

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
SPECIAL LEAVE PETITION (CIVIL) NO. _____ OF 2016**

IN THE MATTER OF :

X _____ ...PETITIONER
VERSUS
Y _____ ... RESPONDENT

COUNTER AFFIDAVIT

Y, _____ S/o _____ R/o _____ presently at Delhi, do hereby solemnly affirm and state as follows :

1. That the Deponent is respondent in the aforesaid Special Leave Petition and as such fully acquainted with the facts circumstances and records of the case. Hence competent to swear and affirm the present affidavit.

2. That before giving parawise reply to the Special Leave Petition the Deponent craves leave of this Hon'ble Court to bring certain facts on record which have not been mentioned in the Special Leave Petition by Petitioners.

3. That pursuant to the direction given by Hon'ble Single Judge, affirmed by the Division Bench of the Hon'ble High Court, the Deponent has been reinstated and has been working with effect from 1-6-2015. In these circumstances, the Special Leave Petition filed by Petitioners hereinabove has become infructuous and is liable to be rejected.

Even otherwise the said Special Leave Petition is not maintainable as Petitioners before the Division Bench have never raised any point which has been raised by Petitioners before this Hon'ble Court. Before the Division Bench of the Hon'ble High Court the Petitioners had contended only very limited point and rather they sought clarification in LPA of judgment and order passed by Hon'ble Single Judge. The Division Bench of the Hon'ble High Court disposed of the LPA accordingly. On this ground alone the Special Leave Petition is liable to be rejected.

PARAWISE REPLY

1. In reply to paragraph-1 of the Special Leave Petition, it is submitted that there is no merit in the Special Leave Petition filed by Petitioners and as such the SLP deserves to be out rightly rejected with costs in favour of the Deponent.

2. In reply to paragraph-2, the plea taken by Petitioners has no legal force and hence the Petitioners are not entitled to any relief in terms of misplaced assertions under paragraphs A and B. As regards assertions under sub paragraph C, it is most respectfully submitted that such a stand of Petitioners is in itself contradictory with their pleadings inasmuch as that they

have stated that since 42nd Amendment to Article 311 of the Constitution of India is not applicable to the State of Jammu and Kashmir, therefore, the opportunity by way of show cause notice in terms of decision of the Petitioners for removal of Deponent from Government service could not be issued. Such pleadings on the face of record do not entitle the Petitioners for any relief.

3. Paragraph-3 of the Special Leave does not merit any reply.

4. Paragraph-4 of the Special Leave does not call for any reply.

5A. In reply to Ground-A, the assertion of Petitioners holds no legal force and as such the Petitioners because of their conduct as highlighted heretofore are not entitled to any relief because of the established fact that all the issues have been minutely and carefully gone into by the Hon'ble High Court at its Single Bench level, which on facts and law, did not warrant any interference by the Division Bench of the Hon'ble High Court.

B. In reply to paragraph-B it is most respectfully submitted that without affording due opportunity, the Petitioners could not be permitted to remove Deponent from Government service and that too by an incompetent authority, namely, Petitioner No. 4, who is neither the appointing authority of Deponent nor any such powers stood delegated to him. It is in this context most respectfully submitted that avoid action by an incompetent authority remains void and illegal and void order cannot be resuscitated.

C. In reply to this Ground, it is most respectfully submitted that this aspect of the matter stood elaborately dealt with by the Hon'ble High Court of Jammu and Kashmir and as such no issue survives and hence the Petitioners are not entitled to any relief much less in terms of misplaced assertions to the Petitioners. When the Petitioners had full knowledge that the Deponent had applied for leave on health grounds and also that the records of Petitioners did establish that mother of the Deponent was suffering from cancer, still the Petitioners could not have treated the Deponent as on unauthorized absence. The Petitioners were expected to conduct themselves as custodian and guardians of their employees but unfortunately, they acted in violation of settled procedure and rules for satisfaction of their personal ego, administrative obstinacy and for their personal ends. Hence, they are not entitled to any relief.

D. In reply to Ground-D, the assertions of Petitioners under this Ground are also not tenable because action of Petitioners in transferring the Deponent firstly to Nowshera and then to Amritsar or Chandigarh was based merely to satisfy their ego, and was attributed to extraneous considerations and that is why the Petitioners 2, 3 and 4 have been resorting to such illegal practices with oblique motive of harassing the Deponent and likewise other employees including one Mr. Pradeep Sharma, as submitted heretofore.

6. In reply to paragraph-7 of the Special Leave Petition, the prayer of Petitioners under this paragraph cannot be granted in the light of facts and circumstances submitted heretofore. The petition of the Petitioners deserves to be dismissed with exemplary costs in favour of the Deponent.

7. In reply to paragraph-8 of the Special Leave Petition, the Petitioners are not entitled to any interim relief as prayed for and their prayer to this effect also merits to be rejected outrightly in interest of justice.

VERIFICATION

The above-named Deponent do hereby verify and declare that the facts stated in the foregoing paragraphs of my affidavit are true to my knowledge and nothing of it is false and nothing material has been concealed there from.

Verified at Delhi on this the 05th day of January, 2010.

DEPONENT

* * * * *

**IN THE SUPREME COURT OF INDIA
(CRIMINAL APPELLATE JURISDICTION)**

SPECIAL LEAVE PETITION (CRL) No. _____ OF 2016
(FROM THE FINAL JUDGEMENT AND ORDER DATED ____ PASSED BY THE
HIGH COURT OF _____ AT _____ IN CRIMINAL APPEAL NO. ____ OF ____)

IN THE MATTER OF:-

N. _____ S/o _____,
R/o _____
lodged in Model Jail, Chandigarh ... PETITIONER/ORIGINAL ACCUSED

VERSUS

1. Union Territory of _____
through Home Secretary,
Secretariat, _____ ... RESPONDENT
2. S Singh S/o ____ R/o _____. ... PROFORMA RESPONDENT/
ORIGINAL ACCUSED.

**PETITION FOR SPECIAL LEAVE TO APPEAL UNDER ARTICLE
136 OF THE CONSTITUTION OF INDIA**

To,

The Hon'ble Chief Justice of India
And his Companion Justices of
The Supreme Court of India

The humble petition of the
Above named petitioner

MOST RESPECTFULLY SHOWETH

1. That the present Special leave Petition (Criminal.) is filed against order dated 26.11.2015 of the High Court of Punjab and Haryana at Chandigarh, in Criminal Appeal No. 305-DB of 2013, titled "Subeg Singh & Anr., versus The State Union Territory of Chandigarh" whereby the Hon'ble Court dismissed the appeal of the petitioner.

2. That the present petition raises an important question of law for consideration before this Hon'ble Court. _____ -

3. BRIEF FACTS

On the night intervening 11/12.2.2013 murder of Shri Bachna Ram, who was a cook and domestic servant of Shri Devinder Singh Brar, resident of house No. 53, Sector 28-A Chandigarh, was committed in the kitchen of his house when Shri Devinder Singh Brar and his sister Smt. Gurmail Kaur were in Aurngabad. The F.I.R. was registered on the statement of Capt Jagat Pal Singh PW-11 who resides in the neighborhood of house No. 53. The offence came into light when Smt. Babita the sweeper of House No. 53 informed Capt. Jagat Pal Singh PW-11 that on 11.2.2013 and again on 13.2.2013. Smt. Babita informed Capt. Jagat Pal Singh PW-11. On the information given by Captain Jagat pal Singh, PW-11 S.I. Puran Chand aforesaid recorded D.D.R. No. 46 dated 13.2.2013 in the Rojnamcha of the police-Station East, Chandigarh and formed a Police party and the came to House No. 53. The investigation of this case remained pending with S.I. Puran Chand up to 8.3.2013. The police remained unsuccessful in tracing out the crime till 8.4.2013. On that day, Balwan Singh S.I. PW-24 of the CIA staff, took over the investigation of this case. He along with members of the police party including S.I. Partap Sing PW-23 visited House No. 53. Sector 28-A Chandigarh where Mr. Devinder Singh Brar PW-12 was present. In his presence, appellant Gurdev Singh was interrogated and he made certain disclosures after which the further story unfolded. After completion of the investigation the accused were challaned on the charges under Section 120-B, 392/120-B, 302/34, 302/114, I.P.C. The accused pleaded not guilty to the charge framed against them and claimed trial. The Court of Sh. B.S.Bedi, Session Judge, Chandigarh convicted the accused U/s. 120-B, 302/34 and in alternative 302/114 IPC.

4. That the copy of the Trial Court judgment passed by Sessions Judge Chandigarh convicting and sentencing the petitioner in Sessions Case No.15 of 2013 U/s. 120-B, 302/34 and in alternative 302/114 IPC is Annexure P-1.

5. GROUNDS

Being aggrieved and dissatisfied with the impugned order, the Petitioner approaches this Hon'ble Court by way of Special Leave Petition on the following amongst other grounds:-

- A. Because the judgment and order dated 26.11.2015 passed by the Hon'ble High Court which dismissed the appeal of the appellant is contrary to law and facts and hence the same is liable to set aside both on the point of law and equity.
- B. Because the prosecution only produced the partisan or the interested persons as witnesses in order to prove the commission of crime by the petitioner. This fact doubts the truthfulness of the case of prosecution.
- C. Because the prosecution has suppressed the origin and genesis of the occurrence and has thus not presented the true version.
- D. Because the prosecution has miserably failed to prove its case beyond doubt against the petitioner.
- E. Because the witnesses have not deposed correctly and there is discrepancy in the depositions of witnesses and the conviction of the petitioner is bad.

F. Because the Hon'ble Court ignored the fact to be considered in the case was as to whether the evidence of PW-5 Gurpartap Singh, the approver, was reliable and if so whether there was corroboration to his evidence on material particulars so as to warrant conviction. It is high-lighted that it was a case of no evidence from the side of the prosecution and, therefore, the evidence of the approver and other circumstances, corroborated by his statement cannot be the base of conviction of the appellent.

G. Because Gurpartap Singh PW-5 lost his status as an approver when he appeared before the learned Committing Magistrate and his statement was recorded as PW-1 on 11.9.1995. The relevant portion of the same is as follows:-

“Before 7.4.2012 I had no conversation with anybody. On 7.4.2012 my self, accused Subeg Singh and accused Nand Singh were coming from Rajpura to Chandigarh on a Motorcycle. I had come to Chandigarh on that date for the first time. When we crossed Zirakpur, we were apprehended on the first Chowk by the Chandigarh Police. From there we were apprehended and implicated in this case. I do not know where Sector 28 is. I was threatened by the Police that I should give a statement in favour of the Polcie otherwise I would be involved in a TADA case and should suffer imprisonment for whole of the life. In the Jail also, the police people used to visit me and threaten and intimidate me. I made statement before the Chief Judicial Magistrate on account of fear of the police. I have nothing more to say about this Case”

H. Because the above statement will show that the tender of pardon given to Gurpartap Singh by the Learned Chief Judicial Magistrate, Chandigarh on 1.5.2012 was no, more available and he lost the status of an approver. It is stated here that the Learned Committing Magistrate was entirely wrong in permitting the cross-examination of Gurpartap Singh by the prosecution by declaring him hostile. This could not have been done for the simple reason that he did not attain the status of a witness. This being so, all the proceedings after 11.9.2012 with regard to the examination of Gurpartap Singh as a witness by the Learned committing Magistrate or by the Learned Sessions Judge, Chandigarh stood vitiated being totally illegal. It is submitted that from the date 11.5.2012 when Gurpartap Singh made the above statement, he is to be taken as an accused and not an approver, he had made altogether different statement from the one alleged to have been made after alleged acceptance of tender of pardon.

6. That the Petitioner has not filed any other Special Leave Petition against the Impugned Order dated 26.09.2002 before the Hon'ble Supreme Court of India.

7. PRAYER

In the premises the Petitioner herein prays that this Hon'ble Court may graciously be pleased to:

- a) Grant special leave to appeal to the petitioner against judgment and order dated 26.11.2015 of the High Court of Punjab and Haryana at Chandigarh, in Criminal Appeal No. 305-DB of 2013, titled “Subeg Singh & Anr., versus The State Union Territory of Chandigarh”

- b) Pass any other order which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case in favour of the Petitioner.

NEW DELHI

DRAWN ON: _____

FILED ON: _____

[NOTE : To be supported by an affidavit]

DRAWN AND FILED BY
ADVOCATE FOR THE PETITIONER

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CURATIVE PETITION (CIVIL) NO. _____ OF 2016**

IN THE MATTER OF :

X _____ R/o _____ ... PETITIONER

VERSUS

Y _____ R/o _____ ... RESPONDENT

**CURATIVE PETITION UNDER ARTICLE 129, 137, 141 AND 142
OF CONSTITUTION OF INDIA READ WITH ORDER XLVIII OF SUPREME
COURT RULES 2013**

To

The Hon'ble Chief Justice of India
And His Lordships Companion Judges
of the Supreme Court of India.

The Humble Petition on behalf of Petitioner abovenamed.

MOST RESPECTFULLY SHOWETH :-

1. That the petitioner is desirous of filing the present Curative Petition against the Judgment and Final Order dated _____ passed in Review Petition (Civil) No. _____ in SLP (Civil) No. _____ which was dismissed by this Hon'ble Court vide Judgment and Final Order dated _____.

2. QUESTION OF LAW:

In the present Review Petition the following questions of law of general public importance arise for the consideration of this Hon'ble Court ;

- (a) Whether the Court is justified to refuse the decree for divorce when advocates appearing for both the sides argued and submitted that since 1976 there is no cohabitation between the parties and there is no chance of reunion and therefore there is no harm if the decree for divorce is passed in favour of the petitioner husband ?
- (b) Whether the courts below erred in holding that the petition filed by the petitioner was barred by the principle of resjudicata ?

- (c) Whether the High Court as well as the courts below erred in not appreciating the aspect that the marriage is irretrievably broken and there is no possibility of reunion and hence the decree for divorce is to be granted ?
- (d) Whether the courts below erred in holding that the ground of desertion is not proved and can not be taken ?
- (e) Whether efflux of time and admitted fact that the cohabitation is not resumed is not sufficient to grant decree of divorce ?

3. **FOUNDATIONS**

That the petitioner is filing the present Curative Petition on the following amongst other grounds :-

AB.....C..... D

The Grounds mentioned in the curative petition had been taken in the Review Petition and that it was dismissed by circulation; and that no new grounds have been taken in this curative petition.

4. **MAIN PRAYER :-**

It is therefore, most respectfully prays to this Hon'ble Court may graciously be pleased to :-

- (a) reconsider the Judgment and Final Order dated _____ passed by the Hon'ble Supreme Court of India in Review Petition No. _____.
- (b) Pass such other order or orders as this Hon'ble Court may deem fit and proper in the interest of justice.

AND FOR THIS ACT OF KINDNESS THE PETITIONER AS IN DUTY BOUND SHALL EVERY PRAY.

FILED BY :-

FILED ON :- _____ 2010
NEW DELHI

ADVOCATE FOR THE PETITIONER

[**NOTE** : To be supported by an affidavit]

* * * * *

NOTE: To be supported by affidavit of the petitioner and a certificate by **Senior Advocate**

CERTIFICATE

Certified that the Curative Petition has been examined by me and it appears to that following very strong grounds exists for facts of the curative parties

The curative Petition fulfils the requirements as laid down in the judgment dated _____ in the matter of Rupa Ashok Hurra Vs. Ashok Hurra [W.P. (C) No. 509/97 etc.] reported as 2002 (4) SCC 388, as the Review Petition was dismissed by Circulation and the grounds taken herein had been taken in the review petition and a specific averment has been made in the Curative Petition to this effect.