SUPREME COURT OF INDIA

Sunil Kumar

Vs.

State of Haryana

Crl.M.P.No.7477 OF 2012

(Dr. B.S. Chauhan and Jagdish Singh Khehar JJ.)

27.03.2012

ORDER

Dr. B.S. CHAUHAN, J

1. Delay condoned.

2.. Once it had been commented that anti-social elements i.e. FERA violators, bride burners and whole horde of reactionaries have found their safe haven in the Supreme Court and such a comment became subject matter of contempt of this Court and had to be dealt with by this Court in Ors., AIR 1988 SC 1208.

3. This Court in Rathinam v. State of Tamil Nadu Anr., (2011) 11 SCC 140 quoted the observations made by the High Court in that case expressing its views that common man must feel assured to get justice and observed as under:

> Let not the mighty and the rich think that courts are their paradise and in the legal arena they are the dominant players.

4. These judgments make one thing crystal clear that criminals do not hesitate approaching courts even by abusing the process of the court and sometimes succeed also. The instant case belongs to the same category. Petitioner feels that merely because he is a black- marketeer and succeeded in exploiting the helplessness of the poor people of the Society and is capable of engaging lawyers, he has a right to use, abuse and misuse the process of the court and can approach any court any time without any hesitation and without observing any required procedure prescribed by law.

5. An FIR dated 15.9.1998 was lodged against the petitioner and one other person under Section 7 of Essential Commodities Act, 1955 (hereinafter called the Act 1955) as they were found in possession of 1370 litres of blue kerosene and indulging in unauthorised sale thereof in violation of the provisions of Section 7 of the Act, 1955. After completing investigation chargesheet was filed and trial commenced.

6. The trial court vide judgment and order dated 27.10.1999/2.11.1999 found them guilty of the said offence and awarded sentence of imprisonment for one year alongwith a fine of Rs.2,000/- each. Against the aforesaid order, the appeal of the petitioner stood dismissed by the High Court vide judgment and order dated 30.7.2010. Petitioner preferred an application dated 25.7.2011 before the High Court for modifying the aforesaid judgment and order dated 30.7.2010 giving him the benefit of the provisions of Section 360 of Code of Criminal Procedure, 1973 (hereinafter called Cr.P.C.) and/or Section 4 of the Probation of Offenders Act, 1958 (hereinafter called the Act 1958). The said application was dismissed vide impugned order dated 19.9.2011.

7. It may be pertinent to mention that against the judgment and order dated 30.7.2010, the petitioner had filed SLP (Crl.) no.1469 of 2011 on 13.10.2011 which was dismissed by this Court vide order dated 27.1.2012. Subsequent thereto this special leave petition has been filed on 29.2.2012 challenging the order dated 19.9.2011. No explanation has been furnished as why the present petition could not be filed during the pendency of the earlier SLP or both the orders could not be challenged simultaneously as the order impugned herein had been passed much prior to the filing of the first SLP on 13.10.2011, and petitioner surrendered to serve out the sentence only on 13.1.2012.

8. The High Court dealt with various propositions of law while dealing with the averments raised on his behalf including the application of the provisions of Section 362 Cr.P.C. which puts a complete embargo on the criminal court to reconsider any case after delivery of the judgment as the court becomes functus officio.

9. This Court in a recent judgment in Ors. etc., AIR 2012 SC 364 dealt with the issue considering a very large number of earlier judgments of this Court including Anr., AIR 2011 SC 1232 and came to the conclusion:

Thus, the law on the issue can be summarised to the effect that the criminal justice delivery system does not clothe the court to add or delete any words, except to correct the clerical or arithmetical error as specifically been provided under the statute itself after pronouncement of the judgment as the Judge becomes functus officio. Any mistake or glaring omission is left to be corrected only by the appropriate forum in accordance with law.

10. Learned counsel for the petitioner placed a very heavy reliance on the judgment of this Court in Kunhayammed Ors. v. State of Kerala Anr., (2000) 6 SCC 359, wherein this court has held that in case the special leave petition is dismissed by this Court in limine, party aggrieved may file a review petition before the High Court. The said judgment has been explained in various subsequent judgments observing that in case the review petition has been filed before the High Court prior to the date the special leave petition is dismissed by this Court, the same may be entertained. However, a party cannot file a review petition before the High Court after approaching the Supreme Court as it would amount to abuse of process of the court. (See: Meghmala Ors. v. G. Narasimha Reddy Ors. (2010) 8 SCC 383). The ratio of the aforesaid case has no application in the instant case as that was a matter dealing with civil cases.

11. Further reliance has been placed on behalf of the petitioner on the judgment of this Court in Chhanni v. State of U.P., (2006) 5 SCC 396, wherein the court itself held as under:

9. The High Court is justified in its view that there is no provision for modification of the judgment.

> Further direction has been issued by this court to re-consider the case exercising its power under Article 142 of the Constitution of India. Thus, the aforesaid judgment does not lay down the law of universal application, nor it deals with the provisions of Section 362 Cr.P.C. Thus, in view of the above, the said judgment has also no application in the instant case.

12. The High Court in the impugned judgment came to the right conclusion that court could not entertain the petition having become functus officio.

13. Be that as it may, petitioner being the black-marketeer presumed that he had a right to dictate terms to the court and get desired results, thus, approached this Court again and sought the relief prayed before the High Court. Petitioner has lost

in four courts earlier. In this fact-situation whether there should be any restrain on the petitioner or he should be permitted to abuse the judicial process as he likes.

14. This Court in Ors., AIR 1996 SC 2687 observed as under:

> No litigant has a right to unlimited drought on the Court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be misused as a licence to file misconceived or frivolous petitions.

15. In Sabia Khan Ors. v. State of U.P. Ors., AIR 1999 SC 2284, this Court held that filing totally misconceived petition amounts to abuse of the process of the Court and waste of courts' time. Such litigant is not required to be dealt with lightly.

16. Similarly, in Anr., (2003) 1 SCC 488, this Court held that wherever the Court comes to the conclusion that the process of the Court is being abused, the Court would be justified in refusing to proceed further and refuse the party from pursuing the remedy in law.

17. Even otherwise, the issue as to whether benefit of the Act 1958 or Section 360 Cr.P.C. can be granted to the petitioner is no more res integra. In Issar Das v. The State of Punjab, AIR 1972 SC 1295, this Court dealt with the case under the provisions of Prevention of Food Adulteration Act observing that adulteration of food is a menace to public health and the statute had been enacted with the aim of eradicating that anti-social evils and for ensuring purity in the articles of food. The Legislature thought it fit to prescribe minimum sentence of imprisonment. Therefore, the court should not lightly resort to the provisions of the Act 1958 in case of an accused found guilty of offences under the Prevention of Food Adulteration Act.

18. In M/s. Precious Oil Corporation Ors. v. State of Assam, AIR 2009 SC 1566, this Court dealt with the issue of application of the Act 1958 in case of offences punishable under Section 7 of the Act, 1955. The Court did not grant the benefit of the said provisions to the appellant therein placing reliance upon the judgment of this Court in Ors., AIR 1974 SC 228 wherein this Court has held as under:

> The kindly application of the probation principle is negatived by the imperatives of social defence and the improbabilities of moral proselytisation. No chances can be taken by society with a man whose anti-

> social operations, disguised as a respectable trade, imperil numerous innocents. He is a security risk. Secondly, these economic offences committed by white-collar criminals are unlikely to be dissuaded by the gentle probationary process. Neither casual provocation nor motive against particular persons but planned profit-making from numbers of consumers furnishes the incentive - not easily humanised by the therapeutic probationary measure.

19. Thus, in view of the above, the relief sought by the petitioner cannot be granted. Petition is misconceived and untenable. The petition being devoid of any merit, is accordingly dismissed with the cost of Rs.20,000/- which the petitioner is directed to deposit within a period of four weeks with the Supreme Court Legal Services Authority and file proof thereof before the Registrar of this Court, failing which the matter be placed before the Court for appropriate direction for recovery.