

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Cont.Case (Crl.) No.16/2008**

% **Date of Decision: 06.11.2008**

Manju Saxena Petitioner

Through Petitioner in person.

Versus

Naina Lal Kidwai & Anr Respondent

Through Nemo.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE V.K. SHALI

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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1. The petitioner seeks initiation of criminal contempt proceedings and punishment to the respondents under the Contempt of Courts Act, 1971 on the ground that they have interfered with the due course and administration of justice by willfully and deliberately making false statements and suppressing documents to obtain the ex parte order dated 11.08.2006 thereby causing serious prejudice and irreparable injury to the petitioner. The petitioner also seeks action against the

respondents under Article 215 of the Constitution of India in order to uphold the dignity of this Court.

2. The petitioner is alleged to have joined the services of Hongkong & Shanghai Banking Corporation as Lady Secretary. Later on she was appointed as a Senior Confidential Secretary. The Banking Corporation is alleged to have reviewed its working norms. Revised working norms were offered to the petitioner which were declined by her and consequently her services are alleged to have been terminated with effect from 1st October, 2005.

3. The petitioner raised disputes under the Industrial Disputes Act. During the pendency of her reference she sought an interim relief. The Industrial Adjudicator by his order dated 30th June, 2006 directed the Banking Corporation to make payment of Rs.30,000/- per month to the petitioner during the pendency of the reference. While awarding the interim payment of Rs.30,000/- per month, the Industrial Adjudicator relied on the allegation of the petitioner that despite being posted as a staff officer with a substantial salary, she did not do any work of a managerial, supervisory or administrative nature and she had been performing clerical duties all along. Reliance was also placed on the email dated 9th September, 2005, a copy of which was filed by her

before the Central Government Tribunal-cum-Labour Court (Industrial Adjudicator) along with her rejoinder to the written statement of the Corporation.

4. The order dated 30th June, 2006 of the Central Government Industrial Tribunal-cum-Labour Court was challenged by the Banking Corporation in a writ petition being Writ Petition (Civil) No.12602/2006. Along with the petition an application for interim order was also filed. A Learned Single Judge of this Court by order dated 11th August, 2006 had stayed the interim order of the Industrial Adjudicator dated 30th June, 2006.

5. The said Writ Petition (Civil) No.12602 of 2006 has been heard finally and decided by judgment dated 24th September, 2008 and the writ petition of the Banking Corporation has been dismissed and the interim order granted by order dated 11th August, 2006 was also vacated.

6. The plea of the petitioner is that the interim order dated 11th August, 2006 was obtained by the Banking Corporation, represented by respondents, by concealing the email dated 9th September, 2005. According to the petitioner, had the Banking Corporation filed the copy

of the said email which was already on record, the learned single Judge would not have passed the interim order dated 11th August, 2006 staying the interim award dated 30th June, 2006 of the Industrial Adjudicator.

7. The petitioner has also contended that the respondents have willfully made a false and incorrect statement in the writ petition being Writ Petition (Civil) No.12602/2006 in paragraph 5.17 contending that no such document (email dated 9th September, 2005) is available on the record before the learned Tribunal, though the same had been filed by the petitioner along with her rejoinder before the Industrial adjudicator in the reply to the written statement filed by the banking Corporation.

8. We have heard the petitioner, who appears in person, on 11th September, 2008; 25th September, 2008; 16th October, 2008 and have also perused copies of various documents filed by her from time to time and the judgments relied on by her. The petitioner has relied on 1974 SCC (Crl.) 727, Naraindas v. The Government of Madhya Pradesh and Others; (1996) 7 SCC 397, Afzal and Another v. State of Haryana and Others; 1996 (83) E.L.T. 256 (SC), Union of India v. Kitply Industries; (1995) 1 SCC 421, Chandra Shashi v. Anil Kumar Verma and (2003) 5 SCC 376, M.C. Mehta v. Union of India and Others to contend that the

action of the banking corporation in not filing the copy of the e-mail dated 9th September, 2005 has interfered and tended to interfere with the due course of justice as the banking corporation was granted ex-parte stay of order dated 30th June, 2006 of the Industrial Adjudicator.

9. Learned single Judge while disposing of the writ petition in which, according to the petitioner, interim order was granted on account of suppression of the email dated 9th September, 2005, had considered the plea of the petitioner that the interim order was granted on account of suppression of fact but had not upheld the same. The learned single Judge had held as under:-

“24. The workman made numerous other submissions, impugning the conduct of the Corporation, both before the Industrial Adjudicator and this Court, including but not limited to, misleading this Court on the facts without filing any documentary evidence in support of such purported facts. In addition, she expectedly supported the validity and legality of both the order of the Central Government making the subject reference and the order of the Industrial Adjudicator granting interim relief.”

From the order of the Learned Single Judge it is apparent that it has not been held that the interim order dated 11th August 2006 was granted only on account of non-consideration of email dated 9th September, 2005. The plea of the petitioner, in the facts and circumstances, that the interim order dated 11th August, 2006 would

not have been passed, in case the e-mail dated 9th September, 2005 had been filed before the single Judge, cannot be accepted.

10. The petitioner had filed another contempt case being Cont Case (Civil) No.135 of 2007 which was disposed of by order dated 10th September, 2007. The petitioner, who appears in person, contend that in her written statement filed before the single Judge she had taken the plea that the ex parte order dated 11th August, 2006 was passed only on account of suppression of email dated 9th September, 2005, however, no specific finding has been given about the effect of suppression of email dated 9th September, 2005 and, therefore, this court should exercise its jurisdiction in the interest of justice and issue notice to the respondents.

11. If the order dated 24th September, 2008 dismissing the writ petition of the respondents has an error apparent she is entitled to get it corrected either by filing the Review petition, if the petitioner is aggrieved on account of non-adjudication of her plea of fraud played by the Banking Corporation, the appropriate remedy for the petitioner is to file an appropriate appeal or petition before the Appellate Court. The petition under Sections 2, 12 and 14 of the Contempt of Courts Act, 1971 shall not be maintainable in these facts and circumstances to

correct any error committed by the Learned Single Judge while dismissing the writ petition of the Banking Corporation against the interim order of the Industrial Adjudicator granting her interim relief.

12. The judgments relied on by the petitioner are distinguishable. In *Naraindas (supra)*, the Apex Court had held that mere making of incorrect statements in justification of a decision to postpone the reopening of the schools could not possibly have had any prejudicial effect on due course of justice so far as appeal and the writ petitions were concerned in that matter. It was, however, held that a wrong or misleading statement, if made deliberately and willfully, by a party to a litigation with a view to obtain a favorable order, would prejudice or interfere with the due course of judicial proceedings. However, in the present case, it has not been held that the interim order staying the interim order of the Industrial Adjudicator was passed merely because copy of email dated 9th September, 2005 was not filed and considered. Consequently it cannot be held that a favorable order was obtained by concealment as has been alleged by the petitioner. In any case, this matter was also raised before the single Judge who has not held that any favorable order was passed in favour of the Banking Corporation on account of withholding or concealment of alleged email.

13. The other judgment cited by the petitioner, *Afzal and Another (supra)* is also clearly distinguishable as in that case during the

pendency of habeas corpus petition before the Supreme Court regarding the confinement of two minor boys by the police, the Head Constable had forged the signatures of SP on the carbon copy of the affidavit which was to be filed in the Supreme Court. A second counter affidavit was also filed which was also found to be false and consequently the Apex Court had punished Superintendent, Sub Inspector and ASI. The case of the petitioner is clearly distinguishable and on the basis of the ratio of the case relied on by the petitioner, it cannot be held that respondents have interfered with the administration of justice and have committed criminal contempt of court as has been alleged by the petitioner.

14. In *Union of India v. Kitply Industries (supra)*, a categorical statement was made by the President of the assessee Company that no contempt petition had been filed in Guwahati High Court. Consequent to the false affidavit filed, certified copy of the contempt petition as well as the order of the Guwahati High Court was produced and in the circumstances on a prima facie view, it was held that a false affidavit was filed in the Supreme Court and consequently the contempt proceedings were initiated.

15. In *Chandra Shashi (supra)*, the petitioner wife had prayed for the transfer of matrimonial proceedings on the ground of her poverty. To resist that prayer of the wife, forged and fabricated documents were

filed by the husband. In the circumstances, it was held that if recourse to falsehood is taken with oblique motive, the same would definitely hinder, hamper or impede even flow of justice and would prevent the courts from performing their legal duties as they are supposed to do.

16. In M.C. Mehta (supra), a sole proprietor of a hot mix plant in total disregard and in defiance of consistent orders passed by the Supreme Court continued to operate hot mix plant and thereafter defended his action and found faults with the orders passed by the Supreme Court. In those circumstances, it was held that the proprietor of hot mix plant had committed contempt of court.

17. The precedents relied on by the petitioner are clearly distinguishable. It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. In *Ambica Quarry Works v. State of Gujarat and Ors.* MANU/SC/0049/1986 the Supreme Court had observed:-

“The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it.”

In Rafiq Vs State, 1980 SCC (Crl) 946 it was observed by the Supreme Court as under:

“The ratio of one case cannot be mechanically applied to another case without having regard to the fact situation and circumstances obtaining in two cases.”

Similarly in Bhavnagar University v. Palitana Sugar Mills Pvt Ltd (2003) 2 SC 111 (vide para 59), the Supreme Court had observed:-

“It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision.”

18. Considering the totality of facts and circumstances, it cannot be held that the order dated 11th August, 2006 was passed by the Learned single Judge only on account of non-consideration of alleged email dated 9th September, 2005. The matter was raised before the single Judge which has not held so and in the circumstances the plea of the petitioner that the respondents have willfully and deliberately made false statements and have played a fraud causing serious prejudice to petitioner and irreparable injury and has thus interfered with the due course of justice and administration of justice cannot be accepted.

19. The petitioner who appears in person has contended that the representative of the respondents are keeping a watch on the

proceedings and are mocking at her and in the circumstances notice to show cause be issued to them. It is a serious matter to issue notice in a matter seeking initiation of Criminal Contempt. Prima facie we are not satisfied that petitioner has been able to make out a case for initiation of Contempt of Court proceedings against the respondents and consequently on misplaced sympathies, if any, for the petitioner, notice to show cause cannot be issued to the respondents.

20. There is no merit in the petition. It is, therefore, dismissed.

ANIL KUMAR, J.

November 06, 2008
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V.K. SHALI, J.