

IN THE HIGH COURT OF SINDH, AT KARACHI
C.P No. D-802 of 2016

Muhammad Noman.....Petitioner

Versus

Government of Sindh & others.....Respondents

Date of hearing: 22.05.2018

Mr. Muhammad Hanif Chattari Advocate for the Petitioner.
Mr. Sibtain Mehmood, AAG.

Disposed of case.

CMA No. 1613/2018(Review)

ORDER

The captioned Petition was disposed of by the learned Single Judge of this Court vide Order dated 01.06.2016 with the following observations:-

“None Present for Petitioner. On issuance of notice DIO Inspector Zafar Iqbal filed comments. Comment filed by respondent no. 5 and 6 are taken on the record. I.O of the case crime No. 483/2014 requested Under section 302/109 PPC submitted that petitioner is a nominated accused in the aforesaid FIR against whom final report Under section 173 Cr.P.C has also been accepted by the trial Court for trial. However, he says that neither he neither caused harassment to the petitioner nor intends to do so but at present the case is sub-judice before the competent Court of law.

Mr. Javed Iqbal filed vakalatnama on behalf of respondent No.10, taken on the record. He has confirmed such facts. It appears that actual facts have been suppressed in the instant petition just to put pressure upon the complainant party. Deliberate and intentional absence of the petitioner and his counsel shows that perhaps the petitioner has lost his interest to contest the instant petition, which is accordingly dismissed. However, record reflects that actual facts have been concealed by the petitioner before this Court therefore, cost of Rs. 20,000/- is imposed upon the petitioner to be paid to the complainant party.”

2. On 09.02.2018, Petitioner filed listed application (CMA No. 1613 of 2018) for reviewing/ setting aside the order

dated 01.06.2016 on the premise that the absence of the Petitioner on the very day was neither deliberate nor intentional even the Petitioner was not intimated by his previous counsel regarding date of hearing on 01.06.2016. Petitioner has submitted that the complainant party in connivance with the Investigating Officer, misled this Court by suppressing the true facts, as it is a matter of record that the Petitioner was not a nominated accused in the subject FIR. Petitioner further added that the person namely Noman, (Noman son of Muhammad Asghar) mentioned in the FIR No. 483 of 2014, which is the subject FIR of the instant matter, is the brother of Ammara Ali Daughter of Muhammad Asghar, who was the class fellow of the deceased Irsa Daughter of Ishtiaq Hussain the complainant of the FIR. Petitioner has submitted that in the order dated 19.01.2016 passed by the learned Judicial Magistrate VI Karachi the name of one of the accused Mst. Ammara Daughter of Muhammad Asghar is mentioned. Petitioner has added that he filed the instant Petition to seek remedy from this Court against private Respondents for harassment at the hands of the official Respondents. Petitioner further submitted that at the time of subject crime he was in Dubai.

3. Mr. Muhammad Hanif Chattari, learned counsel for the Petitioner has argued that the instant petition was dismissed due to absence of the Petitioner and his counsel and this Court in absence of the parties imposed a cost of Rs. 20,000/- upon the Petitioner to be paid to the complainant party, which is against the law; that without hearing the Petitioner, the order dated 01.06.2016 cannot be passed; that the Petitioner has been condemned unheard; that Respondent No.10 filed CMA No.

10163/2018 for initiating contempt proceeding against the Petitioner and this Court vide order dated 24.01.2018 passed the following order:-

“Comments filed by SHO Clifton P.S are taken on record. Counsel for petitioner has shown his ignorance as to the dismissal of this petition. Though he has filed counter affidavit to the contempt application but has not filed any application for restoration of this petition. He now intended to file an application for restoration of this petition which was dismissed on 01.06.2016. The cost as ordered on 01.06.2016 is yet to be deposited. He does not need any permission to move any application which may include application for restoration of the petition and if filed, shall be dealt with in accordance with law, however in the first instance the amount of Rs. 20,000/- as ordered on 01.06.2016 be deposited with the Nazir of this Court within a week.”

Learned counsel has drawn attention of this Court that the Petitioner in compliance of the order dated 24.01.2018 deposited the cost of Rs. 20,000/- with the Nazir of this Court on 27.01.2018 and same was transmitted in favour of Ishtiaq Hussain son of Abdul Aziz/Respondent No.10; that in view of the bonafide intention of the Petitioner the instant petition may be heard and decided on merits, rather than dismissal on account of non-appearance of the Petitioner. He lastly prayed for allowing the listed application along with condonation of delay application.

4. Mr. Sibtain Mehmood, learned AAG has argued that the listed application is not maintainable under the law; that the matter was decided by the learned Single Judge of this Court in accordance with law; that the Petitioner has the remedy to file direct complaint against the Respondents, if he is aggrieved against their alleged actions if any, that the application for review has been filed after a lapse of more than one and half year as such is not worth consideration and is liable to be dismissed.

5. We have considered the submissions of the parties and perused the orders passed by the learned Single Judge of this Court as well as material available on record.

6. Perusal of the order dated 1.6.2016 reveals that this Court has dismissed the instant Petition due to absence of the Petitioner and his counsel and decided the matter on the basis of comments filed by Inspector Zafar Iqbal and the assertion made by the learned counsel for the Respondent No.10. The learned Single Judge imposed cost of Rs. 20,000/- upon the Petitioner due to suppression of facts and misleading the Court.

7. Record further reflects that the parties have disputed their respective claims and that there is a criminal case pending between the parties before the competent Court of law. We have perused the order dated 24.01.2018 and compliance made by the Petitioner by depositing the cost of Rs. 20,000/- which has been paid to the Respondent No.10. It is also noted that the Review application has been filed after considerable delay of more than one and half year without disclosing the cause of such a long delay in filling the application.

8. In the light of above facts and circumstances of the case and reasons alluded to above, we are not persuaded to allow the application being CMA No. 1613 of 2018 and recall the order dated 01.06.2016 passed by the learned Single Judge of this Court. The listed application is dismissed accordingly along with other pending applications if any.

JUDGE

JUDGE