

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO. 311 OF 2011

Noor Mohd. Abdul Malik Ansari .. Petitioner
vs.
Yogesh Desai, Superintendent
Thane Central Prison & Anr. .. Respondents

Ms Rebecca Gonsalvez for Petitioner.
Mr. A. R. Patil – AGP for Respondent No. 2.

CORAM : M. S. SONAK, J.
DATE: 28 JANUARY 2015

P.C. :-

1] By this petition, the petitioner alleges contempt of order dated 14 July 2011 passed by the Special Court constituted under the Prevention of Terrorism Act, 2002 (POTA), Mumbai.

2] The facts in brief are that the petitioner was in custody of the Superintendent, Thane Central Prison, in pursuance of POTA Special Case No. 2 of 2003 and Sessions Case No. 403 of 2004. It is the case of the petitioner that the petitioner had already been granted bail in the said two cases on 15 April 2011 and 23 June 2005 read with order dated 26 April 2011. As there was some issue with regard to production warrant issued by West Bengal Courts, the petitioner was not being released. Accordingly, the petitioner applied to the Special Judge who was pleased to make an order dated 14 July 2011, of which the breach is now alleged. The operative portion of the order dated 14 July 2011, reads thus :

"ORDER

Application Ext. 187 is allowed and disposed off as follows:

Supdt., Thane Central Prison is directed to forthwith release the A7-Noor Mohd. Abdul Mallik Ansari, who was in his custody in POTA Spl. Case No. 02/03 and Sessions case No.403/04, if he is not in custody in any other case of Mumbai as per his record.

Supdt., Thane Central Prison is also directed to inform the Dy. S.P., SOG, CID, West Bengal, Bhabani Bhaban, Alipore, Kolkata-27 about this order and to obtain the necessary orders from the concerned court at Alipore.

Registrar (S) is directed to send copy of this order to the Supdt., Thane Central Prison immediately by fax.

Authenticated copy of this order be given to the adv Ms. Gonsalvez for A7."

3] From the records as also the return filed by the contemnor, there is no serious dispute that the order dated 14 July 2011 was received at the Thane Central Prison by fax on 15 July 2011. There is also no dispute that the petitioner was actually handed over in the custody of West Bengal Police Officials on 16 July 2011. In such circumstances, the petitioner contends that there was absolutely no justification for the contemnor to not comply with the directions contained in the order dated 14 July 2011 during the period 15 July 2011 and 16 July 2011. The learned counsel for the petitioner has submitted that the contemnor has wilfully and deliberately disobeyed the orders made by the Special Judge and consequently this is a fit case where action under Section 10 of the Contempt of Courts Act, 1971 read with Article 215 of the Constitution of India ought to be initiated against the contemnor.

4] The contemnor, Yogesh Desai, the then Superintendent of Thane Central Prison has affidavit an affidavit, in which at the very outset he has tendered unconditional apology should this Court

come to the conclusion that there is any violation of order dated 14 July 2011. Thereafter in paragraphs 7 to 9 of the affidavit, the contemnor has furnished explanation, which reads thus :

*"7. I say that the said order dated 14.7.2011 was received by the Thane Central Prison by fax on 15.7.2011. I say that after receipt of the said order dated 14.7.2011 on 15.7.2011 I immediately communicated the said order to the Dy. S.P. SOG, CID, West Bengal through my letter dated 15.7.2011 by fax on 15.7.2011 itself. Hereto annexed and marked as **Exhibit 'C'** is the copy of said letter dated 15.7.2011 issued by me to the Dy. S.P. SOG, CID, West Bengal. I say that the Dy. S.P. SOG, CID, West Bengal vide his fax dated 15.7.2011 immediately informed about the order dated 14.7.2011 passed by the Hon'ble Additional Chief Judicial Magistrate, Alipore, Kolkatta in Tiljala Case No. 223 of 2001 thereby directing the Dy. S.P. SOG, CID, West Bengal to produce the petitioner before that Court by 19.8.2011. Hereto annexed and marked as **Exhibit 'D'** is the copy of the said Order dated 14.7.2011 passed by the Hon'ble Additional Chief Judicial Magistrate, Alipore, Kalkotta.*

*8. I say that in pursuance of Order dated 14.7.2011 passed by the Hon'ble Additional Chief Judicial Magistrate, Alipore, Kalkotta Shri Swarup Saha, PSI, CID West Bengal along with strong police escort came to Thane Central Prison and took the custody of the petitioner for his production before the Hon'ble Additional Chief Judicial Magistrate, Alipore, Kalkotta. I say that on 16.7.2011 itself I submitted the report dated 16.7.2011 to the Hon'ble Additional Chief Judicial Magistrate, Alipore, Kalkotta through PSI Shri Swarup Saha of CID West Bengal. Hereto annexed and marked as **Exhibit 'E'** is the copy of report dated 16.7.2011 submitted by me to the Hon'ble Additional Chief Judicial Magistrate, Alipore, Kalkotta.*

9. I say that the Learned Advocate for the petitioner thereafter moved the application below Exh. 203 for taking action against me for not complying the order dated 14.7.2011 passed below Exh. 187. I say that the Hon'ble Special Court was thereafter pleased to direct

*me to explain within three days as to why the Order dated 14.7.2011 below Exh. 187 about releasing the petitioner was not complied with. I say that in pursuance of the said order dated 16.7.2011 which is annexed at page no. 34 to the present petition, I submitted my detailed say dated 18.7.2011 in the matter before the Hon'ble Special Judge (under POT Act). I say that I have specifically mentioned in the said say that in pursuance of the various communication received from the Dy. S.P. SOG, CID, West Bengal and the production warrants dated 15.7.2011 and 16.7.2011 received by me thereby directing me to produce the petitioner before the concerned Hon'ble Additional Chief Judicial Magistrate, Alipore, Kolkatta for the kind perusal and consideration. Hereto annexed and marked as **Exhibit 'F'** is the copy of the said say dated 18.7.2011. I further say that I have specifically stated that with a view to avoid the disobedience of the order passed by the Hon'ble Additional Chief Judicial Magistrate, Alipore, Kolkatta I could not release the petitioner from my custody as he was not on bail in the said case and also in view of the communications received by me from the concerned authority from West Bengal. I say that I had also tendered my apology in the matter."*

5] There is no doubt that there is violation of the order dated 14 July 2011. But that by itself is not sufficient for the purpose of initiating action under the Contempt of Courts Act, 1971 or for that matter Article 215 of the Constitution of India. From the explanation furnished, it does appear that the contemnor was under the impression that he would be in breach of the orders made by the Chief Judicial Magistrate, Alipore, Kolkata, in case he would immediately release the petitioner, no sooner the order dated 14 July 2011 was received in the Thane Central Prison by fax on 15 July 2011. The order dated 14 July 2011 itself directs the release of the petitioner in the said cases referred to above, if he is not in custody in any other case of Mumbai as per his record. It is possible that the contemnor was misled into believing that release of the

petitioner in pursuance of order dated 14 July 2011, would amount to breach of orders made by the Chief Judicial Magistrate, Alipore, Kolkata. There does not seem to be any wilful or deliberate violation. At the highest this can be regarded as an error of judgment. The contemnor has already tendered his unconditional apology, which can in the circumstances be accepted.

6] Accordingly, in the facts and circumstances of this case, there is no reason to pursue this matter any further. The contempt petition is accordingly rejected.

(M. S. SONAK, J.)

Chandka