

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

Date of decision: 4th January, 2013

+ **CRL. REV. P. 598/2012**

GOPI KANT MISHRA & ORS. Petitioners

Through: Mr. P.K. Devpayer, Adv.

versus

JITENDER KUMAR TALWAR Respondent

Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

CRL.MA.18091/2012 (Exemption)

Exemption allowed, subject to all just exceptions.

The Application is allowed.

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1. The Petitioner challenges an order dated 30.06.2012 passed by the Metropolitan Magistrate, East whereby an application to initiate contempt proceedings under Section 2 (c) of the Contempt of Court Act, 1971 (the Act) moved by the Petitioner was dismissed.
2. The Petitioner's grievance is that in spite of repeated opportunities granted by the learned Metropolitan Magistrate, copy of the complaint and other documents was not supplied by the Respondent (the

Complainant) to the Petitioners who had been summoned as accused in the Complaint case.

3. Mere non supply of the copy of the Complaint and other documents filed along with it in pursuance of the directions given by a Court by itself would not amount to Contempt of Court.
4. It is well settled that to hold a person guilty of contempt, there must be wilful disobedience of the order of the Court. In *Ashok Paper Kamgar Union v. Dharam Godha & Ors. (2003) 11 SCC 1*, the Supreme Court analysed the concept of wilful disobedience of the order of the Court. Para 17 of the report is extracted hereunder:

“17. Section 2(b) of the Contempt of Courts Act defines “civil contempt” and it means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of undertaking given to a court. “Wilful” means an act or omission which is done voluntarily and intentionally and with the specific intent to do something the law forbids or with the specific intent to fail to do something the law requires to be done, that is to say, with bad purpose either to disobey or to disregard the law. It signifies a deliberate action done with evil intent or with a bad motive or purpose. Therefore, in order to constitute contempt the order of the court must be of such a nature which is capable of execution by the person charged in normal circumstances. It should not require any extraordinary effort nor should be dependent, either wholly or in part, upon any act or omission of a third party for its compliance. This has to be judged having regard to the facts and circumstances of each case…….”

5. In *Kapildeo Prasad Sah v. State of Bihar, (1999) 7 SCC 569* it was indicated that although even negligence and carelessness may amount to contempt but it was reiterated that the Petitioner who complained of breach of the Court order must allege and prove deliberate or contumacious disobedience of the Court order and if such allegation is

proved only then contempt is said to have been made out and not otherwise.

6. Thus, in order to be guilty of contempt an intention has to be there to act in violation of the Court's order, that is, to consciously defy the Court. In a later judgment in *Dinesh Kumar Gupta v. United India Insurance Company Limited*, (2010) 12 SCC 770, the Supreme Court dealt in detail with the question of civil contempt and held that mere unintentional disobedience is not enough to hold anyone guilty of contempt. Absence of wilful disobedience on the part of the contemnor will not hold him guilty unless the contempt involves the task of fault or misconduct. Paras 17, 23 and 24 of the report are extracted hereunder:-

“17. This now leads us to the next question and a more relevant one, as to whether a proceeding for contempt initiated against the appellant can be held to be sustainable merely on speculation, assumption and inference drawn from facts and circumstances of the instant case. In our considered opinion, the answer clearly has to be in the negative in view of the well-settled legal position reflected in a catena of decisions of this Court that contempt of a civil nature can be held to have been made out only if there has been a wilful disobedience of the order and even though there may be disobedience, yet if the same does not reflect that it has been a conscious and wilful disobedience, a case for contempt cannot be held to have been made out. In fact, if an order is capable of more than one interpretation giving rise to variety of consequences, non-compliance with the same cannot be held to be wilful disobedience of the order so as to make out a case of contempt entailing the serious consequence including imposition of punishment. However, when the courts are confronted with a question as to whether a given situation could be treated to be a case of wilful disobedience, or a case of a lame excuse, in order to subvert its compliance, howsoever articulate it may be, will obviously depend on the facts and circumstances of a particular case; but while deciding so, it would not be legally correct to be too speculative based on assumption as the Contempt of Courts Act, 1971 clearly postulates

and emphasises that the ingredient of wilful disobedience must be there before anyone can be hauled up for the charge of contempt of a civil nature.

23. Besides this, it would also not be correct to overlook or ignore an important statutory ingredient of contempt of a civil nature given out under Section 2(b) of the Contempt of Courts Act, 1971 that the disobedience to the order alleging contempt has to satisfy the test that it is a wilful disobedience to the order. Bearing this important factor in mind, it is relevant to note that a proceeding for civil contempt would not lie if the order alleged to have been disobeyed itself provides scope for reasonable or rational interpretation of an order or circumstance which is the factual position in the instant matter. It would equally not be correct to infer that a party although acting due to misapprehension of the correct legal position and in good faith without any motive to defeat or defy the order of the Court, should be viewed as a serious ground so as to give rise to a contempt proceeding.

24. To reinforce the aforesaid legal position further, it would be relevant and appropriate to take into consideration the settled legal position as reflected in the judgment and order delivered in Ahmed Ali v. Supdt., District Jail [1987 Cri LJ 1845 (Gau)] as also in B.K. Kar v. High Court of Orissa [AIR 1961 SC 1367 : (1961) 2 Cri LJ 438] that mere unintentional disobedience is not enough to hold anyone guilty of contempt and although disobedience might have been established, absence of wilful disobedience on the part of the contemnor, will not hold him guilty unless the contempt involves a degree of fault or misconduct. Thus, accidental or unintentional disobedience is not sufficient to justify for holding one guilty of contempt. It is further relevant to bear in mind the settled law on the law of contempt that casual or accidental or unintentional acts of disobedience under the circumstances which negate any suggestion of contumacy, would amount to a contempt in theory only and does not render the contemnor liable to punishment and this was the view expressed also in State of Bihar v. Rani Sonabati Kumari [AIR 1954 Pat 513] and N. Baksi v. O.K. Ghosh [AIR 1957 Pat 528].”

7. It is noteworthy that while dismissing the Application of Contempt, the learned MM directed the Complainant to supply the copy of the

Complaint along with complete set of documents within one month from the date of passing of the order. It was further directed that if the Petitioners refuses to receive the same, the Respondent (the Complainant) would transmit the same at Petitioners' residential address. It was further directed that one complete set shall also be supplied to the Petitioners on the next date of hearing.

8. The Petitioner failed to show that there was wilful and contumacious defiance to comply with the Court order.
9. There is no error or infirmity in the impugned order dated 30.06.2012. The Revision Petition is devoid of any merit; the same is accordingly dismissed.
10. Pending Application also stands disposed of.

(G.P. MITTAL)
JUDGE

JANUARY 04, 2013
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