

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Contempt Case (C)No.167 of 2017**

Teekamchand Jain S/o Sri Dharamchand Jain, Aged About 34 Years, R/o Village Kewati, Police Station Bhanupratappur, Tehsil Bhanupratappur, Civil And Revenue District Uttar Bastar Kanker, Chhattisgarh, Through Smt. Anjali Jain, W/o Teekamchand Jain, Aged About 29 Years, R/o Village Kewati, Police Station Bhanupratappur, Tahsil Bhanupratappur, Civil And Revenue District Uttar Bastar Kanker, Chhattisgarh.

---- **Petitioner****Versus**

Smt. Shammi Abidi, the District Magistrate Uttar Bastar Kanker, Chhattisgarh, District Uttar Bastar Kanker, Chhattisgarh.

---- **Respondent**

For Petitioner	:	Shri Sunil Pillai, Advocate.
For Respondent	:	Shri B.Gopa Kumar, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy**Order On Board****27/06/2017**

1. The present contempt petition has been filed against non compliance of the order passed by this court on 25.11.2016 in Writ Petition (Criminal) No.191 of 2016.
2. The fact in brief is that, the petitioner is convicted and has been sentenced to Rigorous Imprisonment for life. He is undergoing jail sentence at Central Jail, Jagdalpur. He had moved an application for his release on parole. The said application was rejected on 07.05.2016 by the District Magistrate, Uttar Bastar, Kanker. The said order dated 07.05.2016 was put to challenge in Writ Petition (Criminal) No.191 of 2016. This court, considering the total facts and circumstances of the

case, vide order dated 25.11.2016 had quashed the order dated 07.05.2016 and had directed the District Magistrate to pass a fresh order after consultation with the concerned Superintendent of Police and also taking note of the report of the SHO dated 29.12.2015.

3. The present petition has been filed alleging that the said directives given by this court on 25.11.2016 have not been honoured by the respondent. The counsel for the petitioner submitted that, the direction given by this court was for passing of a fresh order by the District Magistrate taking into consideration the report of the SHO and also after fresh consultation with the concerned Superintendent of Police. According to him, there was no direction/observation of this court that the respondent should call for a fresh report from the SHO, but in the instant case, the District Magistrate while consulting with the Superintendent of Police had called for a fresh report from the SHO on the basis of which the respondent have again vide order dated 23.01.2017 rejected the application of the petitioner for grant of parole.
4. According to counsel for the petitioner, this act on the part of the respondent is totally overreaching the orders of this court and also in contravention to the directives issued. According to him, there was no reason why the District Magistrate or the concerned Superintendent of Police should have called for a fresh report from the SHO. Thus, contempt is made out against the respondent.
5. Counsel for the respondent however, opposing the petition submits that the order passed by this court was to the extent of earlier order dated 07.05.2016 being quashed and further direction to the respondent

District Magistrate to pass a fresh order after consulting with the concerned Superintendent of Police and keeping in view the report of the SHO dated 29.12.2015. He further adds that the District Magistrate had infact in consultation with the concerned Superintendent of Police had taken a fresh report from the SHO as considerable time had lapsed from the earlier report. He further submits that this court had never precluded the District Magistrate or the Superintendent of Police from making any further queries in respect of release of the petitioner on parole. He submits that order of this court has substantially complied with inasmuch as his application was duly considered and the same was rejected. Thus, no contempt of any of the order of this court is made out.

6. Having considered the rival contentions on either side and on perusal of record, it would be appropriate at this juncture to quote operative portion of the order dated 25.11.2016, which reads as under :

“13. As a consequence, in the light of the quashment of the order dated 7.5.2016 (Annexure P-3), the case of the Petitioner for grant of temporary leave/parole is again ordered to be placed before the District Magistrate who in turn in consultation with the Superintendent of Police in the light of the recommendation made by the Station House Officer in his report dated 29.12.2015 and also keeping in view Rule 6 of the Rules of 1989 in this regard, shall pass a fresh order within a period of 15 days from the date of presentation of the certified copy of this order.”

7. A perusal of aforesaid order would reveal that the court had quashed the earlier order 07.05.2016 and directed the District Magistrate to pass a fresh order. It was also ordered that the District Magistrate while passing

the fresh order would consult with the concerned Superintendent of Police. In the instant case, what reflect is that when the District Magistrate did consult the Superintendent of Police, the Superintendent of Police thought it proper for calling for a fresh report from the concerned SHO. Fresh report of SHO dated 09.01.2017 also reflects the same version what it was there in the earlier report dated 29.12.2015. The only difference between the earlier report and present report of SHO is that earlier the SHO had expressed his No objection of the police for grant of parole whereas, in the fresh report, the SHO has expressed his apprehension in granting the benefit of parole to the petitioner.

8. So far as this court is concerned, it is undisputed that this court in exercise of contempt jurisdiction has to confine itself to ensure whether the order passed by this court has been honoured in its letter and spirit. The respondent has come up with a case that the order passed by this court has been honoured to the extent that the application of the petitioner has been considered and decided. Passing of fresh order dated 23.01.2017 gives rise to fresh cause of action. Whether the order is proper, legal or justified cannot be decided while exercising the contempt jurisdiction of this court and for which the petitioner would have to take appropriate recourse for challenging the fresh order that has been passed on 23.01.2017.
9. Given the facts submissions in the preceding paragraphs and taking into consideration the submissions of the counsel for the respondent, this court is of the opinion that the Superintendent of Police, in the given facts and circumstances of the case, can not be said to be wrong in

calling for a fresh report from the SHO apart to the earlier report already available as more than two years had already lapsed from the earlier report of SHO.

10. Thus, in the opinion of this court, no contempt as such is made out against the respondent. Accordingly, the contempt petition is dismissed and the contempt proceedings against the respondent stands dropped.

Sd/-

(P. Sam Koshy)
Judge

inder