

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CONTEMPT PETITION NO. 282 OF 2010
IN
CRIMINAL APPLICATION NO. 4123 OF 2009**

- | | | | |
|----|-------------------------------------|---|-----------------|
| 1. | Ramesh Venkatesh Gaikwad |) | |
| 2. | Kiran Arvind Gaikwad |) | |
| 3. | Kedar Ramesh Gaikwad |) | |
| 4. | Sachin Suresh Gaikwad |) | |
| 5. | Sudhir Suresh Gaikwad |) | |
| 6. | Dasbabu Venkatesh Gaikwad |) | |
| | All residing at TS No.404, |) | |
| | Ganpati Ali, Wai, Taluka, District: |) | |
| | Satara. |) |).. Petitioners |
| 1. | Smt. Malan Balasaheb Shinde |) | |
| | Age 50 years, Occ: Service |) | |
| | residing at C/4/12, Dhoni Colony, |) | |
| | Vasant Songirwadi, Wai, Post Tal. |) | |
| | Wai, Dist: Satara 412 803. |) | |
| 2. | Amrutrao Deshmukh |) | |
| | Age: Adult, Occ: Service |) | |
| | The Police Inspector Wai Police |) | |
| | Station, Wai, District: Satara. |) |).. Respondents |
- Mr. K.P.Shah, Advocate for the petitioners
Mr.S.G.Rajput, for respondent No.2.

**CORAM: SMT.SADHANA S.JADHAV, J.
DATE : 17th April, 2017.**

ORAL JUDGMENT:

Heard. Rule. Rule made returnable forthwith with the consent of the parties.

2. The present petitioner has filed the present Contempt Petition

thereby demonstrating that respondent No.2 herein had committed willful disobedience and violation of the order passed by this Hon'ble Court dated 11.9.2009 in Criminal Application No.4123 of 2009.

3. The petitioner herein happens to be the original accused in Crime No.94 of 2009. The applicant had filed an application seeking the relief of quashing of the said crime.

4. According to the learned counsel for the petitioners, the Hon'ble Single Bench of this Court by an order dated 25.1.2010, had observed that it appears that there are civil disputes between the parties and, therefore, the proceedings deserve to be stayed. The Hon'ble Bench had also observed that inadvertently interim relief was granted in terms of prayer clause (d). The said interim relief granted vide prayer clause (d) was vacated on 9.11.2011 and this Court had granted interim relief in terms of prayer clause (c) which reads as follows :-

“Pending the hearing and final disposal of the present application, all further proceeding on the basis of the C.R.No.94 of 2009 registered with the Respondent No.2 – Wai Police Station, District Satara u/s. 143, 147, 452, 447, 427, 323, 504 & 506 r/w 34 of Indian Penal Code be stayed.”

It appears from the records that the order was passed on 25.1.2010.

4. According to the petitioners, despite the fact that this Court had stayed the proceedings, the respondent No.2 had filed charge-sheet in the Court and hence had committed contempt of the order passed by this Court dated 25.1.2010. It appears that after filing of the present Contempt Petition, this Hon'ble Court vide order dated 16.12.2014, had directed the Registrar (Judicial) to conduct an enquiry as to whether the respondent No.2 had committed contempt of the order dated 25.1.2010. The Registrar – Judicial had conducted a detailed enquiry and thereafter had informed the High Court that he had taken inspection of the inward & outward Registers for the relevant period maintained by Wai Police Station. That Wai Police Station had received the High Court order Inward No.436 of 25.2.2010 in Crime No.306/2010 wherein the C.R. number was shown as 94/2010 instead of 94/2009. The same tallied with the register maintained by the Criminal Department of the High Court (Appellate Side). The Registrar (Judicial) has also a report stating therein that the order granting interim relief in terms of prayer clause (c) was received on 25.2.2010 as per the extracts of the inward-outward Register produced by the Police Inspector of Wai Police Station. It is pertinent to note that respondent No.2 had filed the charge sheet on 9.2.2010 i.e. prior to receipt of the order dated 25.1.2010.

5. Thereafter, the present Contempt Petition was heard by Hon'ble Justice R.G.Ketkar. On 29.4.2013, Hon'ble Justice Ketkar had passed an order as follows :-

“Mr. Patil seeks time to file reply. He submits that the copy of the order dated 25/01/2010 was not served on respondent No.2 and the petitioners may substantiate their contention that the copy of the order dated 25/01/2010 was duly served on respondent No.2.”

Before Hon'ble Justice Ketkar, counsel for the petitioners had submitted that respondent No.2 has filed charge sheet on 31.1.2010, whereas the order was passed on 25.1.2010. It is further observed that the copy of the order dated 25.1.2010 was not served on respondent No.2 and that the petitioners may substantiate their contention that the copy of the order dated 25.1.2010 was duly served on respondent No.2 and the petitioner to file affidavit enclosing therein with acknowledgment evidencing service of order dated 25.1.2010.

6. The learned counsel for the petitioners submits that thereafter the petitioners had filed an affidavit contending therein that the petitioners had put the best efforts to serve the copy of the order upon respondent No.2. However, he had refused to accept the same. In view of this submission, it

cannot be said that respondent No.2 had knowledge that further proceedings in C.R. No.94/2009 has been stayed. It is further pertinent to note that the petitioners herein had filed an application for recalling the charge sheet. According to the learned counsel for the petitioner, the said application was contested by the State. No application seeking recalling of the charge sheet would be maintainable. The said application was rejected. According to the learned counsel for the petitioners, the learned Magistrate had also refused to accept the order being tendered by the petitioners and had insisted upon a certified copy or a communication by the High Court. In the given circumstances, this Court is of the opinion that respondent No.2 has not wilfully disobeyed the order passed by the Hon'ble High Court on 25.1.2010. The charge sheet was filed prior to receipt of the order by the concerned officer and hence it cannot be said that respondent No.2 has committed contempt.

7. In view of this, the Contempt Petition stands dismissed. Rule is accordingly discharged. Bailable Warrant issued against respondent No.2 is hereby recalled. No order as to costs.

(SMT. SADHANA S.JADHAV, J.)