

Court No. - 4

Case :- CONTEMPT APPLICATION (CIVIL) No. - 3632 of 2023

Applicant :- Mohammad Majid Khan

Opposite Party :- Shri Manoj Kumar Singh, Badgaon Chowki Incharge, Police Station Gonda And Others

Counsel for Applicant :- Amit Sachan,Utkarsh

Hon'ble Rajesh Singh Chauhan,J.

1. Heard.

2. This Court has passed the order dated 18.10.2023, which reads as under:-

"1. Heard learned counsel for the applicant/ petitioner.

2. Attention has been drawn towards the order of the writ court dated 23.08.2023 passed in Criminal Misc. Writ Petition No.6605 of 2023, which reads as under:-

"Heard learned counsel for the petitioner and learned A.G.A. who appears on behalf of State-respondents.

Under challenge in this petition is the First Information Report dated 27.6.2023, lodged at FIR No. 524 of 2023, under Sections 323, 504, 506 IPC at P.S. Kotwali Nagar, District Gonda.

Learned counsel for the petitioner confines his prayer for issuing direction to the police authorities to follow the mandate of Section 41A, Cr.P.C. for the reason that the offences mentioned in the impugned First Information Report carry the sentence of upto 7 years of imprisonment.

*Accordingly, we dispose of this petition with the direction to the police authorities concerned to follow the mandate of Section 41A Cr.P.C. and also the directions issued by the Hon'ble Supreme Court in the case of **Arnesh Kumar Vs. State of Bihar, reported in (2014) 8 SCC 273.**"*

*3. Learned counsel for the petitioner has stated that instead of giving notice under Section 41-A Cr.P.C., the opposite parties have arrested the petitioner in disobedience of the direction being issued by the Apex Court in re; **Arnesh Kumar Vs. State of Bihar, (2014) 8 SCC 273.** He has further submitted that the police team came to the house of the petitioner on 04.10.2023 for the purposes of investigation and arrested him. Recital to this effect has been given in para-4 of the contempt petition. Thereafter, the petitioner was produced before the Magistrate on 06.10.2023 as per G.D. Entry No.19 and he was sent to the judicial custody by the Magistrate on 06.10.2023 itself as recital to this effect has been given in paras 8 & 9 of the contempt petition.*

4. Normally, the cases wherein the writ court passes the order to make compliance of the dictum of the Apex Court in re; **Arnesh Kumar** (supra) are not entertained under the roster of contempt for the reason that the aggrieved person is having alternative remedy before the appropriate court of law but this is a case where the FIR has been registered against the petitioner under Sections 323, 504 & 506 IPC wherein the petitioner has not only been arrested by the police but has been sent to the judicial custody pursuant to the remand being granted by the Magistrate concerned, therefore, I find it appropriate that the specific instructions be sought from the opposite parties no.1 & 2 as to whether compliance of the direction being issued by the Apex Court in re; **Arnesh Kumar** (supra) has been followed or not.

5. Not only the above, I also find it appropriate that the comments be sought from the Chief Judicial Magistrate, Gonda to apprise the Court as to what are those circumstances under which the petitioner has been sent to the judicial custody in an FIR, which has been registered under Sections 323, 504 & 506 IPC, without following the dictum of the Apex Court in re; **Arnesh Kumar** (supra).

6. Therefore, learned counsel for the petitioner is directed to provide two copies of the contempt petition to Sri Sunil Bajpai, learned Addl. Chief Standing Counsel, who shall seek specific written instructions from opposite parties no.1 & 2 as to how compliance of the dictum of the Apex Court in re; **Arnesh Kumar** (supra) has been followed.

7. Learned counsel for the petitioner is also directed to provide two copies of the contempt petition to Sri Akbar Ahmad, holding brief of Sri Gaurav Mehrotra, learned counsel for the High Court, who shall seek specific instructions from the Chief Judicial Magistrate, Gonda through the District & Sessions Judge, Gonda as to how compliance of the dictum of the Apex Court in re; **Arnesh Kumar** (supra) has been followed.

8. List on 06.11.2023 as fresh.

9. On that date, if the written instructions are not provided, opposite parties no.1 & 2 shall appear in person."

3. Sri Shishir Jain, learned counsel, who appears on behalf of the Chief Judicial Magistrate, District-Gonda and Sri Mohit Jauhari, learned Standing Counsel for the opposite parties have produced the instructions letter submitted by Sri Manoj Kumar Singh, Sub-Inspector, Police Station-Kotwali Nagar, District-Gonda and the letter dated 25.10.2023 submitted by the Chief Judicial Magistrate, District-Gonda along with some relevant documents showing that during investigation Sections 147, 447, 457, 380 and 411 I.P.C. have been added. The aforesaid instructions letter along with relevant documents are taken on record.

4. Sri Mohit Jauhari, learned Standing Counsel has stated that during investigation the petitioner has not been arrested nor has been sent to judicial custody. Sri Jauhari has further submitted that on 18.10.2023 the impression was given to the Court that

the petitioner has been arrested and has been sent to judicial custody, therefore, in para-4 of the aforesaid order this fact has been indicated.

5. On that, learned counsel for the petitioner has stated that he has not indicated anywhere in the contempt petition that the present petitioner was arrested or sent to judicial custody.

6. On the aforesaid submissions of learned counsel for the petitioner, the specific query has been put to him to the effect that when the petitioner was not arrested nor has been sent to judicial custody, then why the present contempt petition has been filed, he has stated that other co-accused persons have been arrested and sent to judicial custody but the petitioner has not been arrested nor has been sent to judicial custody.

7. Learned counsel for the petitioner could not explain as to why the present contempt petition has been filed when the coercive steps have been taken against the other co-accused persons who are not the party in the present contempt petition nor filed any contempt petition.

8. Be that as it may, considering the submissions of learned counsel for the parties, it appears that the present contempt petition is misuse the process of Court by filing the present contempt petition. The petitioner has wasted precious time of the Court. Therefore, the present contempt petition is dismissed with the cost of Rs.10,000/-.

9. The aforesaid cost shall be deposited within a period of one month before the Senior Registrar of this Court, who shall remit this amount to Library of Oudh Bar Association to purchase the Library books.

10. If the aforesaid amount of cost is not deposited within the aforesaid stipulated time, the same may be realized from the petitioner as arrears of land revenue.

[Rajesh Singh Chauhan,J.]

Order Date :- 6.11.2023
Suresh/