

(2019) 03 DEL CK 0173

In the Delhi High Court

Case No : Criminal Writ Petition No. 1383 Of 2018, Criminal Miscellaneous
Application No. 8410 Of 2018

R K Jain

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 14-03-2019

Acts Referred:

Constitution Of India, 1950 — Article 21
Code Of Criminal Procedure, 1973 — Section 313

Citation : (2019) 3 AD(Delhi) 432

Hon'ble Judges : Mukta Gupta, J

Bench : Single Bench

Advocate : Rahul Mehra, Jamal Akhtar, Amanpreet Singh

Final Decision : Dismissed

Judgement

Mukta Gupta, J

1. By this petition, the petitioner seeks following prayers:-

a) Issue a writ of Mandamus thereby directing the Id. CMM (E) Ms Shivali Sharma at Karkardooma District Courts, for:

(i) Summoning the material witness PW-9 and conducting evidence/allowing the petitioner to cross-examine the said witness as per prescribed Criminal Procedure and Indian Evidence Act,

(ii) Following the pronouncements of superior courts which bind the trial court, including those specifically relied upon, thereby expeditiously concluding the 17-year-old proceedings being dragged illegally, by glaring abuse of process of law well-documented, and without compromising the livelihood of the petitioner any further, who has professional/livelihood commitments out-station Mondays through Wednesdays,

(iii) Filing compliance report of the same by setting a short time-frame for the

same

(iv) Taking action as per law against the identified culprits for their well-documented illegalities, by registration of FIR against each of the identified wrong-doers, for the cognizable serious offences/Fraud indulged in, profusely documented, punishable under Indian Penal Code, besides under Prevention of Corruption Act for Criminal Misconduct so far shirked by successive transferee trial court presiding officers,, to promote justice and uphold Rule of Law.

(b) pass appropriate orders against trial court for indulging in Contempt of own Court by illegal arbitrary acts under color of power detailed in the application, and also for wilfully refusing to follow the mandate of Statute/Code of Criminal Procedure and also the Indian Evidence Act, as also the pronouncements of supervisory courts, thereby managing to drag the fraud/illegal proceedings for nearly 18 (eighteen) years already, thereby not only substantially affecting the administration of justice but actually subverting the very judicial process, by infringing upon the Legal and Constitutional rights of petitioner under Article 21 of the Constitution and further serious illegality proposed to be indulged in on 5/4/2018, in worst bias/violation of Principles of Natural Justice and Contravention of the Law of Land, by proceeding to record the statement of petitioner on 5/4/2018, after illegally and prejudicially closing the PE, without allowing petitioner to cross-examine material witness PW-9, instead making PW3 to depose as PW9, by worst abuse of power and subversion of established judicial procedure, calling for stern action, not merely reprimand.

(c) award Compensation by way of Punitive Damages to the petitioner for wilfully harassing him even after nearly 18 (eighteen) years of illegal proceedings ignoring documented fraud of complainant ahlmad ab-initio, subverting the judicial process, thereby dragging the fraud proceedings and managing to delay the conclusion of the trial by such modus operandi, ignoring the judicial mandate for promoting Justice and not Fraud, devastating his personal and professional life/livelihood, besides for defaming him and his family, and even consuming his beloved parents in the process by such Fraud upon Fraud in the name of law, an amount Rupees Fifty lacs which is most reasonable amount, keeping in view the hardship put to/gone through even after 18(eighteen) years of documented fraud upon fraud, and value of human life which is priceless, snuffed out by fraud, the same could be directed for being realized from the wrong-doers or as deemed fit and proper.

(d) award litigation Costs an amount Rs. 30,000/- (Rupees Thirty Thousand) only, Rs. 20,000/- (Rupees Twenty Thousand) already expended towards taking legal opinion, drafting as also typing, photocopying, travel, and other miscellaneous expenses already incurred, and another Rs. 10,000/- (Rupees Ten Thousand only) to be incurred in pursuing the proceedings and obtaining certified copies etc.

2. The petitioner in the petition claims that he is facing trial in FIR No. 382/01

registered at PS Anand Vihar which has dragged on till date, the wrong doers be identified and action be taken against them. From the facts as noted in the petition the basic grievance of the petitioner is that during the course of trial besides Ahlmad of the Court, namely, Vijay Kumar Marwah who was a witness and examined as PW-3, the learned Metropolitan Magistrate was also a witness and instead of said witness again as PW-9 Vijay Kumar Marwah was examined.

3. This Court has perused the testimony of Vijay Kumar Marwah as PW-3 and as PW-9 which deals with two different facets of the trial and whether Vijay Kumar Marwah is competent to be examined as PW-9 instead of the Magistrate is not an issue which can be decided in a writ petition and would be in the realm appreciation of evidence. Further it may be noted that in the cross-examination of Vijay Kumar Marwah when he appeared as PW-9 no such objection has been taken that he is incompetent to depose of the facts for which learned Metropolitan Magistrate was cited as a witness. Hence the prayer (a) (i) of the petitioner in the present petition asking summoning of the material witness PW-9 and permitting the petitioner to cross-examine the said witness is not maintainable before this Court.

4. As noted above the remaining prayers relate to expeditious conclusion of the proceedings. Learned Standing Counsel for the State has handed over a compilation of various order sheets both of the Trial Court as well as Revisional Courts which show that the witnesses are appearing before the Trial Court and being examined, however, time is being spent in their cross-examination and filing of various Revision Petitions. The matter was pending before the learned Trial Court for recording of the statement of the petitioner, however, on each date repeated adjournments were sought on the ground that the present writ petition was pending.

5. The petitioner who appears in person states that his statement under Section 313 Cr.P.C. has already been recorded, hence this Court finds no ground to direct expeditious disposal of the trial because the prosecution evidence as well as statement of the petitioner having already been recorded and the trial now only awaits defence evidence if any to be led by the petitioner. Further on the facts of the case without the trial having been concluded, the petitioner has not made out any case for granting of compensation or damages.

6. Petition and application are dismissed.