

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

101

COCP No.2303 of 2015 (O&M)

Date of Decision: September 20, 2016

Miss Reetu

...Petitioner

Versus

Dr. Sukhchain Singh, IPS and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Bahadur Singh, Advocate
for the applicant-petitioner.

Mr. J.S. Toor, Advocate
for the respondents.

AUGUSTINE GEORGE MASIH, J.

CM No.6608-CII of 2016

Prayer in this application is for permission to place on record documents received/taken under RTI Act as Annexures P-4 to P-10.

Application is allowed.

Documents Annexures P-4 to P-10 are taken on record subject to just exceptions.

COCP No.2303 of 2015

This contempt petition has been filed by the petitioner on the ground that the respondents have not complied with the directions issued by the Supreme Court in *Lalita Kumari Versus Government of U.P. and others, 2014 (1) SCC (Criminal) 524*, wherein the Hon'ble Supreme Court in para 111 has drawn the conclusion and issued directions, according to which registration of an FIR is mandatory under Section 154 of the Code of Criminal Procedure if the information discloses commission of a

cognizable offence and no preliminary inquiry is permissible in such a situation.

2. It has been asserted that on 13.08.2015, petitioner along with her brother-Anil Kumar, who was driving the scooter, was going to her office in Old Civil Secretariat, Chandigarh, riding pillion rider on LML Vespa scooter bearing No.CH03 N-0640. When they reached near the first speed breaker of the Punjab Raj Bhavan at about 8:45 AM, a Duster silver colour car bearing No.HR03 Q-1879 came from behind on high speed and hit their scooter, because of which it fell down on the road. Anil Kumar suffered simple injuries because of the fall and the scooter was also damaged. Petitioner being pillion rider, fell on the bonnet of the Duster car and suffered multiple serious/grievous injuries. With the help of the brother of the petitioner, the driver of the Duster car shifted her for treatment in his offending vehicle to the emergency ward of General Hospital, Sector 16, Chandigarh, where she was admitted with her right leg broken. An iron rod was implanted in her broken leg by the doctors by conducting an operation and it was indicated that she will have to stay in the bed for three months. In the meanwhile, brother of the petitioner informed the police on telephone No.100 about the accident. Statements were recorded of the petitioner and her brother by Head Constable Birender Singh posted at Police Post Sukhna Lake on 13.08.2015. Written complaint was also given at Public Window of Chandigarh Police in Sector 9, Chandigarh, with emails sent to the higher authorities requesting for registration of FIR under Sections 279, 337 and 338 of the Indian Penal Code.

When no such FIR was registered as per and in the light of the judgment of the Supreme Court in *Lalita Kumari's case (supra)*, legal notice dated 22.08.2015 was sent to the respondents through registered post. No response thereto had been received and thus, the present contempt petition has been filed for having not complied with the directions issued by the Supreme Court.

3. Upon notice having been issued to the respondents, reply to the contempt petition has been filed by respondent No.2. In the said reply, the allegations as made in the contempt petition with reference to the complaint submitted, have not been disputed, however, the information which has been disclosed with regard to the action taken by the police officials after the receipt of the information on 13.08.2015 at about 9:40 AM, has been detailed, according to which Head Constable Birender Singh along with other police officials reached the General Hospital, Sector 16, Chandigarh, and on receipt of the opinion of the doctor about the fitness of the petitioner, her statement had been recorded. Statement of the driver-cum-owner of the Duster car namely Anil Guleria was also recorded which was totally contrary to the statement of the petitioner as he asserted that because of the stopping of the traffic near the Punjab Raj Bhavan while he was going to his office in his Duster car, he also had to stop it. Scooter hit his car from the right rear side. He came out of his vehicle and saw scooter having struck the car from behind, because of which the petitioner was lying injured near the car, whom he carried in his car to the General Hospital, Sector 16, Chandigarh,

and got admitted. He asserted that there was no fault of his as the scooter had hit his car from the rear. The incident was witnessed by one person. His statement was also recorded.

4. The eyewitness namely Chhote Lal son of Ganga Ram stated that he was working as a peon in the Electricity Office of MLA Hostal, Sector 4, Chandigarh. He was going to his office via the Punjab Raj Bhavan and saw an accident of a car and scooter which took place. The scooter rider hit the car from rear, which resulted in injury to the girl, who was lying near the vehicle and the driver of the car rushed the injured girl to the hospital.

5. There were cross complaints filed one by the petitioner and the other by Shri Anil Guleria projecting their respective positions. Photographs of both the vehicles namely the Duster car and the LML Vespa scooter were clicked and both these vehicles were kept in the Police Post. Since the facts as narrated in the two complaints were totally at variance, a DDR No.31 dated 13.08.2015 was recorded at Police Post Sukhna Lake. Mechanical examination of both the vehicles was carried out, which disclosed that the Duster car No.HR03 Q-1879 - back bumper right side was scratched and qua LML Vespa scooter No.CH03 N-0640, the clutch lever was broken from corner, scratches on front shield left side corner, rear view mirror of the right side was cracked, foot rest shield of the left side was bent and there was a bend on the left back shield.

6. On the basis of the mechanical examination report, it was concluded that the scooter driven by the brother of the petitioner Anil Kumar had hit the Duster car on the rear side bumper, which has

resulted in the fall of the two riders of the scooter i.e. petitioner and her brother. The injuries, therefore, received by the petitioner, cannot be attributed to the driver of the Duster car. Statement of the eyewitness Chhote Lal also corroborates the statement of the driver of the Duster car as also the mechanical examination report of the vehicles. It has further been stated that the said report has been submitted by Head Constable Birender Singh to the Incharge Police Post Sukhna Lake, which has been further forwarded to the Deputy Superintendent of Police, Central. As per the information which has been received by the petitioner as is disclosed from Annexures P-5 and P-6, it is apparent that the Deputy D.A., Legal, on 01.10.2015, has opined that no *prima facie* cognizable case appears to be made out on the complaint of the petitioner. Similarly the Senior Superintendent of Police has concluded that no *prima facie* cognizable case seems to have been made out on the complaint of the petitioner.

7. It is the contention of the counsel for the petitioner that a cognizable offence is made out from the complaint, according to which the petitioner was injured because of the hitting of the scooter on the rear by the Duster car which was being driven by Shri Anil Guleria and, therefore, offences under Sections 279, 337 and 338 of the Indian Penal Code are disclosed to have been committed by him mandating registration of an FIR against him, which has not been done by the respondents, thus, violating the judgment of the Supreme Court in *Lalita Kumari's case (supra)*.

8. On the other hand, counsel for the respondents has taken a

preliminary objection that the present contempt petition is not maintainable in this Court and in support of this contention, he places reliance upon the judgment of this Court in *M/s Jethu Mal Mohan Lal and another Versus Shri A.S. Guliani and another*, 2009(4) RCR (Criminal) 570, where it has been held that the directions of the Supreme Court having been violated, does not confer jurisdiction upon this Court to entertain a contempt petition for initiating contempt proceedings for allegedly violating directions issued by the Supreme Court. Reliance has also been placed upon the judgment of Division Bench of the Gujarat High Court in *P.T. Chacko Versus Vares Shina*, 1993(1) GCD 740. He further contends that in the light of the details given in the reply filed by respondent No.2, it cannot be said that no action has been taken upon the complaint submitted by the petitioner, rather in the given facts and circumstances of the case, the action which has been taken by the respondents, is fully justified and based upon the correct appreciation of the position in law. He, therefore, prays for dismissal of the present contempt petition.

9. I have considered the submissions made by the counsel for the parties and with their assistance, have gone through the pleadings and the records of the case.

10. First dealing with the preliminary objection which has been raised by the counsel for the respondents with regard to the maintainability of the present contempt petition, provisions of The Contempt of Courts Act, 1971 (hereinafter referred to as 'Act'), will have to be seen. Section 2 of the Act deals with the definitions such as civil contempt and the

criminal contempt. High Court has also been defined. Powers of the High Court to punish contempts of subordinate Courts have been provided for under Section 10 of the said Act. Apart from this, it is nowhere provided that the High Court can exercise its jurisdiction under the Act for violation of an order or direction issued by the Supreme Court. There is no observation of the Supreme Court in the judgment of *Lalita Kumari's case (supra)* to this effect. This Court in *M/s Jethu Mal Mohan Lal and another's case (supra)* has while relying upon the judgment of the Andhra Pradesh High Court in *Advocate General Andhra Pradesh, Hyderabad Versus V. Ramana Rao, AIR 1967 Andhra Pradesh 299* as also the judgment of the Supreme Court in *Zahira Habibullah Sheikh and another Versus State of Gujarat and others, 2006(2) R.C.R. (Criminal) 448* held that the High Court did not have jurisdiction to entertain the petition for contempt under Section 12 of the Act for alleged violation of the directions issued by the Supreme Court of India.

11. In *Manubhai Pragji Vashi Versus State of Maharashtra and others, 1996(2) Mh.LJ 615*, the Single Bench of Bombay High Court has held that High Court cannot deal with the alleged contempt of the Supreme Court by virtue of its jurisdiction under Article 215 of the Constitution of India. Similarly the Division Bench of Bombay High Court in *P.T. Chacko's case (supra)* has held that under The Contempt of Courts Act, 1971, High Court can exercise its jurisdiction and deal with its own contempt as well as the contempt of the subordinate Courts but if it is a contempt of the Supreme Court, then the High Court has no jurisdiction.

12. No law has been shown by the counsel for the petitioner to the contrary.

13. Perusal of the provisions of the Act would show that the power to punish for contempt of subordinate Courts by the High Court is derived from Section 10 of the Act and it also has power to punish contempt of itself under the provisions of the Act as also under Article 215 of the Constitution of India. It cannot be said that the power to punish for contempt of orders passed by the subordinate Courts is derived under Article 215 but it is only under the Act. The High Court has been conferred jurisdiction to the extent as provided under the Act to punish for contempt of itself and the subordinate Courts. The intent of the legislature is, therefore, clear that the jurisdiction of the High Court to punish for contempt is limited to the subordinate Courts and not to the superior Courts than the High Court. The expression 'Court subordinate to the High Court' in Section 10 of the Act would lead to only one conclusion that the High Court can exercise powers under the Act to the Courts subordinate to it in the hierarchy of the Court established for the purpose of administration of justice but it would not include the Supreme Court which cannot be said to be a Court subordinate to the High Court. Similarly the expression 'Court' in Section 2(b) or expression 'any Court' mentioned in Section 2(c) of the Act cannot include the power of the High Court to punish for the civil contempt or criminal contempt of the Supreme Court unless there are observations/directions in the order, contempt of Court whereof is alleged to have been committed, indicating or specifically stating that the High Court

would monitor or seek compliance or violation of the order would be contempt of Court which can be filed in the High Court which has jurisdiction where such contempt is committed or such other observations etc.

14. In view of the above and especially in the light of the fact that the Supreme Court has not observed anything with regard to taking cognizance of any violation by the officials/competent authority qua the directions and conclusions recorded in para 111 of the judgment in *Lalita Kumari's case (supra)*, which would enable this Court to initiate or take action against the alleged contemnor, this Court would not like to exercise its jurisdiction in the present contempt petition.

15. In view of the above conclusion, it would not be appropriate for this Court to go into the merits of the case, especially in the light of the mechanical examination report, the contents whereof have been referred to above, or to comment thereon and rather leave it open for the competent forum to adjudicate the same in accordance with law.

16. The present contempt petition, therefore, stands dismissed with above observations.

September 20, 2016

Puneet

(AUGUSTINE GEORGE MASIH)

JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No