

**IN THE COURT OF SHRI ANUJ AGRAWAL, ADDITIONAL
SESSIONS JUDGE-05, SOUTH EAST DISTRICT, SAKET COURTS,
NEW DELHI**

**REVISION PETITION NO. 527 of 2018
CNR No. DLSE01-005961-2018**

IN THE MATTER OF:

Devi Prasanna Nayak,
S/o Sri Kailash Chandra Nayak,
At Mirzapur, PO Madhuban Hat,
Via Resulpur, PS Kuakhia,
District Jajpur, Odisha-755009

.....Revisionist

Versus

Deepak Malviya,
S/o late Sh Mangli Prasad Malivya,
Servants of the People Society,
Harihar Math, Shastri Smarak Bhawan,
N/425 Khalasi Lane, Kanpur, UP

.....Respondent

***Instituted on* : 24.07.2018**
***Reserved on* : Not reserved**
***Pronounced on* : 24.11.2021**

JUDGMENT

1. By way of the instant revision, revisionist takes exception to the order dated 26.05.2018, whereby his complaint moved under section 190 read with section 156(3) Cr.P.C in case bearing Ct No. 1978/2017 titled as **Devi**

Prasanna Nayak Vs. Deepak Malviya & Ors, stood dismissed by Ld. Metropolitan Magistrate-08, South East District, Saket Court, New Delhi.

2. Ld. Trial Court vide impugned order dismissed the complaint of revisionist observing that revisionist/complainant has no locus standi in the case. Relevant observations of Ld Trial Court are being reproduced for the sake of convenience:-

“The applicant / complainant had alleged offence of cheating, criminal breach of trust and forgery committed by alleged Deepak Malviya as Secretary of Servants of the People Society, by seeking a duplicate registration certificate of the society. From the perusal of the record, it is clear that no offence qua the present applicant/ complainant has been committed and the said fact was also admitted by applicant / complainant. If at all any offence has been committed as per the allegations, the same would have been against the society i.e. Servants of People Society or against Railway Authorities. The offence of cheating and criminal breach of trust is committed only against a person and a 3rd person is privy to such offence. Hence, applicant / complainant has no locus standi in the present case.

Moreover, even the jurisdiction of PS Amar Colony does not appear to have been made out as only above named society is having an office in the jurisdiction of PS Amar Colony, but no part of cause of action appears to have occurred in the said jurisdiction. The complainant himself is resident of Orissa and the alleged persons is a resident of Kanpur, UP.

In these circumstances, the present application and consequent complaint is not maintainable as the complainant has no locus standi in this case.

It is also observed that matter has been pending in this court for last more than 1 year which had not only wasted precious time of the court but has put lot of pressure on the Exchequer, as resources have been wasted in hearing the present complaint which appears to be categorically frivolous in nature. Hence, cost of Rs.25,000/- is imposed upon the applicant/ complainant to be deposited in this court by next date positively.

Application/ complaint stands dismissed in terms of this order. ”

3. Revisionist is aggrieved with the impugned order and has assailed the same order on various grounds which can be summarized as under :-

i) That the impugned is against the settled principle of law and as such same is bad as well as based on conjectures, surmises and imaginations;

(ii) That Ld Trial Court failed to appreciate the fact that the revisionist himself would be prejudiced by the acts of respondent along with his other co-workers;

(iii) That Ld Trial Court failed to appreciate the fact that revisionist has fulfilled all requirements under law before filing of complaint;

(iv) That Ld Trial Court failed to appreciate the fact that offence was committed within jurisdiction as Head Office of said Society is located in Amar Colony;

(v) That Ld Trial Court failed to consider the information obtained through Right to Information Act;

(vi) That Ld Trial Court failed to appreciate the fact that revisionist being layman could not prove his case properly but prima facie, discloses commission of cognizable offence;

(vii) That Ld Trial Court failed to appreciate the fact that revisionist is having locus standi to agitate the matter.

4. None appeared on behalf of revisionist to address arguments in the instant matter.

5. Ld counsel for respondent has vehemently argued that there is no infirmity in the impugned order and Ld. Magistrate has rightly dismissed the complaint of revisionist. It is further argued that revisionist had taken frivolous ground and Ld Trial Court after considering facts and circumstances of the matter, rightly dismissed the complaint. It is argued that Ld. Magistrate has rightly observed that revisionist has no locus standi in the matter as well

as lacking jurisdiction of PS Amar Colony. It is submitted that the present revision petition is misconceived and therefore, same is liable to be dismissed.

6. I have heard contentions and perused the record.

7. In the matter of **Taron Mohan v. State & Anr 2021 SCC OnLine Del 312** Hon'ble Delhi High Court has observed as under:-

“9. The scope of interference in a revision petition is extremely narrow. It is well settled that Section 397 CrPC gives the High Courts or the Sessions Courts jurisdiction to consider the correctness, legality or propriety of any finding inter se an order and as to the regularity of the proceedings of any inferior court. It is also well settled that while considering the legality, propriety or correctness of a finding or a conclusion, normally the revising court does not dwell at length upon the facts and evidence of the case. A court in revision considers the material only to satisfy itself about the legality and propriety of the findings, sentence and order and refrains from substituting its own conclusion on an elaborate consideration of evidence.”

8. Further, Hon'ble Apex Court in **Sanjaysinh Ramrao Chavan vs. Dattatray Gulabrao Phalke and others, 2015 (3) SCC 123** observed as under :

“14.....Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or there is non-consideration of any relevant material or there is palpable misreading of records, the Revisional Court is not justified in setting aside the order, merely because another view is possible. The Revisional Court is not meant to act as an appellate court. The whole purpose of the revisional jurisdiction is to preserve the power in the court to do justice in accordance with the principles of criminal jurisprudence. The revisional power of the court under Sections 397 to 401 CrPC is not to be equated with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the courts may not interfere with decision in exercise of their revisional jurisdiction.”

14. In the above case also conviction of the accused was recorded, the High Court set aside the order of conviction by substituting its own view. This Court set aside the High Court's order holding that the High Court exceeded its jurisdiction in substituting its views and that too without any legal basis."

9. Therefore, in view of the settled position of law, this court in its revisional jurisdiction, is not expected to substitute its own view with that of Ld. Trial Court until and unless the order passed by Ld. Trial Court suffers from jurisdictional error or patent infirmity/illegality. In the instant case, after going through the records, I am of the view that Ld Magistrate adopted correct approach by dismissing the complaint of revisionist as no offence whatsoever appears to have been made out in the instant case on the basis of averments made in the complaint. As evident from record, Ld. Magistrate passed a well reasoned detailed order, thereby dismissing the complaint and therefore, this court cannot and rather ought not substitute its own view with that of Ld. Magistrate (while exercising its revisional jurisdiction) and thereby arriving at a different conclusion.

10. Therefore, in the facts and circumstances of the present case, I am of the view that there is no infirmity in the impugned order. Revisionist failed to point out any patent illegality/ infirmity or jurisdictional error in the impugned order and therefore, present petition is liable to be dismissed.

11. **With these observations, it is held that there is no patent illegality, impropriety or jurisdictional error in the impugned order. The instant revision petition is liable to be dismissed being frivolous and devoid of any merit.**

12. Before parting, I may hasten to add that liberal access to justice should not be construed by anyone as a means to lead chaos and indiscipline and frivolous petitions should be penalized with heavy cost. The sanctity of the judicial process will be seriously eroded if such attempts are not dealt with firmly. A litigant who takes liberty with court procedure should anticipate the necessary consequences.

13. In my view, a stern message is required to be sent to the litigants who indulge in frivolous and vexatious litigation as such litigation not only clogs arteries of justice delivery system but also deprives genuine litigants of their fundamental right of speedy trial. Therefore, it is bounden duty of the court to ensure that the legal system is not exploited by those who use the forms of the law to defeat or delay justice. It is only then the courts would be in a position to resolve genuine causes in a time bound manner and answer the concerns of those who are in need of justice. Imposition of real time costs is also necessary to ensure that access to courts is available to citizens with genuine grievances and not to the frivolous petitions like the present one.

14. The issue that in appropriate cases, costs can also be imposed while dismissing revision petition is no longer res integra. Reliance can be placed upon judgments of our own Hon'ble High Court in the matter of **Vijay Ghai v. State** Crl. M. C. No. 3669/2011 decided on 01.11.2013 and **M/s Miracle Infoweb Pvt. Ltd. v. State**, Crl. M. C. No. 4529/2013 decided on 07.11.2013. To illustrate, observations of Hon'ble High Court of Delhi in the matter of **Inderjeet Kaur Kalsi v. NCT of Delhi & Anr**, Crl. M.C No. 4504/2013 and Crl. M. A No. 16125/2013 decided on 27.11.2013 while imposing costs in a criminal revision can be reproduced here as under:

“...22. Imposition of Costs- 22.1 Imposition of actual, realistic or proper costs and or ordering prosecution would go a long way in

controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants. The cost should be equal to the benefits derived by the litigants, and the harm and deprivation suffered by the rightful person so as to check the frivolous litigations and prevent the people from reaping a rich harvest of illegal acts through Court. The costs imposed by the Courts must be the real costs equal to the deprivation suffered by the rightful person and also considering how long they have compelled the other side to contest and defend the litigation in various courts. In appropriate cases, the Courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings. The parties raise fanciful claims and contests because the Courts are reluctant to order prosecution. The relevant judgments in support of this proposition are as under:-

“22.2 In Ramrameshwari Devi v. Nirmala Devi, (2011) 8 SCC 249, the Supreme Court has held that the Courts have to take into consideration pragmatic realities and have to be realistic in imposing the costs. The relevant paragraphs of the said judgment are reproduced hereunder:-

"52. ...C. Imposition of actual, realistic or proper costs and or ordering prosecution would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants. Imposition of heavy costs would also control unnecessary adjournments by the parties. In appropriate cases the courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings...

54. While imposing costs we have to take into consideration pragmatic realities and be realistic what the Defendants or the Respondents had to actually incur in contesting the litigation before different courts. We have to also broadly take into consideration the prevalent fee structure of the lawyers and other miscellaneous expenses which have to be incurred towards drafting and filing of the counter affidavit, miscellaneous charges towards typing, photocopying, court fee etc.

55. The other factor which should not be forgotten while imposing costs is for how long the Defendants or Respondents were compelled to contest and defend the litigation in various courts. The Appellants in the instant case have harassed the Respondents to the hilt for four decades in a totally frivolous and dishonest litigation in various courts. The Appellants have also wasted judicial time of the various courts for the last 40 years.

56. On consideration of totality of the facts and circumstances of this case, we do not find any infirmity in the well reasoned impugned order/judgment. These appeals are consequently dismissed with costs, which we quantify as Rs. 2,00,000/- (Rupees two lakhs only). We are imposing the costs not out of anguish but by following the fundamental principle that wrongdoers should not get benefit out of frivolous litigation."

22.3 In *Maria Margarida Sequeria Fernandes v. Erasmo Jack de Sequeria*, (2012) 5 SCC 370, the Supreme Court held that heavy costs and prosecution should be ordered in cases of false claims and defences as under:-

"82. This Court in a recent judgment in *Ramrameshwari Devi*, (2011) 8 SCC 249, aptly observed at p. 266, para 43 that unless wrongdoers are denied profit from frivolous litigation, it would be difficult to prevent it. In order to curb uncalled for and frivolous litigation, the courts have to ensure that there is no incentive or motive for uncalled for litigation. It is a matter of common experience that the court's otherwise scarce time is consumed or more appropriately, wasted in a large number of uncalled for cases. In this very judgment, the Court provided that this problem can be solved or at least can be minimised if exemplary costs is imposed for instituting frivolous litigation. The Court observed at pp. 267-68, para 58 that imposition of actual, realistic or proper costs and/or ordering prosecution in appropriate cases would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants. Imposition of heavy costs would also control unnecessary adjournments by the parties. In appropriate cases, the courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings." (Emphasis supplied)"

22.4 In *Padmawati v. Harijan Sewak Sangh*, 154 (2008) DLT 411, this Court imposed costs of Rs.15.1 lakhs and noted as under:

"6. The case at hand shows that frivolous defences and frivolous litigation is a calculated venture involving no risks situation. You have only to engage professionals to prolong the litigation so as to deprive the rights of a person and enjoy the fruits of illegalities. I consider that in such cases where Court finds that using the Courts as a tool, a litigant has perpetuated illegalities or has perpetuated an illegal possession, the Court must impose costs on such litigants which should be equal to the benefits derived by the litigant and harm and deprivation suffered by the rightful person so as to check the frivolous litigation and prevent the people from reaping a rich harvest of illegal acts through the Courts. One of the aim of every judicial system has to be to discourage unjust enrichment using Courts as a tool. The costs

imposed by the Courts must in all cases should be the real costs equal to deprivation suffered by the rightful person.

9. Before parting with this case, I consider it necessary to pen down that one of the reasons for over-flowing of court dockets is the frivolous litigation in which the Courts are engaged by the litigants and which is dragged as long as possible. Even if these litigants ultimately loose the lis, they become the real victors and have the last laugh. This class of people who perpetuate illegal acts by obtaining stays and injunctions from the Courts must be made to pay the sufferer not only the entire illegal gains made by them as costs to the person deprived of his right and also must be burdened with exemplary costs. Faith of people in judiciary can only be sustained if the persons on the right side of the law do not feel that even if they keep fighting for justice in the Court and ultimately win, they would turn out to be a fool since winning a case after 20 or 30 years would make wrong doer as real gainer, who had reaped the benefits for all those years. Thus, it becomes the duty of the Courts to see that such wrong doers are discouraged at every step and even if they succeed in prolonging the litigation due to their money power, ultimately they must suffer the costs of all these years long litigation. Despite settled legal positions, the obvious wrong doers, use one after another tier of judicial review mechanism as a gamble, knowing fully well that dice is always loaded in their favour, since even if they lose, the time gained is the real gain. This situation must be redeemed by the Courts..." (Emphasis supplied)"

15. **Considering the totality of circumstances and frivolous nature of litigation, I deem it appropriate that the instant revision not only deserves to be dismissed but the revisionist also deserves to be saddled with the cost of Rs.25,000/- (Twenty Five Thousand) for his mischievous approach. The revisionist in the instant matter is therefore, directed to deposit a sum of Rs.25,000/- with Lawyers Welfare Fund, Saket Bar Association within seven days from the date of the instant order and the receipt thereof be deposited with the Ld. Trial Court, failing which Ld. Trial Court is requested to initiate appropriate recovery proceedings against the revisionist.**

16. With these observations, the present revision stands dismissed.

17. Copy of the instant judgment be also sent to Honorary Secretary, Saket Bar Association for necessary information.

18. TCR be sent back along with copy of judgment to Ld Trial Court for information.

19. Revision file be consigned to record room after due compliance.

**Announced in the open
Court on 24th November 2021**

**(ANUJ AGRAWAL)
Additional Sessions Judge-05,
South East, Saket Courts, New Delhi**