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

+ CONT.CAS(C) 171/2015

MAAN SINGH @ JAI NARAYAN Petitioner
Through Mr. Prem Prakash, Advocate

versus

ANUPAM BHUSHAN Respondent
Through Mr. Gautam Narayan, Addl. Standing
Counsel for Govt. of NCT of Delhi.

WITH

+ CONT.CAS(C) 172/2015

NITIN KHURANA Petitioner
Through Mr. Prem Prakash, Advocate

versus

ANUPAM BHUSHAN Respondent
Through Mr. Gautam Narayan, Addl. Standing
Counsel for Govt. of NCT of Delhi.

% Date of Decision: 20th July, 2015

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present contempt petitions have been filed alleging that petitioners had been arrested in complete violation of the peremptory directions given by the Supreme Court in the case of *Arnesh Kumar Vs. State of Bihar & Anr., 2014 (8) SCALE 250* decided on *2nd July, 2014*.

2. According to Mr. Prem Prakash, learned counsel for the petitioners, police officials in the present cases did not furnish the reasons and material which necessitated their arrest while producing the accused before the Magistrate. In this connection, he draws this Court's attention to the order dated 22nd September, 2014 passed by CMM, South East District, Saket Courts while granting bail to the petitioners. The relevant portion of the said order is reproduced hereinbelow:-

“6. In the present case the charge sheet has already been filed against both the accused persons. It is pertinent to mention here that arrest of the accused persons by the previous IO SI Anupam was made in violation of Provisions of Section 41 of the Cr. P.C.

Present IO SI Anupam has failed to explain those grounds on which arrest of accused persons was made. No permission was taken by the previous IO SI Anupam from the higher authority, neither any notice u/s. 160 Cr. P.C. was served upon the accused persons for joining the investigation. Hence in these circumstances IO SI Anupam had made arrest of accused in utter violation of provisions of Section 41 Cr.P.C.

The accused persons are no more required in investigation and charge sheet has already been filed qua the accused persons. Therefore both accused namely Maan Singh @ Jay Narayan and accused Nitin Khurana are admitted on bail on furnishing bail bond in a sum of Rs. 50,000/- along with one surety each in the like amount.”

3. In support of his submissions, Mr. Prem Prakash, learned counsel for petitioners refers to the following portion of the judgment in ***Arnesh Kumar Vs. State of Bihar & Anr.*** (supra) :-

“13. Our endeavour in this judgment is to ensure that police officers do not arrest accused unnecessarily and Magistrate do not authorise detention casually and mechanically. In order to ensure that we have observed above, we give the following direction:

(1) *All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A of the IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41, Cr. P.C.*

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(7) *Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before High Court having territorial jurisdiction.”*

4. On the other hand, Mr. Gautam Narayan, learned additional standing counsel for Government of NCT of Delhi appearing for the respondent points out that in accordance with the direction given by the Supreme Court in ***Arnesh Kumar Vs. State of Bihar & Anr.*** (supra), the police department had issued a circular only on 17th November, 2014. Consequently, Mr. Gautam Narayan submits that on the date of the arrest the respondent-contemnor did not have knowledge or notice of the directions issued by the Supreme Court in the aforesaid case. In support of his submission, he relies upon judgment of the Supreme Court in ***All India Anna Dravida Munnetra Kazhagam Vs. L.K. Tripathi and Others, (2009) 5 SCC 417*** wherein it has

been held as under:-

“53. We have considered the submissions/arguments of learned counsel for the parties. Sections 2(b) and (c) of the 1971 Act which define civil and criminal contempt read as under:

“2. (b) ‘civil contempt’ means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court;

(c) ‘criminal contempt’ means the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which—

(i) scandalises or tends to scandalise, or lowers or tends to lower the authority of any court; or

(ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or

(iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner;”

54. An analysis of Section 2(b) of the 1971 Act shows that wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court constitutes civil contempt. If this definition is read with Article 129 of the Constitution of India, it becomes clear that being a court of record, this Court can punish a person for civil contempt if it is found that he has wilfully disobeyed any judgment, etc. or violated an undertaking given to the Court.

55. The term “wilful” (willfull) has not been defined in the 1971 Act. Therefore, it will be useful to notice dictionary meaning of the said term. As per The New Oxford Illustrated Dictionary (1980 Edn.), the term “wilful” means “asserting or disposed to assert one's own will against instruction, persuasion, etc.; obstinately self-willed; deliberate, intentional, showing perversity or self-will”.

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57. As per Stroud's Judicial Dictionary, Vol. 5 (4th Edn.), “wilful

disobedience” means:

“(1) The wilful disobedience of a SEAMAN or apprentice is ‘wilfully disobeying any lawful command DURING the engagement’: ‘There may be many cases in which DESERTION, or ABSENCE without leave, would not amount to wilful disobedience, and in these cases the seaman would only be liable to the lesser penalty. Where, however, the seaman deserts or is intentionally absent without leave after the time at which he has been lawfully ordered to be on board, his desertion or absence may amount to “wilful disobedience,” and, consequently, that he would be liable to imprisonment. The words “during the engagement” seem to suggest that the contract between the employer and the employed should be taken into account, and that if, having regard to that contract, the order was one which the employed was bound to obey, his disobedience might be dealt with under clause (d)’;”

58. In Shorter Oxford English Dictionary, the term “wilful” has been defined as:

“1. Asserting or disposed to assert one's own will against persuasion, instruction, or command; governed by will without regard to reason; obstinately self-willed or perverse.

2. Willing; consenting; ready to comply with a request, desire, or requirement—1598.

3. Proceeding from the will; done or suffered of one's own free will or choice; voluntary—1687.

4. Done on purpose or wittingly; purposed, deliberate, intentional. (Chiefly, now always, in bad sense of a blameworthy action; freq. implying ‘perverse, obstinate’.)”

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60. The facts of Dharam Godha case [(2003) 11 SCC 1] were that by an order dated 8-7-1996, this Court approved the proposal made by the Government of India for takeover of M/s Ashok Paper Mills by M/s Nouveau Capital and Finance Ltd. and disposed of the writ petition filed by Ashok Paper Kamgar Union. Later on, by an order dated 1-5-1997, all concerned were

directed to participate in implementation of the scheme and the Finance Secretary, Ministry of Finance, Government of India was directed to ensure that the legal requirements are fulfilled and the mill is rehabilitated and both Phases I and II of the scheme are given effect to. Two more orders were passed by the Court in the matter on 31-7-2000 [Ashok Paper Mills Kamgar Union v. Union of India, (2003) 11 SCC 16] and 1-9-2000 [Ashok Paper Mills Kamgar Union v. Union of India, (2000) 7 SCC 326 : 2000 SCC (L&S) 922] . The petitioner alleged that the respondents have failed to comply with the directions given by the Court for implementation of the scheme and, therefore, they are liable for contempt of court.

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62. Para 17 of the judgment which contains discussion on the subject reads as under: (Dharam Godha case [(2003) 11 SCC 1], SCC pp. 14-15)

“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. The facts mentioned above show that none of the respondents to the petition can be held to be directly responsible if the Scheme which had been formulated by the Government of

India on 28-6-1996 and had been approved by this Court by the order dated 8-7-1996 could not be implemented in letter and spirit as many factors have contributed to the same. The reasons given for non-inclusion of Shri Umadhar Prasad Singh in signing of the agreement appear to be quite plausible. NCFL has undoubtedly not discharged its liability of making payment of its entire liability of Rs 6 crores. However, it has come out with a case that some additional expenditure has been incurred in running the unit. It is not possible to get the complete financial picture only on the basis of the affidavits filed in the present petition. On the material on record, therefore, it is not possible to hold that the charge of having committed contempt of court on account of alleged non-compliance with the orders passed by this Court on 8-7-1996, 1-5-1997 [Ashok Paper Mills Kamgar Union v. Union of India, (1997) 10 SCC 113] and 31-7-2000 [Ashok Paper Mills Kamgar Union v. Union of India, (2003) 11 SCC 16] has been established against any one of the respondents.”

(emphasis added)

63. In *DDA v. Skipper Construction* [(1995) 3 SCC 507] this Court highlighted the distinction between the civil and criminal contempt in the following words: (SCC p. 517, paras 43-44)

“43. Civil contempt is defined under Section 2(b) of the Act. Thus, any wilful disobedience to the order of the court to do or abstain from doing any act is prima facie a civil contempt. Civil contempt arises where the power of the court is invoked and exercised to enforce obedience to orders of the court.

44. On the contrary, criminal contempts are criminal in nature. It may include outrages on the Judges in open court, defiant disobedience to the Judges in court, libels on Judges or courts or interfering with the courts of justice or any act which tends to prejudice the courts of justice.”

5. Mr. Gautam Narayan also points out that answering respondent has submitted to this Court an unconditional apology for any inadvertent

oversight of any direction of the Supreme Court and that he would not repeat the same in future.

6. Having heard learned counsel for the parties, this Court is of the view that the standard of proof to sentence a contemnor is that of a criminal proceeding and the breach would have to be established beyond reasonable doubt.

7. Since in the present case it cannot be concluded that respondent-contemnor had knowledge of the Supreme Court's judgment in *Arnesh Kumar Vs. State of Bihar & Anr.* (supra), this Court is of the view that respondent cannot be held guilty of 'wilful disobedience' under the Contempt of Courts Act, 1971. However, petitioner is granted liberty to file any other alternative proceeding in accordance with law.

With the aforesaid liberty and observations, present petitions stand disposed of.

MANMOHAN, J

JULY 20, 2015

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