

(2024) 04 SHI CK 0114

In the High Court Of Himachal Pradesh

Case No : Latter Patent Appeals No. 58 Of 2024

Ritu Bhagat

APPELLANT

Vs

State Of Himachal Pradesh & Ors

RESPONDENT

Date of Decision : 30-04-2024

Acts Referred:

Constitution Of India, 1950 — Article 19(1)(g), 21, 32, 226, 227

Code Of Civil Procedure, 1908 — Section, Order 23 Rule 1

Indian Penal Code, 1860 — Section 34, 120b, 354, 387, 395, 405, 506

Citation : (2024) 04 SHI CK 0114

Hon'ble Judges : M.S. Ramachandra Rao, CJ;Jyotsna Rewal Dua, J

Bench : Division Bench

Advocate : Ravinder Kumar Anand, Atul G. Sood, Gobind Korla

Final Decision : Dismissed

Judgement

Jyotsna Rewal Dua, J

1. In question in this Letters Patent Appeal is the judgment passed by the learned Single Judge on 05.01.2024, whereby appellant's writ petition was dismissed being not maintainable.

2. The appellant filed a writ petition invoking Article 226 of the Constitution of India for grant of following substantive reliefs:-

“(a) Issue a writ of mandamus or any other appropriate Writ or order or direction to the respondent No.1 to 5 to abide by and implement the law laid down by Hon'ble Constitution Bench of 5 Hon'ble Judges of the Hon'ble Supreme Court of India in the matter of Lalita Kumar Vs. Government of U.P. (Annexure P-4) and discharge their Statutory Duties and take cognizance on the Complaint dated 09.02.2023 (Annexure P-1), and Complaint dated 19.03.2023 (Annexure P-2), of the Petitioner and register appropriate FIR's against the Accused Persons namely the Respondent No.6 Mr. Ashok Kumar Goyal, Director Hotel I Square Baddi and his henchman/gundas when the said Complaints dated 09.02.2023 and

19.03.2023 of the Complainant unambiguously and unequivocally discloses commission of cognizable offences under Sections 354, 387, 395, 450, 506, 120b,34 IPC of the Indian Penal Code 1860 by the Accused Persons.

(b) Issue a writ of mandamus or any other Writ or Order direction to the Respondent Nos.1 to 5 to provide appropriate police protection to the Petitioner from the Respondent No.6 and his henchman/gundas in the same manner as directed by the Hon'ble Supreme Court of India in a similar case vide Order dated 28.04.2023 (Annexure P-6) and Order dated 04.05.2023 (Annexure P-7) passed in the case of xyz and other Vs. State NCT of Delhi in Writ Petition (Crl.) No. 189 of 2023 so that her Fundamental Rights to life and Personal Liberty guaranteed under Article 21 & Article 19(1) (g) of the Constitution of India are not infringed.

(c) To issue a writ of mandamus or order or direction to the Respondent No.6 and his henchman/gundas acting under the command of the Petitioner not to go within the radius of 100 meters around the Petitioner as and when she visit Baddi so that her fundamental rights under Article 21 and under Article 19 (1) (g) of the Constitution of India are protected with further directions to the Respondent Nos.1 to 5 to ensure the compliance of the said Order."

It was appellant's (petitioner's) pleaded case that for grant of above reliefs, she had previously moved the Hon'ble Supreme Court under Article 32 of the Constitution of India, but was permitted to withdraw the same under order dated 31.07.2023.

Here, it would be appropriate to extract the order in verbatim passed by the Hon'ble Apex Court on 31.07.2023:-

"Heard Dr. Ravinder Kumar, learned counsel appearing for the petitioner.

When this Court expressed disinclination to entertain this writ petition, the counsel prays for liberty to withdraw the same. Accordingly, the writ petition stands dismissed as not pressed."

3. The petition filed by the appellant was dismissed by the Hon'ble Apex Court as not pressed as her counsel had prayed for liberty to withdraw the same in view of disinclination of the Hon'ble Apex Court to entertain the same. The order also indicates that no liberty was reserved to the appellant for filing subsequent writ petition before this Court.

4. In SLP(C) No.019359/1998 (M/s Upadhyay & Co. Vs. State of U.P. & Ors) decided on 01.12.1998, the Hon'ble Apex Court in the facts of the case observed that it is not permissible practice to challenge the same order over again after withdrawing the Special Leave Petition without obtaining permission of the Court for withdrawing it with liberty to move for Special Leave again subsequently. The provision of Order 23 Rule 1 of the Code of Civil Procedure dealing with withdrawal of the suit or abandonment of part of the claim and the law laid down in (1987) 1 SCC 5 (Sarguja Transport Service vs. State Transport Appellate

Tribunal, Gwalior) were noticed as under:-

"The above principle has been incorporated as a rule in the realm of suits. Order 23 Rule 1 of the Code of Civil Procedure deals with withdrawal of suit or abandonment of part of the claim. Sub-rule (3) says that the court may in certain contingencies grant permission to withdraw from suit with liberty to institute a fresh suit in respect of the subject matter of such suit. Sub-rule (4) reads thus:

(4) Where the plaintiff-

(a) abandons any suit or part of claim under sub-rule (1), or

(b) withdraw from a suit or part of a claim without the permission referred to in sub-rule (3).

he shall be liable for such costs as the court may award and shall be precluded from instituting any fresh suit in respect of such subject matter or such part of the claim.

The aforesaid ban for filing a fresh suit is based on public policy. This Court has made the said rule of public policy applicable to jurisdiction under Article 226 of the Constitution [Sarguja Itransport Service vs. State Transport Appellate Tribunal, Gwalior, (1987) 1 SCC 5]. The reasoning for adopting it in writ jurisdiction is that very often it happens, when the petitioner or his counsel finds that the court is not likely to pass an order admitting the writ petition after it is heard for some time, that a request is made by the petitioner or his counsel to permit him to withdraw it without seeking permission to institute a fresh writ petition. A court which is unwilling to admit the petition would not ordinarily grant liberty to file a fresh petition while it may just agree to permit withdrawal of the petition. When once a writ petition filed in a High Court is withdrawn by the party concerned he is precluded from filing an appeal against the order passed in the writ petition because he cannot be considered as a party aggrieved by the order passed by the High Court. If so, he cannot file a fresh petition for the same cause once again. The following observations of E.S. Venkataramiah, J. (as the learned chief Justice then was) are to be quoted here:

"We are of the view that the principle underlying Rule 1 of Order 23 of the code should be extended in the interests of administration of justice to cases of withdrawal of writ petition also, not on the ground of res judicata but on the ground of public policy as explained above. It would also discourage the litigant from indulging in bench-hunting tactics. In any event there is no justifiable reason in such a case to permit a petitioner to invoke the extraordinary jurisdiction of the High Court under Art. 226 of the Constitution once again. While the withdrawal of a writ petition filed in High Court without permission to file a fresh writ petition may not bar other remedies like a suit or a petition under Art.32 of the constitution since such withdrawal does not amount to res judicata, the remedy under Art.226 of the Constitution should be deemed to have been

abandoned by the petitioner in respect of the cause of action relied on in the writ petition when he withdraws it without such permission.

Of course their Lordships added that the above rule is not applicable to writ petitions involving personal liberty "since such a case stands on a different footing altogether.

We have no doubt that the above rule of public policy, for the very same reasoning, should apply to special leave petitions filed under Art.136 of the Constitution also. Even otherwise, the order passed by the Division Bench of the High Court on 3.5.1998 does not warrant interference on merits as the learned judges of the High Court have taken into account all the relevant facts and came to the correct conclusion.

We also agree with the Division Bench of the High Court that the order dated 3.5.1996 does not require any clarification. In fact the attempt of the petitioner was to get the order reviewed. Since there was no error apparent on the face of the record the petitioner termed his petition as one for clarification. The Division Bench of the High Court has dismissed it rightly."

Learned counsel for the appellant contended that petition was for enforcement of Fundamental Right to life guaranteed under Article 21 of the Constitution of India, hence, the writ petition instituted in this Court was maintainable.

We have perused the writ record & also considered the nature of allegations levelled in it. In our considered view, nature of the writ petition would not take it outside the mandate of law laid down in Sarguja Transport's case, wherein it was held that withdrawal or abandonment of a petition under Article 226/227 of the Constitution of India without permission to file fresh petition would operate as a bar for filing a fresh petition on the same subject matter.

Distinction carved out in (2008) 1 SCC 494 (Sarva Shramik Sanghatana Vs. State of Maharashtra & Ors) & (2008) 14 SCC 58 (Ramesh Chandra Shukla & Ors Vs. Vikram Cement & Ors) in cases of industrial adjudication where withdrawal was bonafide; not a case of bench hunting to avoid adverse order to be passed against the petitioner, in the given facts of the cases, is not attracted to the instant case.

As noticed earlier, the appellant had admittedly previously moved the Hon'ble Apex Court on same facts and for grant of reliefs, which she has prayed for in the writ petition instituted in this Court. In terms of the order dated 31.07.2023, the Hon'ble Apex Court had expressed disinclination to entertain the writ petition. In that background, learned counsel for the appellant (petitioner) had prayed for liberty to withdraw the same. Accordingly, the writ petition was dismissed by the Hon'ble Apex Court "as not pressed". No liberty was given to the appellant to invoke Article 226 before this Court for the reliefs prayed by her invoking Article 32 of the Constitution of India. In view of order dated 31.07.2023 passed by the Hon'ble Apex Court, the subsequent writ petition preferred by the appellant

before this Court was not maintainable. Therefore, we do not find any error in the judgment dated 05.01.2024 in CWP No.6124/2023, passed by the learned Single Judge, dismissing the writ petition as not maintainable.

For the foregoing reasons, the present appeal is dismissed. Pending miscellaneous applications, if any, shall also stand disposed of.