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**212 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**COCP NO. 1946 OF 2015
Date of decision: 7.12.2015**

Gurbax Singh Bains

.....Petitioner

versus

Sh. Sarvesh Kaushal and others

.....Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. J.S.Lalli, Advocate
for the petitioner.

Mr. A.P.S.Deol, Sr. Advocate with
Mr. Himmat Deol, Advocate
for the applicants.

Mr. M.C.Berry, Addl.A.G., Punjab.

Rakesh Kumar Jain, (Oral)

In a road accident which took place on the intervening night of 27th and 28th September, 2010 between a Ford Endeavour Car bearing registration No. PCP 17 and the Truck bearing registration No. HR 58-3264 at Liberty Chowk, Rajpura, District Patiala, two students namely, Gagandeep Singh Bains and Gaurav Verma died and the other two occupants of the car, namely, Zorawar Singh and Jaskaran Singh were injured. On the Complaint dated 28.09.2010 made by Karnail Singh, an FIR No. 219 was registered under Sections 304A, 279, 337, 427 IPC at Police Station, Rajpura against the driver of the truck, namely, Pardeep Kumar. Petitioner (Gurbax Singh Bains) whose son Gagandeep Singh Bains died in that alleged accident, made a representation dated

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17.01.2011 to the Chief Secretary and DGP, Punjab that his son has not died in the accident but has been murdered in a pre-planned manner and also made a similar representation to this Court on 21.02.2011 which was registered vide Diary No. 350 dated 23.02.2011 and after the permission of Hon'ble the Chief Justice, the same was treated as Criminal Misc. No.M-6656 of 2011.

While the matter was pending before this Court, Principal Secretary, Home, Punjab entrusted the matter to Kunwar Vijay Pratap Singh IPS, DIG(Crime) on 27.02.2011 for investigation. He submitted his inquiry report on 27.12.2011 holding that FIR No. 129 was not registered on the basis of true facts and concluded that the custodial interrogation of the concerned persons is necessary, recommended to register FIR under Section 302 IPC and the investigation through an independent and impartial agency. DGP, Punjab did not agree with the inquiry report dated 27.12.2011 and constituted the Ist Special Investigating Team (SIT) under the Chairmanship of B.K.Garg, I.G.(Crime) which was disbanded. The IInd SIT was constituted under the Chairmanship of Kunwar Vijay Partap Singh, IPS DIG, Crime on 18.07.2012. However, it was also disbanded. The IIIrd SIT was constituted by ADGP, Crime on 27.09.2012 under the Chairmanship of Paramjit Singh Gill, IGP, Patiala who submitted his report on 29.01.2013 about the accident and submitted Challan on 14.02.2013 to the concerned Court. The said Challan has already been set aside by the Supreme Court vide its order dated on 4.12.2014. Ultimately, the High Court decided the Criminal Misc. No.M-6656 of 2011 vide its

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order dated 21.02.2013 and passed the following orders:-

“19. Therefore, keeping in view the peculiar facts and the special circumstances of the case, the petitioner is entitled to some amount of compensation in this respect, which is quantified ₹ 50,000, initially to be paid by the State of Punjab. Needless to mention that subsequently, the State may fix the responsibility after holding an inquiry and recover the amount of compensation from the respective salaries of the erring officers. To me, it would be in the interest and justice would also be subserved if the respondent-State is directed to implement the report(Annexure A-26) of Kanwar Vijay Partap Singh, DIG(Crime) to prevent the failure of justice.

20. In the light of aforesaid reasons, taking into consideration the totality of all the facts, special circumstances, oozing out from the record as discussed here-in-above and without commenting further anything on merits, lest it may prejudice the case of either side during the course of investigation or trial of the main case, the instant petition is hereby partly accepted. The State of Punjab is directed to give effect & implement the indicated report of DIT(Crime) and Senior Superintendent of Police, Patiala is also directed to monitor, ensure the completion of investigation and to act in pursuance of report(Annexure A26) of DIG(Crime), preferably within a period of three months from the date of receipt of certified copy of this

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order.”

Zorawar Singh and his father Gurmeet Singh filed Special Leave Petition against the order dated 21.02.2013 passed by this Court which was ultimately converted into Criminal Appeal No(s). 2530 of 2014 and was dismissed by the Supreme Court on 4.12.2014 with the following directions:-

“(A) The challan dated 14.02.2013 filed by the Superintendent of Police, District SAS Nagar is held illegal and improper and stands withdrawn from the record of the concerned case.

(B) The crime shall be registered under section 302 IPC in keeping with the report dated 27.12.2011 of Shri Kunwar Vijay Pratap Singh, DIG(Crimes) and further investigation shall be undertaken in terms thereof.

(C) The SITs as constituted are held invalidly constituted and the reports dated 01.03.2012 and 29.01.2013 stand set aside.

(D) We direct the concerned Superintendent of Police to conduct thorough investigation into the matter. Such investigation must be completely fair and transparent and shall be free from any interference. We expect the concerned officer to rise to the occasion and do his job well.

(E) It is left to the concerned Magistrate to consider whether any further investigation is called for, and if so, in which direction, as and when the occasion so demands.

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(F) Respondent no. 1 shall be paid Rs. 2,50,000/- by way of compensation instead of Rs. 50,000/- as directed by the High Court. Such compensation shall first be paid by the State and after fixing the responsibility regarding officials who were responsible for delaying the process, recover the same from such officials.

(G) We request the Chief Secretary of the State to inquire into the matter, the way and the manner in which it was dealt with at various stages and more particularly with regard to items A to G mentioned in para 15 hereinabove and submit a report to this Court in a sealed cover within two months from today.

17. Before we part, we must record that we shall not be taken to have expressed any opinion as regards merits of the matter. We have dealt with the propriety of constitution of SITs and having set aside the reports thereof, tried to implement the logical consequence and the order of the High Court dated 24.04.2012. The matter shall and must be considered on its own merits and every stage.

18. We thus, dismiss the present appeal in the aforesaid terms. The matter shall however be listed after three months or soon after the receipt of the Report of the Chief Secretary as stated above for further directions, if any.”

In compliance of the aforesaid order, the Director, Bureau of Investigation, Punjab, wrote a letter dated 24.12.2014 to the Senior

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Superintendent of Police(SSP), Patiala for investigation in the matter in terms of the order of the Supreme Court. The SSP, Patiala directed the SHO, City, Rajpura to register an FIR under Section 302 IPC and get it investigated by the SP(Detective). On the receipt of the case, SHO, Police Station City, Rajpura registered the FIR No. 288 dated 24.12.2014 under Section 302 IPC at Police Station, City Rajpura.

The petitioner was not satisfied with the proceedings, referred to above, whereby SP(Detective) was appointed as the Investigating Officer. Therefore, he wrote a letter to the Chief Secretary, Punjab on 4.04.2015 regarding his displeasure and doubt. The relevant portion of his letter is as under:-

“4. The above ugly position emerged because the direction given by Hon'ble Supreme Court is being misread as the investigation has not been assigned to Senior Superintendent of Patiala/independent agency in terms of direction given by Hon'ble Punjab & Haryana High Court upheld by Hon'ble Supreme Court. Instead the investigation has been assigned to a much junior officer who has failed to deliver the goods as per expectations of Hon'ble Supreme Court.

5. xxxxx

(i) The investigation of this case may be withdrawn from SP(D) Patiala and assigned to some independent agency as recommended by Sh. Kanwar Vijay Partap Singh IPS and ordered by the Hon'ble High Court/Apex Court.”

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Thereafter, the petitioner filed the present contempt petition in which notice of motion was issued on 6.08.2015 and on 31.08.2015, respondent No. 4 presented the challan before the Illaqa Magistrate under Sections 283, 304A, 337, 338 and 427. After notice, respondent filed the affidavit of the then DGP, Punjab on 28.09.2015 in which he made the following averments:-

“5. That upon the abovesaid directions of Hon'ble Supreme Court, ADGP Sh. V.K.Bhawra, IPS, the then Director, Bureau of Investigation, Punjab, vide his letter No. 29.44.Cr.LA-I dated 24.12.2014 directed the Senior Superintendent of Police, Patiala to register fresh FIR under section 302 IPC in keeping with the Report dated 27.12.2011 of Sh. Kunwar Vijay Partap Singh, IPS, the then DIG/Crime and also directed that investigation be conducted by an officer of the rank of Superintendent of Police. It was further directed that the investigation must be completely fair and transparent, and free from any interference.

6. That whereupon, SSP/Patiala, vide letter No. 17287/S-3, dated 25.2.2014, informed the Director, Bureau of Investigation, Punjab that FIR No. 288 dated 24.12.2014 under Section 302 of IPC has been registered at Police Station City Rajpura, District Patiala. The said FIR was registered as per the report dated 27.12.2011 of Sh. Kunwar Vijay Partap Singh, IPS, the then DIG/Crime, Punjab.

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7. *That the investigation of the abovesaid case was entrusted to SP/Investigation, Patiala as per the direction of the Hon'ble Supreme Court of India mentioned at point No. 4(D), wherein the Hon'ble Supreme Court had specifically directed the concerned Superintendent of Police to conduct thorough investigation into the matter. It is humbly submitted that there is no direction of the Hon'ble Supreme Court of India to hand over investigation of the case to any independent agency, as alleged by the petitioner.*

8. *That as per report of SSP/Patiala, Sh. Jaskaranjit Singh Teja, PPS, the then Superintendent of Police(Investigation), Patiala conducted a thorough investigation of the abovesaid case and upon completion of investigation the Investigating Officer (SP/Investigation, Patiala) recommended filing chargesheet against truck driver Pardeep Kumar under Section 283, 304-A, 337, 338, 427 IPC. Whereupon, opinion of the District Attorney(Prosecution), Patiala was obtained, who concurred with the investigation conducted by SP/Investigation, Patiala. Upon approval of the SSP/Patiala, chargesheet against the truck driver Pardeep Kumar was presented under Sections 283, 304-A, 337, 338, 427 IPC to the competent Court on 31.8.2015.”*

Thereafter, the petitioner filed rejoinder/replication to the said affidavit. The stand taken by the then DGP, Punjab was not accepted and

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counsel appearing for the State requested for time to file an another affidavit and in pursuance thereto, affidavit dated 9/14.10.2015 of the then DGP, Punjab was filed in which he made the following averments:-

“3. That in view of the ongoing proceedings in the contempt petition and subject to approval of the Hon'ble High Court, the deponent intends to pass fresh orders of entrustment of the investigation of FIR No. 288 dated 24.12.2014 u/s 302 IPC, PS City Rajpura, District Patiala to an S.P., rank police officer, strictly in consonance with the judgment dated 4.12.2014 passed by Hon'ble Supreme Court in Criminal Appeal No. 2530 of 2014{Special Leave Appeal(Crl.) No. 2038 of 2013}.

4. That earlier, the investigation in the abovesaid case was entrusted to Superintendent of Police(Detective), Patiala by the order of ADGP V.K.Bhawra, IPS, the then Director, Bureau of Investigation, Punjab. Now, the deponent proposes to entrust investigation of abovesaid case to AIG/Investigation(S.P. rank officer), to be conducted under the supervision of Director, Bureau of Investigation, Punjab, who is an ADGP rank officer. The said entrustment would be made with a clear direction to Investigating Officer to conduct the investigation, strictly in compliance with the abovesaid orders passed by Hon'ble Supreme Court, in a fair and transparent manner.”

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While this petition was pending, one application bearing CM No. 22808-CII of 2015 has also been filed by Zorawar Singh and Gurmeet Singh under Order 1 Rule 8-A read with Section 151 of the Code of Civil Procedure, 1908(for short, 'CPC') seeking permission to take part in the proceedings as 'intervener'. The petitioner has filed a reply to this application and contested it on the ground that in the contempt petition the applicant cannot be allowed to intervene and relied upon the following judgments:-

1. **The Advocate-General of T.N., Madras vs. R.M.Krishna Raju and others 1981 CriLJ 250**
2. **Amar Bahadursingh vs. P.D.Wasnik and others 1994 CriLJ 1359**
3. **Karuna Gupta(Senior Citizen) vs. Balvinder Kumar, Vice Chairman, Dda and others 2015(147) DRJ 548**

It may also be pointed out that while these proceedings were going on, some proceedings also took place before the Supreme Court in terms of Direction(G) whereby the Supreme Court had asked the Chief Secretary of the State to inquire into the matter, the way and manner in which it was dealt with at various stages and more particularly with regard to items No. A to G mentioned in para 15 of its order and to submit a report to the Supreme Court in a sealed cover within two months from the date of passing of the order.

The case was listed in the Supreme Court by its Registry on 17.11.2015. As per the proceedings, provided to this Court by the counsels' appearing in this case of 17.11.2015 and 23.11.2015, the

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Supreme Court has recorded the following order:-

“It is directed that the present report sent by the Chief Secretary shall be kept in the sealed cover until further orders.

The matter is adjourned for 12 weeks.”

At one point of time, this Court was of the view that it should await the decision of the Supreme Court since the matter is still pending before it but counsel for the parties, more particularly learned Senior counsel appearing for the intervener, on whose behalf the lawyers were also appearing in the Supreme Court, has fairly conceded that the Supreme Court has observed that the Contempt court may proceed with the issue involved in the contempt.

Even otherwise, counsel for the petitioner has submitted that the matter pending before the Supreme Court now is only with regard to compliance of Directions A to G as mentioned in para No. 15 of its judgment and not the directions issued by the Supreme Court in para No. 16.

Counsel for the petitioner has submitted that challan dated 13.08.2015 is presented on an investigation made by an officer who is answerable to the SSP, Patiala and is not by an officer who is directly under the Director, Bureau of Investigation which is an independent agency of the State like the Central Bureau of Investigation. Though it was clearly provided in direction B that the crime shall be registered under Section 302 IPC keeping in view the report dated 27.12.2011 by Kunwar Vijay Pratap Singh IPS, DIG(Crime) and further investigation shall be

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undertaken in terms thereof. He has laid great emphasis on the word "*in terms thereof*" and has also referred to direction D whereby the concerned Superintendent of Police was directed to conduct the thorough investigation in the matter.

Learned counsel appearing on behalf of Zorawar Singh/applicant has argued that the respondent has faithfully complied with the directions issued by the Supreme Court. Therefore, it would not require any further direction by this Court and the challan has already been presented. In this regard, counsel for the petitioner has referred to an order passed by this Court on 24.10.2015 by which proceedings pending before the Judicial Magistrate Ist Class, Rajpura were ordered to be deferred beyond the date given by this Court as only the challan has been presented and no material proceedings have taken place.

Shri M.C. Berry, learned Additional A.G., Punjab has been very fair in assisting the Court and submitted that investigation carried out by SP(D) is under the supervision of the SSP, Patiala and not under the supervision of the Director, Bureau of investigation.

I have heard learned counsel for the parties and examined the available record.

First of all, I would decide the application filed by the applicant Zorawar Singh and Gurmeet Singh to become a party to this contempt petition to intervene in the directions being sought by the petitioner. According to the applicant, direction (D) in para No. 16 of the order of the Supreme Court clearly provides for investigation by the

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Superintendent of Police and since the investigation has already been conducted and challan has been presented, therefore, it would not be justified to nullify the challan at this stage. He has also submitted that since the Court is dealing with the contempt proceedings, therefore, it should allow them to intervene.

On the other hand, counsel for the petitioner has submitted that applicant is not required in this case as their SLP/appeal filed before the Supreme Court has already been dismissed and it is for this Court to see whether the directions issued by the Supreme court has been religiously and faithfully complied with by the respondent State or not.

All the decisions relied upon by learned counsel for the petitioner in regard to the intervention by the applicant/Zorawar Singh and Manjeet Singh are in favour of not allowing any intervention in the contempt proceedings and in this regard in the case of **The Advocate-General of T.N., Madras** (supra) the following observations have been made:-

“Another undesirable, but inevitable concomitant of the unrestricted entry of third-parties in contempt proceedings would be that they may overstep their limits and canvass the Court to adopt a harsh and severe attitude towards the contemner even in those cases where the Court is inclined to treat the matter lightly and discharge the contemner of the contempt notice, or prevail upon the contemner by applying pressure on him not to express regret and tender apology even in those cases

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where a contemner wants to exhibit locus penitential and seek the pardon of Court. It is needless for us to say that contempt proceedings stand on a footing of their own and cannot be equated with other proceedings since the Court is not engaged in deciding a cause between two parties, but is engaged in exercising its jurisdiction and powers to vindicate the majesty of law in its active manifestation against obstruction or outrage. In one sense, the court acts in such matters as judge of its own cause and as such, its decision must rest purely on its own analysis and view of the matter and uninfluenced by the passions and prejudices of third-parties. In other words, the court must apply its dispassionate mind in judging whether a contemner has committed contempt or not and if the finding is a positive one what the sentence should be. Such aloofness of approach and detachment of view will be put in jeopardy if interveners, however well intentioned they might be, are allowed to enter the arena and allowed to identify themselves for or against the contemner. Likewise to deprive a contemner of a chance to escape from the rigorous punishment by repenting for his actions and tendering apology to the Court on account of enthusiastic interveners lending temporary support for his cause and espousing his actions will be an act of the highest injustice to the contemner himself. We are therefore of opinion that the

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presence of interveners may lead to the flaming up of passions as well as loading the armoury for or against the contemner with unwanted weapons, which will not only vitiate the atmosphere, but make the court get involved more than what is necessary in the exercise of its jurisdiction under the Contempt of Courts Act, and the contemner, a hero or a villain even against his own wishes.”

In the case of **Amar Bahadursingh**(supra) the following observations have been made:-

“xxx

The contempt of Courts Act, 1971 and the Rules framed by the High Court do not provide for intervention by the third parties. The provisions of the Code of Civil Procedure as to addition of parties do not arise in the contempt matter which is entirely between the Court and the contemner. If other persons or third parties are allowed to intervene in the proceedings, then it will seriously affect the contempt proceedings. The presence of the intervenors in a given situation may lead to the generation of heat as well as arming for and against the contemnors with lethal weapons which would make the Court involved more than what is necessary in exercise of its jurisdiction under the Contempt of Courts Act.”

In the case of **Karuna Gupta(Senior Citizen)** (supra), the following observations have been made:-

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18) In the first instance, there cannot be an application under Order 1 Rule 10 CPC for being impleaded as a party notwithstanding the fact that one of the applicants was impleaded as R-5 in the writ petition. There may be more than one party to the writ petition but it is not necessary for the petitioner to implead all of them as parties in a contempt petition.

19) Assuming that no service was effected on the applicants and the writ petition was allowed at the threshold itself with some direction. The remedy to such a party is to file an application in the writ seeking recall or file a petition for substantive relief rather than file an application in a contempt petition seeking impleadment. The contempt petition will be filed only against such of the party to whom a direction is given and there is an allegation of willful disobedience. Therefore, the application of the applicants does not deserve to be allowed.

20) An order of demolition even if it is passed may not be a correct order as alleged, it can be challenged by an aggrieved party as it gives rise to a fresh cause of action in favor of the applicants to file a substantive petition or assail the same under Section 30 & 31 of the DDA Act, 1957 before the MCD, Appellate Tribunal as the same is an appealable order rather filing an application under the present contempt petition seeking impleadment. Therefore, the line of action which has been chosen by the applicant is not permissible in law to get impleaded in a

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contempt petition and then try to justify the action initiated by the court or to defend the action which has been taken by the respondents against whom the contempt is alleged. For these reasons, I feel that the present application under Order 1 Rule 10 CPC is misconceived and deserves to be dismissed.

21) Even if for the sake of argument, it is assumed that the applicants are held to be a party to the present contempt petition to address the arguments, still it cannot be said that merely because the respondents have filed their status report and sought dismissal of the contempt petition and discharge of the contempt notice would be a ground for this court to dismiss the contempt petition and discharge the contempt notice. The court is concerned with the implementation of the order as the contempt is filed for enforcing the order passed by the court in a writ petition and there is no dispute about the fact that once the order is passed by the court, which is unambiguous, it must be complied with both in letter and spirit. It has also been urged by the learned counsel for the petitioner and is not disputed by the learned counsel for the respondents that these are essentially double storied flats where the ground floor of the property in question is allotted to the petitioner and the first floor is allotted to one of the applicants herein/respondent No.5 in WP(C) No.2247/2014.

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Thus, the consistent view of all the Courts is that in the contempt proceedings intervention is not required as it would inflame the passion, hence, I do not find any reason to allow the present application and hence, the same is hereby dismissed.

The next question to be decided is as to whether the respondents have committed any kind of contempt for which they should be penalised under Section 12 of the Contempt of Courts Act, 1971 (for short, 'the Act'). Counsel for the petitioner has however, submitted that he is not interested in penalty upon the respondents and is only concerned with the implementation of the order of the Supreme Court in its letter and spirit. He has submitted that the said accused namely, Zorawar Singh and Jaskaran Singh have not even been once taken into custody for the purpose of investigation, though, it has been specifically mentioned in the report of Kunwar Vijay Pratap Singh IPS, DIG(Crime) that “*custodial interrogation of the concerned person is very necessary*”. It was also observed by him that “*the investigation may be got done through an independent and impartial agency*”. Therefore, the SIT was constituted three times. Ist and IIIrd SIT was set aside by the Supreme Court and IInd SIT was disbanded by the Government itself. Since direction B specifically says that the crime has to be registered under Section 302 IPC in keeping with the report dated 27.12.2011, however, investigation shall be undertaken in terms thereof, the custodial interrogation of the said accused should have been done, but for the reasons best known to the investigating agency, it has not been done, the respondent has not handed

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over the investigation to a fair and impartial agency and has handed over the investigation to the SSP, Patiala though the earlier report of the SP, District SAS Nagar, Mohali has already been set aside by the Supreme Court and the challan presented by the SP, SAS Nagar Mohali was held illegal and improper and set aside by the Supreme Court as recorded in direction A contained in para No. 16 of its judgment.

Thus, keeping in view the totality of facts and circumstances narrated hereinabove, the challan dated 31.08.2015 filed by SP(Detective) respondent No. 4 is set aside and fresh investigation is ordered to be carried out by the AIG/SP rank officer which shall be conducted under the direct supervision of Director, Bureau of Investigation, Punjab who is an ADGP rank officer. It is made clear that the investigation shall be conducted expeditiously and the challan shall be presented within a period of three months. All other directions issued by the Supreme Court shall remain intact.

Disposed of.

[RAKESH KUMAR JAIN]

JUDGE

7th December, 2015

Shivani Kaushik