

(2016) 07 RAJ CK 0008

In the Rajasthan High Court

Case No : Criminal Misc. Application No. 320 of 2015 in Criminal Misc. Petition No. 1139 of 2010

Vishnu Kumar Rathi

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 06-07-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 362, 482

Citation : (2016) 3 CriLR 1440

Hon'ble Judges : Mr. M.N. Bhandari, J.

Bench : Single Bench

Advocate : Mr. Mahendra Gaur, Advocate, for the Appellant; Mr. V.R. Bajwa and Mr. Rajneesh Gupta, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Mr. M.N. Bhandari, J.—These criminal misc. applications have been filed to seek recall of the order dated 28.11.2014, passed in Criminal Misc. Petition Nos.1139/2010 and 4858/2014.

2. Learned counsel submits that a criminal misc. petition filed in the year 2010 was disposed of by the court in the light of settlement between two parties for offence under Sections 420, 120B IPC and Section 70 of the Indian Partnership Act. The applicant was Registrar of the Firms at the relevant time.

3. Two parties in the criminal misc. petitions had submitted various documents of the firm and the applicant acting as Registrar of the Firms, accepted them. She was thus concerned to the dispute between two parties, who finally settled the cases inter se between them. The name of the applicant was referred throughout in all the proceedings but without providing an opportunity of hearing, the criminal proceedings against the accused have been dropped based on settlement. The applicant should have been given opportunity to argue the case and contest it before dropping the proceedings. It is more so when she had also

filed criminal misc. petitions from time to time and were pending at the time of disposal of criminal misc. petitions. The details of pending criminal misc. petitions have been given in Para 8 of the applications. Those misc. petitions have been recently disposed of by the Coordinate Bench of this court on 29th June, 2016. The applicant could know about disposal of these criminal misc. petitions recently. The order impugned herein has nexus to the petition now disposed of on 29th June, 2016.

4. Learned counsel appearing for the applicant further submits that out of many cases, in one case criminal proceedings against the petitioners have been dropped on a revision petition preferred by her. The cases initiated against the non-applicant-petitioners were even for offence under the provisions of the Prevention of Corruption Act. Looking to the facts given above, order dated 28.11.2014 deserves to be recalled.

5. Learned counsel for non-applicants has opposed the applications on the ground of its maintainability. It is submitted that applicant is not party to the criminal case and the litigation initiated by the non-applicant-petitioners. In the criminal misc. petition, a challenge was made to the pending proceedings against the petitioners which were finally settled between the parties in the criminal cases. On the basis of settlement between the parties, the criminal proceedings were dropped by this court. The Apex Court in the case of *Gian Singh v. State of Punjab & Anr.*, reported in (2012) 10 SCC 303 and earlier in the case of *Manoj Sharma v. State & Ors.*, reported in (2008) 16 SCC 1 has permitted dropping of the proceedings in the case arising out of offence under Sections 420, 467, 468, 471 IPC, if a settlement has been arrived. In the light of judgments of the Apex Court, dropping of the criminal proceedings against the non-applicant-petitioners on settlement between the parties has unnecessarily been challenged by the applicant who is not a party to the criminal cases.

6. So far as applicant is concerned, three cases have been registered against her with the allegation of commission of offence under the Prevention of Corruption Act. The allegations in the case in hand are altogether of different nature and nothing to do with the cases initiated against the applicant. The applicant is thus stranger to the present case thus application moved by her is not even maintainable.

7. I have considered the rival submissions made by learned counsel for the parties and perused the record.

8. S.B. Criminal Misc. Petitions were filed by the non-applicant-petitioners. They were disposed of vide order dated 28.11.2014. The criminal proceedings against the non-applicant-petitioners were dropped in the light of settlement between the complainant and the accused. The applicant herein is neither a complainant nor an accused therein. The allegations in the FIR were against the accused therein and not against the applicant. In the light of settlement between the parties for offence under Sections 420, 120B IPC and Section 70 of the Indian

Partnership Act, criminal proceedings were dropped in the light of judgments (supra).

9. In the instant case, offence alleged against the non-applicants was under Sections 420, 120B IPC and Section 70 of the Indian Partnership Act. It is on account of inter se dispute between the private persons. Taking into consideration the nature of allegations and the offences, the Apex Court permitted dropping of the criminal proceedings even if offence is not compoundable under Section 320 Cr.P.C. In the light of aforesaid, order dated 28.11.2014 is not liable to be recalled. It is more so when applicant herein has no nexus with the criminal cases in hand. It is a case where allegation for commission of offence under the Prevention of Corruption Act does not exist. If a separate case is pending against the applicant, it would be considered by the court, if challenge is made to the criminal proceedings. In fact, four criminal misc. petitions had been filed by the applicant. Therein, judgment was pronounced on 29th June, 2016, as informed by the counsel for applicant. The criminal misc. petitions so decided on 29th June, 2016 are in reference to the facts and the issues raised therein and not co-related with the case where criminal proceedings were dropped vide order dated 28.11.2014.

10. The fact further remains that after passing of the order dated 28.11.2014, recall is sought though review of the order is not permissible as per Section 362 Cr.P.C. The application for recall of the order dated 28.11.2014 is nothing but to seek review of the order dated 28.11.2014 though not permissible under Cr.P.C.

11. It may however be added that in few cases, the Apex Court has permitted review of the order in the criminal side also but jurisdiction therein is quite narrow and the case in hand does not fall in the said category. It is apart from the fact that applicant is stranger to the litigation in the present cases. No allegation for commission of offence has been made against him in this case so as to connect the applicant with the present case. It is a separate case which is pending against her.

12. In view of facts given above, I do not find applications for recall of the order dated 28.11.2014 to be maintainable or otherwise to be accepted on merit. The criminal misc. applications are accordingly dismissed.