errors and the same principle is

applicable to the orders passed in exercise of power under Section 482 of the Code of Criminal Procedure.

Now coming to the facts of the case, since this court does not have any power to review its own order passed in exercise of the power under Section 482 of the Code of Criminal Procedure, this court do not find any merit in this Criminal Miscellaneous Petition.

Accordingly, this Criminal Miscellaneous Petition, being without any merit, is dismissed with liberty to the opposite party No.2 to file an appropriate proceeding regarding the derogatory and scandalous allegations made against the opposite party No.2 in appropriate court.

(Anil Kumar Choudhary, J.)

AFR-Saroj/