



CRWP-6026-2024 (O&M)

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

235

**CRWP-6026-2024 (O&M)
Date of Decision: 24.09.2024**

Aashish Goel

..... Petitioner

VERSUS

Union of India and others

..... Respondents

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present: Mr. Nitin Mittal, Advocate for the petitioner(s).

Mr. Devanshu Aggarwal, Advocate for respondent No.1.

Mr. Manish Bansal, P.P. U.T. Chandigarh.

KIRTI SINGH, J.

The present petition has been filed under Article 226/227 of the Constitution of India for issuance of appropriate writ or order for the permanent release of the petitioner from Model Jail, Burail, Chandigarh by setting aside, modifying or quashing the sentence orders dated 17.05.2012 (Annexures P-1 to P-3) passed by the State Consumer Disputes Redressal Commission U.T. Chandigarh in Execution No.35/2011, Execution No.36/2011 and Execution No.37/2011.

2 That the petitioner was Managing Director of M/s Castle Concrete Infrastructure Private Limited, having its office in Chandigarh and the company proposed a project (residential and commercial) in District Solan, Himachal Pradesh. Respondents No. 3 to 6 visited the office of

above-said company and met the petitioner and his wife there and they



applied to purchase 03 properties in the said project in the year 2007 and three agreements were made on three different dates for same. However, after passing of some time the respondents observed no progress in the said project and they got suspicious and kept inquiring about the project from the petitioner and his wife, who kept ignoring and postponing the project on one pretext or another. Later the respondents realized that they have been defrauded and they filed a complaint with the police which culminated in lodging of FIR No.- 458 dated 23.10.2009 registered under Sections 420, 406 and 120-B of Indian Penal Code(for brevity IPC) at Police Station Sector 39, District Chandigarh.

2.1 The respondents also filed three separate complaints with regard to each of the agreement , under Consumer Protection Act, bearing numbers 23, 26 and 27 of 2009 before Ld. State Consumer Disputes Redressal Commission, Union Territory, Chandigarh (For brevity ‘District Commission’). As the petitioner failed to appear before the Ld. District Commission, the District Commission vide a common order dated 20.07.2010, while deciding the complaints *ex-parte* in favour of the respondents, awarded a sum of Rs 25,53,100/-, 20,04,000/- and Rs. 26,00,000/- in complaint case bearing numbers 23, 26 and 27 respectively. However, due to non payment of compensation amount awarded, the respondents filed execution petitions, bearing numbers 35, 36 and 37 in the year 2011, which were decided by the Ld. District Commission vide three separate order dated 17.05.2012 and the petitioner was sentenced to undergo



imprisonment for a period of two years and six months in each of the three execution applications.

2.2 Vide order dated 27.09.2012, Ld. JMIC declared the petitioner as proclaimed offender in case FIR No. 458 and the petitioner was arrested on 29.01.2020 from Ahmedabad, Gujarat thereafter the Trial Court commenced proceedings against the petitioner and vide orders dated 14.07.2023, the petitioner was convicted and sentenced to undergo simple imprisonment for a period 02 years and 06 months and a fine of Rs. 500/-.

3. Ld. Counsel for the petitioner submits that the Ld. Consumer Dispute Forum passed a common order in three complaints but while passing the order in execution applications the Ld. Consumer Dispute Forum passed three separate conviction orders in each of the applications without taking into consideration that the proceedings were arising out of a common transaction and three separate conviction orders could not have been passed and same has violated common law rule '*Nemo Debet Vis Vexari*', meaning "a man must not be put in peril twice for the same offence" which is enshrined in Clause 02 of Article 20 of the Constitution of India. He further submits that the petitioner has also been convicted by the Ld. Trial Court vide order of conviction and sentence dated 14.07.2023 and cumulative sentence awarded to him is about 10 years and neither the Ld. Consumer Dispute Forum nor the Ld. Trial Court has ordered the sentences to run concurrent, which has caused prejudice to the petitioner thus violating as he has been behind bars for more than 04 years. He thus prays that the sentence awarded to the petitioner may be directed to run concurrent.



4. At the very outset, learned Public Prosecutor appearing for the U.T. has laid a challenge to the maintainability of the present petition. He contends that the petitioner has a remedy to file appeal before Ld. National Consumer Disputes Redressal Commission, New Delhi (for brevity 'National Commission') and this court cannot interfere with the decisions of the Ld. District Commission especially when a statutory remedy to file an appeal is rightly available to the petitioner. He submits that the petitioner had filed an appeal bearing number 50 of 2021 before Ld. National Commission and same was dismissed vide order dated 09.05.2022 for want of prosecution. He further submits that the petitioner was absconding for a period of about more than 07 years and was also declared proclaimed offender by the Ld. Trial Court Vide order dated 27.09.2012 and the wife of the petitioner, who is the also the judgment debtor in the aforesaid complaints preferred under the Consumer Protection Act and is co-accused in the afore-stated FIR, is still absconding, and was part of the offence and she was duly challaned by the investigating agency in the Final Report presented and the trial is still pending qua her as she is absconding. He has relied upon the judgments passed by the Hon'ble Supreme Court in cases titled as '**Mohammad Swalleh and Ors. Vs IIIrd All. District Judge, Meerut and Anr.**' (AIR 1988 SC 94) and '**Cicily Kallarackal vs Vehicle Factory**' passed in SLP (C) No. 24228-24229 of 2012.

5. Heard Ld. Counsel for the parties and perused the case file.

6. This court while issuing notice to the respondents passed the following order-



“Notice of motion for 01.07.2024.

Process Dasti only.

The question, as to the maintainability of the present petition, is kept open.”

7. It is true that the exercise of powers envisaged under Article 226 read with Article 227 vested with the High Court to pass writs has to be exercised with great care and circumspection as has been reminded by Hon'ble Supreme Court in catena of decisions on various occasions. When a statutory remedy of appeal is created by enactment for redressal of grievances, the High Court cannot convert itself into court of appeal by exercise of jurisdiction under Article 226 especially when the applicant has not availed of that remedy.

7. Reliance can be placed upon order passed by Hon'ble Supreme Court in ***Cicily Kallarackal (supra)***, relevant paragraph is reproduced below:-

7. While declining to interfere in the present Special Leave Petition preferred against the order passed by the High court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India, we hereby make it clear that the order of the Commission are incapable of being questioned under the writ jurisdiction of the High Court, as a statutory appeal in terms of Section 27 A(1)(c) lies to this Court. Therefore, we have no hesitation in issuing a direction of caution that it will not be proper exercise of jurisdiction by the High Courts to entertain writ petitions against such orders of the Commission.



8. Reliance can be placed upon a recent judgment passed by the Hon’ble Supreme Court in case titled as “**Central Council For Research In Ayurvedic Sciences & Anr. Vs Bikartan Das & Ors.**” in Civil Appeal No. 3339 of 2023, relevant part of the judgment is reproduced below :-

“ XXX XXX XXX

*77. The purpose of certiorari, as we understand, is only to confine the inferior tribunals within their jurisdiction, so as to avoid the irregular exercise, or the non-exercise or the illegal assumption of it and not to correct errors of finding of fact or interpretation of law committed by them in the exercise of powers vested in them under the statute. The accepted rule is that where a Court has jurisdiction it has a right to decide every question which crops up in the case and whether its decision is correct or otherwise, it is bound to stand until reversed by a competent Court. This Court in **G. Veerappa Pillai v. Messrs Raman and Raman Ltd. Kumbakonam, Tanjore District and Others, (1952) 1 SCC 334** observed:*

“26. Such writs as are referred to in Article 226 are obviously intended to enable the High Court to issue them in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record, and such act, omission, error, or excess has resulted in manifest injustice. However extensive the jurisdiction may be, it seems to us that it is not so wide or large as to enable the High Court to convert itself into a court of appeal and examine for itself the correctness of the



decision impugned and decide what is the proper view to be taken or the order to be made.”

78. In view of the aforesaid discussion, we have reached to the conclusion that the impugned order passed by the High Court is not sustainable in law and the same deserves to be set aside.

XXX XXX XXX ”

9. In view of the observation made above this court is of the considered opinion that since the petitioner has not availed his alternate remedy in accordance with law, this petition is dismissed.
10. Nothing mentioned hereinabove will be construed as an expression on the merits of the case.

(KIRTI SINGH)
JUDGE

24.09.2024
Kapil

Whether speaking / reasoned	Yes/No
Whether Reportable	Yes/No