

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.C.No.1907 of 2016

ORDER:

Heard the learned counsel for the petitioner and the learned Government Pleader for Home for respondents.

2. This Contempt Case is filed alleging willful disobedience of the order dt.19-08-2016 in W.P.M.P.No.34412 of 2016 in W.P.No.27778 of 2016.

3. The 1st respondent in the Contempt case is the Superintendent of police, Eluru, West Godavari and the 2nd respondent is the Station House Officer, Akividu Police Station, West Godavari District.

THE BACKGROUND FACTS

4. Admittedly, the 1st petitioner married one Razia Sultana and she had lodged a complaint on 04-08-2016 before the Station House Officer, Akiveedu, contending that the 1st petitioner had harassed her for dowry and had committed offence under Section 498-A IPC.

5. The petitioners made a representation to the respondents that they have a life threat at Akiveedu since Razia Sultana and her parents are local people and very influential politically and in the past, they had assaulted the petitioner Nos.1 and 2.

W.P.No.27778 of 2016 AND INTERIM ORDER DT.19-08-2016 IN WPMP.NO. 34412 of 2016

6. When there was no response, petitioners then approached this Court by filing W.P.No.27778 of 2016 and sought a direction to the respondents not to arrest the petitioners without giving due notice. They contended that the respondents therein should follow the procedure contemplated under Section 41-A Cr.PC and extend necessary protection to them in the event of their appearance before the Police Station at Akividu.

7. In W.P.M.P.No.34412 of 2016 in W.P.No.27778 of 2016, an interim direction pending Writ Petition was sought directing the respondents not to arrest the petitioners and to follow the procedure contemplated under Section 41-A of the Cr.P.C.

8. On 19-08-2016, after issuing notice to the respondents and to the wife of the 1st petitioner, this Court directed the respondents to strictly follow the guidelines laid down by the Supreme Court in **Arnesh Kumar Vs. State of Bihar and another**¹ and in particular para 11 thereof. Para 11.6 in the said decision stated that notice of appearance in terms of sec.41-A Cr.P.C has to be served on the accused within 2 weeks from date of institution of the case and para 11.7 stated that failure to comply with the above direction and other directions will render the police officers liable for departmental action apart from punishment for Contempt of Court by the High Court.

¹ (2014) 8 S.C.C. 273

PETITIONER'S CONTENTIONS IN THE INSTANT CONTEMPT CASE

9. This Contempt Case is filed alleging that after the said order was passed, on 29-08-2016 at 10.30 pm, the respondents, along with six others including the brother-in-law of 1st petitioner, barged into the house of the petitioners and took away 1st petitioner from their residence to the Police Station, Akiveedu, and put pressure on the 1st petitioner to yield to whatever ransom amount which was demanded by the wife of the 1st petitioner, and that this was done without issuing written notice and without following the procedure laid down in the above judgment.

10. It is contended that when the petitioners tried to show the respondents the interim order of the High Court, 2nd respondent threw it away and said that he will not care about any orders and the 2nd petitioner was pushed away and his mobile was snatched.

THE COUNTER OF 2ND RESPONDENT

11. Counter affidavit is filed by the Sub Inspector of Police, Akiveedu, on behalf of the respondents contending that Razia Sultana filed a complaint on 04-08-2016 against the 1st petitioner, that it was entered into G.D.Diary and preliminary enquiry was taken up by calling the 1st petitioner over phone to attend enquiry and counseling at the 2nd respondent's police station. It is also stated that on 24-08-2016, wife of the 1st petitioner withdrew her complaint dt.04-08-2016 and that no further action was taken by the 2nd respondent against 1st petitioner or any of the family members. All

the allegations leveled by the petitioners in the Contempt Case were denied.

THE ORDER DT.09-12-2016 IN THE CC

12. In view of the counter affidavit filed by the respondents, on 09-12-2016, the following order was passed by this Court:

“The issue raised in this Contempt Case is whether in spite of an order dt.19-08-2016 passed by this Court in W.P.No.27778 of 2016, the 1st petitioner was forcibly taken away by the 2nd respondent herein at 10.30 pm on 29-08-2016.

While the petitioners allege that it is the 2nd respondent who was responsible for violating the order passed by this Court, in the counter-affidavit filed by 2nd respondent, this allegation is denied.

Therefore, the Metropolitan Sessions Judge, City Criminal Court, Nampally, Hyderabad shall inquire into the matter after recording the evidence adduced on behalf of petitioners as well as 2nd respondent within a period of eight (08) weeks from today and submit a report to this Court as to the allegations leveled by petitioners.

Post after eight (08) weeks.”

13. The Metropolitan Sessions Judge, Hyderabad recorded the evidence of Pws.1 to 6 and RW.1 and marked Exs.P.1 to P.8 and Exs.R.1 to R.3.

THE REPORT OF THE METROPOLITAN SESSIONS JUDGE, HYDERABAD

14. The Metropolitan Sessions Judge, Hyderabad then submitted a report dt.18.04.2017 vide proceedings in Dis.No.2200/MSJ/Adm/Hyd/2017 adverse to 2nd respondent and held that the evidence produced before her had revealed that 1st petitioner

was forcibly taken away by 2nd respondent to Akividu Police Station on 29.08.2016 at 10:30 p.m. from Hyderabad and was illegally detained in the Akividu Police Station on 30.08.2016 and 31.08.2016 and was released only at 11:00 p.m. on 31.08.2016.

15. The Metropolitan Sessions Judge noted that PW.1 stated that he was taken by Akividu Police accompanied by his brother-in-law and others on 29.08.2016 at 11:00 p.m. and was not permitted to leave the Police Station on 30.08.2016 and till 11:00 p.m. on 31.08.2016 until he signed on a settlement deed agreeing to pay Rs.9 lakhs to Razia Sultana, but RW.1 had not agreed; that the evidence of PWs.2 to 5 corroborated the evidence of PW.1 about 1st petitioner being picked up by the Akividu Police; and evidence of PWs. 4 and 6 would prove that they went to Akividu Police Station along with PW.2 who came up to Eluru and returned on 31.08.2016 at 11:00 p.m. along with PW.1 from the Police Station; that PW.6, an Advocate, stated that he found PW.1 in Akiveedu Police Station, and informed the 2nd respondent about the orders passed by this Court, but the 2nd respondent did not pay any attention to the same and detained PW.1 in the Police Station illegally on 30.08.2016 and 31.08.2016 till 11:00 p.m., and had not sent PW.1 only after he signed on the settlement deed marked as Ex.P.1; that PW.1 also exhibited a photo-copy of the surety bond (Ex.P2) for his release dt.31.08.2016 which PW.1 was made to execute; that Exs.P.1 and P.2 were not denied by 2nd respondent; that petitioners had also filed photographs of PW.1 in the Police Station along with PW.6 sitting and waiting with a newspaper

of the said dates marked under Ex.P.3; and the said photographs were not denied by 2nd respondent and he admitted that they were taken in the premises of Akiveedu Police Station.

16. The Metropolitan Sessions Judge held that the plea of 2nd respondent that the *de facto* complainant had withdrawn her complaint on 24.08.2016 itself and there was no necessity to bring her husband PW.1 to the Police Station, cannot be believed, because if the complaint was withdrawn by that date as contended by 2nd respondent, there was no necessity for PWs 1 and 6 to go to Akividu Police Station, stay there on 30.08.2016 and 31.08.2016 taking the photographs and making false allegations against 2nd respondent.

17. The Metropolitan Sessions Judge took note of the fact that there was another Memorandum of Agreement or Deed of Separation executed by PW.1 and the *de facto* complainant under Ex.P.6 dt.31.01.2017, and held that if there was really settlement for Rs.9 lakhs as signed by 1st petitioner on 31.08.2016, there was no necessity to execute Ex.P.6; that Ex.P.6 did not disclose the withdrawal of complaint by the *de facto* complainant, viz., Razia Sultana, and if really it had been withdrawn, it would have been mentioned in Ex.P.6.

18. The Metropolitan Sessions Judge also noted that Clause (5) of Ex.P.6 stated that the 1st petitioner was unimpeded to ventilate his other grievances independently and this indicated that he wanted

to continue with his Contempt Petition irrespective of the Memorandum of Agreement by him with his wife.

19. The Metropolitan Sessions Judge also noted that a complaint Ex.P.7 was filed by PW.1 against Akividu Police Station before the Andhra Pradesh State Human Rights Commission and the Superintendent of Police, West Godavari District (1st respondent herein) submitted that the Inspector of Police, Bhimavaram Police Station enquired into the matter and enclosed report of the Inspector of Police; that the enquiry made by the Inspector of Police, Bhimavaram Rural Police Station would show that on 30.08.2016 night the elders of Razia Sultana followed by petitioner and his elders came to Akividu Police Station and elders of either side held a sitting with 1st petitioner and his wife, made a compromise between them and got executed a compromise deed wherein 1st petitioner agreed to pay Rs.9 lakhs to his wife Razia Sultana towards permanent alimony; that both parties came to Akividu Police Station; that 1st petitioner entered the Police Station and sat in the Police Station premises and asked the Sub-Inspector about the petition given by his wife. It is also stated that on 31.08.2016 both parties turned up to the Police Station and the 1st petitioner again asked the Sub-Inspector on the same issue and the Sub-Inspector showed the petitioner and informed him that the complaint was withdrawn by Razia Sultana, but 1st petitioner was not interested to compromise with his wife and therefore filed a Writ Petition in this Court to avoid cases to be filed by his wife; and falsely implicated the names of Police Officials as respondents.

20. The Metropolitan Sessions Judge concluded from the report dt.05.01.2017 submitted by the Inspector of Police, Bheemavaram Rural Police Station to the Superintendent of Police, West Godavari District that 1st petitioner was at Akividu Police Station on 30.08.2016 and 31.08.2016. She held that if the complaint was really withdrawn by Razia Sultana on 24.08.2016, as contended by the 2nd respondent, then there was no necessity for both parties to settle the matter in the Police Station by executing Ex.P.1; the documents executed by petitioners support the contention of petitioners that PW.1 was forcibly brought to Akividu Police Station and made to sign on Ex.P.1 against his will; that the copy of the release deed given to PW.1 would also prove that he was taken by the Akividu Police Station and released on 31.08.2016 and the said document also disclosed that he was called for counseling to the Police Station in relation to the complaint given by Razia Sultana.

21. The Metropolitan Sessions Judge held that no notice was issued to 1st petitioner under Section 41-A of Cr.P.C. asking him to attend the counseling by the 2nd respondent and without issuing any notice to 1st petitioner, the 2nd respondent took him to Akividu Police Station in the name of counseling, detained him on 30.08.2016 and 31.08.2016 till 11:00 p.m. and the 2nd respondent thus violated the orders passed by this Court on 19.08.2016 in WP.No.27778 of 2016. It also noted that the 2nd respondent did not take any plea about his absence in the Police Station about the said dates.

22. After the report was received by this Court, on 20.04.2017, the Registry was directed to furnish copy of the report to the Metropolitan Sessions Judge, Hyderabad to counsel for both sides and liberty was granted to both parties to file objections thereto.

OBJECTIONS OF 2ND RESPONDENT TO THE REPORT OF THE METROPOLITAN SESSIONS JUDGE AND CONSIDERATION OF THE SAME BY THE COURT

23. The 2nd respondent filed objections to the report on 02.02.2018. In his objections, he merely stated that the Metropolitan Sessions Judge had relied upon the evidence of Pws.1 to 5 to arrive at the finding of the picking up of the 1st petitioner on 29.08.2016 and detention by him up to 31.08.2016 till 11:00 a.m. by the Akividu Police Station and Pws.2 to 5 are all interested witnesses.

24. This contention is factually incorrect because the Metropolitan Sessions Judge relied not only on the oral evidence of PW.s 1 to 5 but also on Exs.P.1 to P.8, apart from the report dt.05.01.2017 submitted by the Inspector of Police, Bheemavaram Rural Police Station to the Superintendent of Police, West Godavari District.

25. Though the 2nd respondent took a plea in the objections that there is no truth in the statement of the Inspector of Police, Bheemavaram Rural Police Station regarding the execution of the settlement on 30.08.2016, there is no reason assigned by him why the Inspector of Police, Bheemavaram would speak about the 1st petitioner being in Akividu Police Station on 30.08.2016 and

31.08.2016, and about the settlement Ex.P.1 executed by PW.1 while he was in detention in the Police Station.

26. The further objection raised by 2nd respondent that the *de facto* complainant, viz., Razia Sultana had withdrawn the complaint made against 1st petitioner on 24.08.2016 itself, cannot be believed because if it was really so withdrawn the 1st petitioner would not have been picked up by 2nd respondent, brought forcibly to Akividu Police Station, and made to sign Ex.P.1 against his will.

27. In any event, there is no evidence adduced by the 2nd respondent that he had complied with the judgment in **Arnesh Kumar** (1 supra) by issuing a notice to 1st petitioner under Section 41-A of Cr.P.C.

28. In **Arnesh Kumar** (1 supra), the Supreme Court held that Police Officials should not arrest the accused in a case under Section 498-A is registered against them unnecessarily, but they must satisfy themselves about the necessity for arrest as per the parameters laid down in Section 41 Cr.P.C.; and notice of appearance in terms of Section 41-A of Cr.P.C. has to be served on the accused within two (02) weeks from the date of institution of the case; and failure to comply with the direction given in the judgment would render the police officer concerned liable for departmental action apart from also making them liable punishable for Contempt of Court to be instituted to the High Court of the territorial jurisdiction. This has been

reiterated by the Supreme Court in **Social Action Forum for Manav Adhijar & Others v. Union of India, Ministry of Law and Justice**².

29. So I hold that the 2nd respondent has willfully disobeyed the order dt.19.08.2016 passed in WPMP.No.34412 of 2016 in WP.No.27778 of 2016.

30. The statement in the counter-affidavit that petitioners were not called and detained by the 2nd respondent and that he did not violate the guidelines in **Arnesh Kumar (1 supra)** cannot be accepted.

31. Though the learned Government Pleader pleaded for a lenient view to be taken against the 2nd respondent, liberty of a citizen cannot be taken away without following the due process of law and in gross violation of the orders passed by this Court, and persons employed in a disciplined force like the Police Department cannot be allowed to get away with such conduct. So I am of the opinion that no lenience is warranted.

32. Accordingly, the Contempt Case is allowed. The 2nd respondent is sentenced to suffer three (03) months' imprisonment with a fine of Rs.2,000/- under Section 12 of the Contempt of Courts Act, 1971 for willful disobedience of the order dt.19.08.2016 passed in WPMP.No.34412 of 2016 in WP.No.27778 of 2016; the sentence of imprisonment is suspended for a period of six (06) weeks; the

² AIR 2018 SC 4273

petitioners shall deposit subsistence allowance at the rate of Rs.300/- per day within six (06) weeks.

33. Disciplinary action shall also be initiated by the State of Andhra Pradesh rep. by its Principal Secretary, Home Department, Secretariat, Velagapudi against the 2nd respondent in regard to the wrongful detention of 1st petitioner on 30.08.2016 and 31.08.2016 in violation of the above order passed by this Court.

34. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 20-11-2018

Kvr/Ndr/*

Note:-

Issue C.C. in one week.

B/o.
GRA

