

(2016) 07 DEL CK 0012
In the Delhi High Court
Case No : W.P. (CRL.) 665 of 2016

Ravinder Kumar

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 22-07-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2016) 3 JCC 1830

Hon'ble Judges : Mr. Pratibha Rani, J.

Bench : Single Bench

Advocate : In Person, for the Appellant; Mr. Rajesh Mahajan, ASC with Ms. Parul Jamwal with SI Kishan Lal, PS Tilak Marg, Advocates, Mr. Manjeet Singh, Senior Advocate instructed by Mr. Tarjeet Singh and Mr. Yogendra Kumar Verma, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Pratibha Rani, J.—CRL.M.A.Nos. 3646/2016, 5289/2016, 6981/2016, 6119/2016.

These applications have been filed by the petitioner seeking exemption from filing certified copies.

2. Exemption allowed, subject to all just exceptions.

3. The applications stand disposed of.

CRL.M.A.No. 4598/2016

4. This is an application seeking exemption from sending notice to respondents and their counsel.

5. Petitioner states that he does not press this application.

6. Accordingly the instant application which has already become infructuous is

dismissed as not pressed.

CRL.M.A.No. 5288/2016

7. By way of this application, the petitioner is seeking transfer of the writ petition to the Court of Hon"ble the Chief Justice.

8. The petitioner does not press this application and the same is hereby dismissed as not pressed.

CRL.M.A.No. 6980/2016

9. By way of this application, the petitioner is seeking direction for passing necessary order with specific directions through counsel for appearance of respondent Nos.2 to 5 on the next date of hearing.

10. Petitioner states that he does not press this application.

11. Accordingly the instant application is dismissed as not pressed.

Crl. M.A. 6118/2016

12. By way of this application, the petitioner has sought cancellation of bail stated to have been granted to the respondent Nos.2 to 4 on 17th July, 2013 in criminal appeal No.240/2013 which is also listed today before this Court but this prayer has been made by filing an application in the writ petition.

13. Vide order dated 17th July, 2013, the bail order dated 18th February, 2013 was modified by reducing the number of sureties to be furnished by respondent Nos.2 to 4 from two to one.

14. The order dated 17th July, 2013 reads as under:-

"Crl.M.A.10450/2013 (for reduction of sureties)

Application has been moved for reduction of sureties from two to one.

Heard.

Order dated 18th February, 2013 is modified and the respondent Nos.2 to 4 are directed to furnish their respective personal bond in the sum of Rs. 40,000/- with one surety each in the like amount subject to the satisfaction of the Registrar General of this Court within six weeks.

The application stands disposed of.

Crl.A.240/2013 & CRL.M..A.10451/2013

List in due course."

15. Since bail order has been passed in Criminal Appeal No.240/2013 on 18th February, 2013 by this Court which was never challenged, the order dated 17th July, 2013 dealt with only on the aspect of reduction of number of sureties.

16. This application for cancellation of bail in this writ petition is not maintainable. If the petitioner had any grievance against the order granting bail to the respondent Nos. 2 to 4, necessary prayer could have been made only in Criminal Appeal No.240/2013 and not in this writ petition.

17. The application is dismissed.

W.P.(CRL.) 665/2016

18. The petitioner is invoking writ jurisdiction of this Court with the following prayers:

(i) Necessary warrants against accused persons may very kindly be directed to be issued for recovery of admitted case properties (one each in both cases) i.e. Forged Seals under Crl. Appeal No. 240/13 and Original MOU dated 9.1.98, possession of which the accused admitted before learned ASJ on 13.8.2002 and again on 16.8.2002 and before this Hon''ble Court on Oath on 16.9.2002 so that the specific directions given by Hon''ble Supreme Court of India vide its Order dated 27.7.2012 under Crl. Appeal No.2 40/12 and pending prayers by Petitioner under C.M.Nos. 10611-12 since July, 2013 are disposed off and the most unfortunate and delayed Trial and Conclusion of Trial against repeated published Judgments pronounced by this Hon''ble Court on 11.7.2003/14.8.2003 and 28.1.2008 can finally take place under the present Writ Petition under Article 226 by this Hon''ble Court.

(ii) Seek the physical appearance/presence of Accused cum Judgment Debtors in person before this Hon''ble Court for Recovery of Admitted Case Properties (one each in both cases), as neither of the Hon''ble Bench of this Hon''ble Court, despite specific directions dated 27.7.12 passed by Hon''ble SCI under Crl. Appeal No.240/13 and Id. MM, despite repeated published Judgments of 2003 and 2008 pronounced by this Hon''ble Court under CC 1357/01 has been pleased to recover admitted case properties from the accused, despite cognizance of offence taken by Id. MM since 2008 and despite admission on possession of case property made by accused on Oath before this Hon''ble Court in 2002.

19. The petitioner is conducting this case in-person and this prolix writ petition is referring various orders passed by different Courts in various civil and criminal litigations between the petitioner and respondent Nos. 3 to 6. Along with the writ petition the petitioner has enclosed copies of various orders passed by different Courts from time to time as well the applications & reply to the same in various civil and criminal litigations.

20. It is necessary to note that in the writ petition Sh.Amit Kumar has been impleaded as respondent No.6. In Complaint Case No.1357/1, on 19th July, 2014 while deleting Sh.Amit Kumar (respondent No.6 herein) from the array of parties, following order was passed by learned Trial Court:-

"Complainant states that his application dated 14.07.2014 is pending for disposal for direction to accused no.2 to 4 to appear in person and initiation of process for

recovery of article of offence may be done. Copy has been supplied to counsel for accused no.2 to 4.

Accused no. 2 to 4 are directed to file reply to the application with advance copy to the complainant.

Accused No.1 Amit Kumar submits that he has no role to play in the present case and he was merely a Parokar. Complainant affirms that he has no objection in deletion of name of accused Amit Kumar subject to the condition that the same does not affect his case in a negative manner. Statement of complainant has been recorded separately to this effect.

Put up for arguments on the application of complainant for direction to accused No.2 to 4 on 22.08.2014."

21. If Amit Kumar was deleted as a party in the complaint case, there was no occasion to implead him as respondent in this writ petition. It may further be noted that even FIR No.240/2002 PS Patel Nagar against which criminal appeal No.240/2013 is pending, Amit Kumar was not an accused. Hence his impleadment in this writ petition was unnecessary.

22. The petitioner's prayer in the writ petition is for arrest/physical presence of the respondents for recovery of the case properties in the two criminal cases i.e. alleged forged seals as case property in CrI. Appeal No. 240/2013 and Memorandum of Understanding (MOU) pertaining to the criminal case which was registered on 17th May, 2005 as FIR No. 199 of 2005, PS Tilak Marg but continuing as criminal complaint No.1357/1 after the FIR was quashed vide order dated 28th August, 2008 by this Court in CrI.M.C.No.1525/2006.

23. The petitioner has prayed for issuance of warrants against the respondents/accused directing them to get recovered the forged seals stated to be case property in case FIR No.240/2002 PS Patel Nagar despite the fact that trial has been concluded and the accused persons stand acquitted.

24. The criminal appeal No.240/2013 has been preferred by the petitioner herein impugning the judgment dated 04.08.2009 passed by the learned trial Court which has to be disposed of separately. The grievance of the petitioner against non-recovery of forged seals will be dealt with in Criminal Appeal No. 240/2013 wherein CrI.M.A. Nos.10611/2013 & 12540/2014 have been filed with identical prayer.

25. The second prayer made by the petitioner in this writ petition is to seek physical appearance/presence of the accused persons for recovery of the admitted case properties i.e. memorandum of understanding in respect of which case FIR No.199/2005 was registered at PS Tilak Nagar but after the FIR was quashed in CrI.M.C. no. 1525/2006 on 28th January, 2008, the matter is now being tried as complaint case CC No.1357/1.

26. The foundation of the criminal complaint lies in Civil Suit No.2349/2002

which was filed by Arcon Electro Plast (P) Ltd. of which petitioner was the Director, against M/s Sparrow Technologies Limited. In the civil suit, IA No.4050/2002 under Section 8 of the Arbitration & Conciliation Act, 1996 was filed by M/s Sparrow Technologies Limited (defendant) pleading that MOU was executed between the parties on 9th January, 1998 wherein it was also agreed that in the event of any dispute between the parties the same shall be subject matter of arbitration. In reply, execution of any MOU was denied by the plaintiff company. Direction given to the defendant therein to produce the original MOU was not complied with by the defendant. Vide order dated 11th July, 2003 IA No.4050/2002 was dismissed drawing the inference that no such MOU was executed between the parties on 9th January, 1998.

27. A criminal complaint case was filed by the petitioner on 21st May, 2002 for alleged commission of forgery and cheating in respect of the MOU, photocopy of which was filed in the Civil Suit No. 2349/2002. While passing the summoning order dated 5th August, 2008 in the complaint case No.1357/1, submissions made on behalf of the complainant (petitioner herein) have been noted down as under:-

"7. Learned counsel for complainant submitted that the original forged MOU has not been produced by the accused in the civil proceedings in the Hon"ble High Court but this does not affect case of the complainant. He has referred to Rama Shankar Lal v. State of U.P., 1971 (3) SCC 905 and also to Gopalakrishna Menon v. D. Raja Reddy (1983) 4 SCC 204 and Sachida Nand Singh v. State of Bihar (1998) 2 SCC 493 and submitted that production of the original document is not required to show forgery. The law laid down in these judgments leave no manner of doubt that production of the original forged document is not necessary. In the present case, it was the accused persons who have deliberately not produced the original MOU dated 09.01.98. However, the circumstances pointed out by the complainant and acknowledge of the Hon"ble High Court in the order dated 14/08/03. Prima facie show that the MOU dated 09.01.98 is forged one. The accused No.1 to 4 have used copy of the forged MOU and thus have used a forged document within the meaning of Section 471 IPC. The accused No.2 to 4 have been asserting that MOU was prepared in their presence and bears signature of accused No.3 Rajeev Sarda and thus the accused persons can be said to have prepared forged document even though the original has not been produced. Accused no.1 was Pairokar of accused no.2 to 4 and had filed the application u/s 8 of Arbitration & Conciliation Act. Thus accused No.1 to 4 have also conspired together to commit offences u/s 467/471 IPC. They have also tried to cheat the complainant and played fraud with the Hon"ble High Court and thus have committed offence u/s 420 IPC. Consequently the forgery u/s 467 IPC becomes punishable u/s 468 IPC. The accused persons can be said to have conspired to commit these offences as well.

7. However as far as accused No.5 and 6 are concerned, there is not sufficient material against them. The alleged admissions of accused No.5 and 6 cannot be

considered as the same were given during investigation of the FIR which has been quashed by the Hon"ble High Court and even otherwise these being statements given to the police cannot be considered for any purpose. Thus there is no material against accused No.5 and 6.

8. Therefore, prima facie case is made out u/s 467/468/420/120-B IPC against accused No.1 to 4. Hence issue summons to accused No.1 to 4 on filing of PF RC AD and courier. Put up on 05.11.08."

28. In CC No.1357/1, while disposing of the applications dated 21st June, 2014, 14th July, 2014 and 20th October, 2014 wherein one of the prayer was identical i.e. seeking presence of the accused persons for recovery of the case property i.e. original MOU dated 9th January, 1998, the learned MM in the order dated 8th December, 2014 recorded the contentions made on behalf of the petitioner (complainant in CC No.1357/1) as under:-

"The contention of the applicant that since recovery of original MOU is to be effected from the accused nos.2 to 4, therefore, orders may be passed to arrest the accused persons 2 to 4 is without any merit, since the Hon"ble Delhi High Court has exempted the personal appearance of the accused nos.2 to 4 through their counsel. Furthermore, for the purpose of evidence, the complainant can always move appropriate application, at the appropriate stage, for bringing on record the original MOU dated 9th January, 1998."

29. In the complaint case CC No.1357/1 while disposing of the application filed by the present petitioner/complainant for cancellation of bail of accused No.2 and 3, the learned MM referred to the order dated 16th January, 2014 passed in Crl.M.C.No. 3053/2008 whereby the accused No.2 to 4 were granted exemptions from personal appearance till arguments on the point of framing of charge are concluded. Thus while declining the prayer of the petitioner herein for cancellation of bail, dealing with the prayer for production of the original MOU it was observed that basically he was seeking direction under Section 91 Cr.P.C. for production of the original MOU dated 9th January, 1998 for pre-charge evidence and thereafter notice was issued to the above effect.

30. Thus, in respect of production of original MOU in the CC No.1357/1, the submissions made by the petitioner herein through his counsel that original forged MOU was not produced by the accused in the civil proceedings before the High Court, and that it does not effect the case of the complainant, the Court had proceeded under Section 91 Cr.P.C. calling upon the respondent herein to produce the original MOU.

31. This writ petition has been filed by the petitioner praying for direction to the accused person for physical appearance before this Court for recovery of the case property i.e. MOU pertaining to CC No.1357/01. When the learned MM is already seized of the matter in this regard and the counsel for the petitioner/complainant had submitted that non-production of the original MOU has no effect on his case, if the petitioner had any grievance against the orders passed by learned MM in

respect of non-production of original MOU, he should have availed the statutory remedy and not to invoke writ jurisdiction of this Court.

32. It is well settled by various decisions of Hon"ble Supreme Court that when an alternative and an equally efficacious remedy is open to a litigant, he should be required to pursue that remedy and not invoke the special jurisdiction of the High Court to issue a prerogative writ. It is true that the existence of another remedy does not affect the jurisdiction of the Court to issue a writ, but, the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs. Article 226 is not meant to circumvent statutory proceedings. Where such remedy exists, it will be a sound exercise of discretion to refuse to interfere in a petition under Article 226. The power vested in this Court under Article 226 of the Constitution of India or under Section 482 Cr.P.C. need to be exercised only in exceptional cases and very sparingly. If an alternative remedy is available to a party, this Court cannot allow him to approach this Court in writ jurisdiction.

33. In this writ petition, facts of two distinct cases have been mixed up by the petitioner. While one of the case i.e. FIR No. 240/2012 PS Patel Nagar stands disposed of, the other one being Complaint Case No.1357/1 is still pending. The reason given by the petitioner for clubbing the two cases in one writ petition is based on the order dated 30th November, 2004 passed by this Court in Crl.M.C.No. 2487/2004 wherein direction is given as under:-

"In view of the averments made in the petition, learned trial Court is directed to expedite the hearing of case FIR No.240/2002 under Sections 463/465/467/468/471/420 IPC PS Patel Nagar, Delhi as well as case No.20/01/2002 Ravinder P Kumar v. Amit Kumar & Ors. in accordance with the law. No further orders are required to be passed at this stage.

Petition stands disposed of.

Dasti."

Thus, vide order dated 30.11.2004 while directing to expedite the hearing in the two cases this Court never directed clubbing.

34. The petitioner had repeatedly been insisting upon physical appearance of the respondents before the learned trial Court in Complaint Case No.1357/1 as well before this Court. While disposing of Crl.M.C. No.3053/2008 in the concluding paragraph this Court has held as under:-

"Till the arguments on the point of framing of charge are concluded, personal appearance of petitioners be not insisted upon by the trial Court, provided petitioners are duly represented through counsel, who does not seek adjournment. However, it is made clear that if petitioners delay the proceedings before the trial Court, then petitioners shall not have the benefit of exemption from personal appearance extended by this Court. If trial Court finds that no case is made out against petitioners, then this order will not stand in the way of

trial Court to discharge petitioners and if trial Court chooses to proceed against petitioners, then trial Court shall obtain presence of petitioners. Needless to say, if trial Court chooses to frame charges against petitioners, then petitioners shall be at liberty to avail of the remedy as available in law, if so advised."

35. Learned MM had complied the directions given by this Court. The order dated 16th January, 2014 in Crl. M.C. No.3053/2008 was never challenged by the complainant. In such circumstances thus this grievance of the petitioner also cannot be redressed in this writ petition.

36. The writ petition is dismissed.