



(THROUGH VIDEO CONFERENCING)

110. CRM-M No.2603 of 2024 (O&M)

Krishan and another Vs. State of Haryana and others

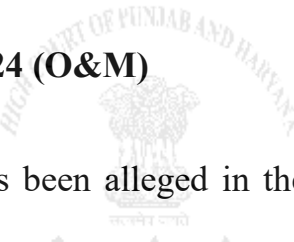
Present: Mr. Tek Chand Sharma, Advocate
for the petitioner.

Mr. Tek Chand Sharma, Advocate appeared through video conferencing and addressed the Court.

The present petition has been filed under Section 482 Cr.P.C. seeking following reliefs:-

- (i) Initiation of CBI enquiry against the official respondents as well as the Judicial Magistrate 1st Class, Hodal on the ground that his integrity is highly questionable and doubtful and he has exceeded his jurisdiction and miserably failed to discharge the jurisdiction vested in him and passed the coercive orders against the petitioners.
- (ii) Further prayer is made for setting aside the order dated 11.10.2023 (Annexure P-1) vide which non-bailable warrants have been issued against the petitioners in the proceedings arising out FIR No.99 dated 06.06.2021 registered under Sections 147, 149, 506 IPC at Police Station Hassanpur, District Palwal.

Learned counsel appearing for the petitioners *inter alia* contends that without specifying any reason on 07.10.2023, the matter was posted for 11.10.2023 and on the said date, coercive order was passed, which has caused personal favour to the private respondents. The pleadings of the petitioners indicate that certain scandalous remarks are made against the Judicial Officer without any justifiable cause, which are as under:-

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- (i) It has been alleged in the head note and prayer clause of the petition that the integrity of the Judicial Officer is highly questionable and doubtful and the officer is engaged in making unlawful favours to the respondents.
 - (ii) It has been alleged in para No.1 of the petition that the Judicial Officer has indulged in corruption and the petitioners have been victimized by the Judicial Officer for this reason.
 - (iii) It has been alleged in para No.8 of the petition that the Judicial Officer has acted under the influence of the private respondents and he has indulged into forgery and fabrication of evidence to pressurize the petitioner to withdraw the case registered under Section 354 IPC.

A perusal of the impugned order dated 11.10.2023 and the record of the case indicates that on 07.10.2023, an application seeking exemption from appearance of petitioner No.1-Krishan was filed, which was allowed and his presence was exempted for the said date only. Thereafter, the matter was posted for 11.10.2023, on which date, the case was called several times but neither the petitioners nor their counsel had put in appearance and thus, the concerned Judicial Magistrate 1st Class vide impugned order dated 11.10.2023 (Annexure P-1) cancelled the bail of the petitioners and their bail bonds were ordered to be forfeited to the State. Further, warrants of arrest were issued against them.

It is trite law that plea of mala fides has to be specific and demonstrable. Not only this, but the person against whom the mala fides are alleged must be made a party to the proceedings and given reasonable opportunity of hearing. Admittedly, the concerned Judicial Officer is not arrayed as party respondent in the present petition. A two Judge Bench of the Hon'ble Supreme Court in *Union of India v. Ashok Kumar & Ors. (2005) 8 SCC 760*, speaking through Justice Dr. Arijit Pasayat has observed as under:-

“21. Doubtless, he who seeks to invalidate or nullify any act or order must establish the charge of bad faith, an abuse or a misuse by the authority of its powers. While the indirect motive or purpose, or bad faith or personal ill will is not to be held established except on clear proof thereof, it is obviously difficult to establish the state of a man's mind, for that is what the employee has to establish in this case, though this may sometimes be done. The difficulty is not lessened when one has to establish that a person apparently acting on the legitimate exercise of power has, in fact, been acting mala fide in the sense of pursuing an illegitimate aim. It is not the law that mala fides in the sense of improper motive should be established only by direct evidence. But it must be discernible from the order impugned or must be shown from the established surrounding factors which preceded the order. If bad faith would vitiate the order, the same can, in our opinion, be deduced as a reasonable and inescapable inference from proved facts. (S. Pratap Singh v. State of Punjab [(1964) 4 SCR 733 : AIR 1964 SC 72] .) **It cannot be overlooked that the burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility. As noted by this Court in E.P. Royappa v. State of T.N. [(1974) 4 SCC 3 : 1974 SCC (L&S) 165 : AIR 1974 SC 555] courts would be slow to draw dubious inferences from incomplete facts placed before them by a party, particularly when the imputations are grave and they are made against the holder of an office which has a high responsibility in the administration. (See Indian Rly. Construction Co. Ltd. v. Ajay Kumar [(2003) 4 SCC 579 : 2003 SCC (L&S) 528] .**

22. As observed by this Court in Gulam Mustafa v. State of Maharashtra [(1976) 1 SCC 800] mala fides is the last refuge of a losing litigant.”

A perusal of the record clearly indicates that there is no justifiable cause on the basis of which scandalous and contemptuous allegations are levelled against the concerned Judicial Officer. The Hon'ble Supreme Court in **M.Y. Shareef and another Vs. The Hon'ble Judges of the High Court of Nagpur and**

others 1955 SCR (1) 757 speaking through Justice M.C. Mahajan has held as under:-

“11. The fact however remains, as found by the High Court, that there was at the time these events happened considerable misconception amongst a section of the Nagpur Bar about advocates' responsibilities in matters of signing transfer applications containing allegations of this character. It cannot be denied that a section of the Bar is under an erroneous impression that when a counsel is acting in the interests of his client, or in accordance with his instructions he is discharging his legitimate duty to his client even when he signs an application or a pleading which contains matter scandalising the Court. They think that when there is conflict between their obligations to the Court and their duty to the client, the latter prevails.

This misconception has to be rooted out by a clear and emphatic pronouncement, and we think it should be widely made known that counsel who sign applications or pleadings containing matter scandalising the Court without of reasonably satisfying themselves about the prima facie existence of adequate grounds therefor, with a view to prevent or delay the course of justice, are themselves guilty of contempt of Court, and that it is no duty of counsel to his client to take any interest in such applications; on the other hand, his duty is to advise his client for refraining from making allegations of this nature in such applications. Once the fact is recognised as was done by the High Court here, that the member of the Bar have not fully realised the implications of their signing such applications and are firmly under the belief that their conduct in doing so is in accordance with professional ethics, it has to be held that the act self of the two appellants in this case was do under a mistaken view of their rights and duties, and in such cases even a qualified apology may well be considered by a Court.”

On being confronted with the averments and scandalous remarks made in the petition against the concerned Judicial Officer, the counsel refused to withdraw the same. In view of the aforesaid facts and circumstance and ratio of

law as discussed above, this Court is of the opinion that the pleadings and prayer clause of the petition are scandalous and *per se* contemptuous and thus, petitioners and the counsel appearing for them are liable for contempt.

Registry is directed to issue a contempt notice to the petitioners and their counsel, Mr. Tek Chand Sharma, Advocate, resident of House No.71, Ganesh Nagar II Extension, Shakarpur, Delhi (Mobile No.9990276215, E-mail tekchand.848@gmail.com) through registered AD.

Registry is directed to list the matter with respect to contempt proceedings in pursuance of order passed by this Court as per roster after taking appropriate orders from Hon'ble the Acting Chief Justice.

After dictating this order, Mr. Sukhbir Singh Maandi, Advocate has put in appearance before this Court at about 12 Noon and prayed for withdrawal of his vakalatnama and also supplied the address of Mr. Tek Chand Sharma, Advocate.

Ordered accordingly. Mr. Sukhbir Singh Maandi, Advocate is allowed to withdraw his vakalatnama.

List on 09.04.2024.

(HARPREET SINGH BRAR)
JUDGE

February 29, 2024
Pankaj*