

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Suo Motu C.C.No.1694 of 2016

and

Suo Motu C.C.No.1905 of 2016

COMMON ORDER :

One V. Sitharama Raju was married to I. Lavanya on 03.10.2015. The latter made a complaint on 03.02.2016 to the Station House Officer alleging that he committed offences under Section 498-A, Sec.506 I.P.C. read with Section 4 of the Dowry Prohibition Act, 1961 read with Section 3 (1) (r) (s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. The said complaint was numbered as Crime No.3 of 2016.
3. Thereafter, the petitioner filed CrI.P.No.7839 of 2016 before this Court to quash the same.
4. On 09.06.2016, the said Criminal Petition was disposed of directing the Station House Officer to proceed with the investigation without arresting the petitioner for a period of one month from the date of passing of the order, and directing him to appear before the investigating agency as and when required during the course of investigation.
5. The petitioner contended that the Station House Officer forcibly took him to Chittoor on 25.06.2016 in spite of the Court order in CrI.P.No.7839 of 2016, and on 27.06.2016, produced him before the III Additional Judicial First Class Magistrate, Chittoor for remand.

He alleged that the said Court did not accept the remand in view of the stay granted by the High Court in CrI.P.No.7839 of 2016, and directed the police to release him.

6. On 06.07.2016, the Inspector of Police, Chittoor served notice under Section 41(A) of the Criminal Procedure Code dt.04.07.2016 to the petitioner asking him to appear by 09.06.2016 for the purpose of investigation. Since the date was not correctly mentioned therein (the date of appearance of the petitioner had gone by when it was served on petitioner), the petitioner issued a reply through e-mail dt.08.07.2016. In the mean time, he filed CrI.P.M.P.No.10600 of 2016 before this Court to extend the order dt.09.06.2016 in CrI.P.No.7839 of 2016 staying his arrest.

7. On 13.07.2016, in CrI.P.M.P.No.10600 of 2016 in CrI.P.No.7839 of 2016 this Court extended stay of arrest of petitioner granted earlier by it on 9.6.2016 for a further period of one month, i.e., up to 12.08.2016.

8. However, on 13.7.2016 at 8.00 pm, the respondent arrested the petitioner notwithstanding the order dt.13.07.2016 passed in W.P.No.26715 of 2016.

9. Thereafter, the petitioner herein filed W.P.No.26715 of 2016 alleging that the Station House Officer, Women Police Station, Chittoor arrested him on 13.07.2016 in violation of the order in CrI.P.M.P.No.10600 of 2016, and produced him before the III Additional Junior First Class Magistrate, Chittoor; that on

14.07.2016, the said Magistrate noted that there were no tenable reasons to arrest the accused after he received the notice under Section 41(A) and recorded that counsel for the accused had filed a copy of the order dt.09.06.2016 in CrI.P.No.7839 of 2016 not to arrest the accused; that another memo was also filed stating that there is an extension of stay of his arrest and internet copy of stay extension order dt.13.7.2016 in CrI.P.No.7839 of 2016 was also filed; and therefore, remanding of the accused would not be proper.

10. The petitioner sought a declaration in the Writ Petition that the arrest of petitioner by 5th respondent on 13.7.2016 is arbitrary, degrading, illegal and *ultra vires*, and to quash the criminal proceedings against him.

11. In the remand report filed as an Annexure to the Writ Petition, the respondent herein (who was impleaded as 3rd respondent in the Writ Petition) admitted that he arrested the petitioner on 13.7.2016 at 2000 hrs.

12. On 10.08.2016, this Court admitted the Writ Petition. Stating that *prima facie* the action of the Deputy Superintendent of Police, Chittoor in arresting the petitioner on 13.07.2016 is contrary to the order passed on the same day by this Court in CrI.P.M.P.No.10600 of 2016 in CrI.P.No.7839 of 2016, it directed the Registry to issue show-cause notice to respondent herein (the 3rd respondent in the Writ Petition) why proceedings of Contempt of Court should not be initiated against him for the said action. The III Judicial First Class

Magistrate was directed to forthwith release the petitioner on bail subject to reasonable conditions, since petitioner's very arrest was contrary to the order passed by this Court on 13.07.2016.

13. The said *suo motu* contempt case was numbered as C.C.No.1694 of 2016 on 2.9.2016.

14. Thereafter, counter-affidavit was filed in the Writ Petition by the respondent on 25.08.2016 stating that at the time of arrest on 13.07.2016, the petitioner did not produce the copy of the order obtained by him from this Court in CrI.P.No.7839 of 2016 and that the website of the High Court was verified which did not disclose that there was any extension of the stay granted by the Court on 13.07.2016. The respondent further contended that he was not aware of the passing of the order dt.13.07.2016 in CrI.P.M.P.No.10600 of 2016 in CrI.P.No.7839 of 2010, and that the petitioner was released on bail on 14.07.2016. He denied that the Station House Officer of the Women Police Station, Chittoor arrested the petitioner on 25.06.2016 and produced him before the III Additional Judicial First Class Magistrate, Chittoor.

15. After perusing this Counter-affidavit, on 26.08.2016, this Court issued notice in Form – I under the Contempt of Court's Act, 1971 in W.P.No.26715 of 2016 alleging that the order dt.13.07.2016 in CrI.P.M.P.No.10600 of 2016 in CrI.P.No.7839 of 2016 was passed in the presence of the Public Prosecutor, that the respondent is deemed to be aware of the order since notice to counsel is notice to party, and

also since the Public Prosecutor was representing the State of Andhra Pradesh.

16. Challenging this order, Writ Appeal No.847 of 2016 was preferred by the 3rd respondent alleging that this Court could not have issued notice in Form – I directing the respondent to appear before it even without initiating proceedings under the Contempt of Courts Act, 1971.

17. The Division Bench was not apprised of the fact that on 10.08.2016 itself, this Court had directed the Registry to issue show-cause notice to respondent to show-cause why proceedings for Contempt of Court shall not be initiated against him for arresting petitioner on 13.07.2016 contrary to the order passed in CrI.P.M.P.No.10600 of 2016 in CrI.P.No.7839 of 2016, and that the *suo motu* contempt case initiated through the order dt.10.08.2016 had been numbered as *Suo Motu Contempt Case No.1694 of 2016* on 2.9.2016; and that the order dt.26.08.2016 was passed in the Writ Petition issuing notice in Form-I keeping in view of the counter-affidavit filed by 3rd respondent in WP.No.26715 of 2016, who is respondent in this Contempt Case.

18. The said Writ Appeal was allowed on 15.9.2016 on the ground that notice in Form – I could not have been issued by this Court unless the Contempt Case is instituted and the respondents are asked to show-cause and the Contempt Case is admitted thereafter.

19. In view of this order, on 23.09.2016 in W.P.No.26715 of 2016, the Registry was again directed to issue a show-cause notice to the respondent to show-cause why proceedings for Contempt of Court shall not be initiated against him for willful disobedience of the order dt.13.07.2016 in CrI.P.M.P.No.10600 of 2016 in CrI.P.No.7839 of 2016 since the respondent had not disputed that he had arrested the petitioner in spite of the order staying arrest of petitioner on 13.7.2016 and a direction was given to the respondent to file counter-affidavit by 30.9.2016. This was done by the Court feeling that it is better to issue a fresh *Suo Motu* Contempt Notice in view of the order in W.A.No.847 of 2016.

20. The Registry then registered the *Suo Motu* Contempt Case No.1905 of 2016.

21. However this common order is being passed since the issue is the same in both the cases.

22. After registration of CC.No.1905 of 2016, time was sought by the Government Pleader for Home on behalf of the respondent and the counter-affidavit filed by respondent in *Suo Motu* Contempt Case No.1694 of 2016 was adopted as the Counter affidavit in the instant Contempt case by filing of a memo dt.08.11.2016.

23. In the counter-affidavit filed by the respondent, a stand is taken that at the time of petitioner's arrest on 13.07.2016 and production before the Magistrate on 14.07.2016, the petitioner had not produced copy of the order dt.13.07.2016 in CrI.P.M.P.No.10600 of 2016 in

Crl.P.No.7839 of 2016, or intimated about the same to the respondent and that the respondent had no knowledge about the passing of the order of the High Court dt.13.07.2016 in Crl.P.M.P.No.10600 of 2016 in Crl.P.No.7839 of 2016. It is also stated that the respondent had no intention to arrest the petitioner on 13.07.2016 violating the orders of the Court.

24. This Court did not accept the stand taken by the respondent and directed issuance of Form-I notice to the respondent.

25. After receipt of the same a counter affidavit dt.25.1.2017 was filed by the respondent.

26. The respondent reiterated the stand taken in the earlier counter affidavit to the effect that he arrested the Writ petitioner at 08:00 pm on 13.7.2016 and produced him before the III Addl. District Munsif Magistrate, Chittoor, but the petitioner was not remanded to judicial custody. He contended that at the time of arrest, the petitioner did not reveal that he obtained stay of arrest order from the High Court on 13.07.2016 and that even when he was produced before the Magistrate on 14.07.2016, copy of the order dt.13.07.2016 in Crl.MP.No.10600 of 2016 in Crl.P.No.7839 of 2016 was not produced by the petitioner and he did not inform the same to the respondent. He therefore pleaded that he had no knowledge of the said order and he had no intention of violating it. He also stated that the Writ Petitioner has also not stated that he had served copy of the order dt.13.07.2016 on the petitioner and that he did not receive information from the office

of the Public Prosecutor, State of A.P., or from anyone about the order dt.13.07.2016 in CrI.MP.No.10600 of 2016 in CrI.P.No.7839 of 2016.

27. Learned Government Pleader for Home reiterated the above contentions.

28. The stand taken by the respondent cannot be accepted in view of the fact that the order was passed by this Court on 13.7.2016 in the presence of the Public Prosecutor extending the stay of arrest of petitioner in CrI.P.M.P.No.10600 of 2016 in CrI.P.No.7839 of 2016 for one more month and so it is deemed to be within the knowledge of the respondent. This is because it is settled law that knowledge of the counsel/Public Prosecutor is equivalent knowledge of the party/respondent herein.

29. In *East India Hotels Ltd. v. Agra Development Authority*¹, in the context of the question of service of notice on a party under sub-section (2) of Section 14 of the Indian Arbitration Act, 1940, it was held by the Supreme Court, referring to Order III Rule 5 CPC, that notice to counsel is notice to party. It observed:

“On 13-11-1998 the trial court recorded the fact of filing of the award by the Umpire and directed that learned counsel for the parties be informed. This order was duly noted by the counsel for both the parties. In our opinion the essential requirement of sub-section (2) of Section 14 was duly complied with inasmuch as intimation of filing the award to the parties was communicated. As notice to the counsel is notice to the party, the above order dated 13-11-1998 together with the endorsement of the advocate on the proceeding sheet would amount to a proper and valid service of notice under sub-section (2) of Section 14 of the Act.

¹ 2001(4) SCC 175

We have already mentioned that as per the direction of the court the Umpire also filed the record. We, accordingly hold that order dated 13-11-1998 which was noted by the learned counsel, would amount to a valid notice under sub-section (2) of Section 14. We therefore, need not consider the alternative arguments of Dr Singhvi.”

28. In ***New Hope Granites Vs. Shri Lokanath, the Deputy Conservator of Forest and Anr.***², a Division Bench of Karnataka High Court, in the context of a plea taken by a respondent in a Writ Petition that he was not aware of the order passed by the said High Court since certified copy thereof was not produced before him, declared :

“8. We do not under any circumstances, where a State or its officers or public authority is represented in the first instance accept the plea that unless the petitioner makes a formal demand for implementation of the order or produces a certified copy thereof, that the authority is absolved from carrying out the Court directive. Under all judicial systems, where the respondents are represented it is the function of the learned counsel and his office which in this case is the office of the Govt. Pleader, High Court, to immediately convey through the quickest means available the substance of the Court's order regardless of whether the officer concerned was present in Court or not. No excuse can be advanced that a certified copy was necessary when orders are pronounced in open Court and where, if the office of the Govt. Pleader so desires, an ordinary copy can be made available immediately. It shall therefore no longer be a defence in contempt proceedings that there was non-communication or late communication and it would therefore be advisable for the Chief Secretary, the law Secretary and the Heads of other public sector organisations to take cognizance of the fact that they shall ensure that the machinery set up by them for handling of their litigation promptly informs them of the Courts orders. Where the orders are time bound, the order will have to be implemented within the prescribed time unless

² 1995 CrL.Law Journal 1545(D.B) (Karnataka)

extension of time has been obtained or the order has been stayed. The lame excuse that further proceedings such as an application for stay or review or appeal was intended or that it was merely filed and left in the office of some Court will not avail a contemnor who has transgressed the time limit.

....

*12. In this context, we need to also observe in the strongest terms that the contempt jurisdiction of the High Court is analogous to a criminal proceeding where the consequences to the contemnor can be extremely grave. This is not because Courts are vindictive or harsh but because it is essential to up hold the rule of law and to enforce it. Under the scheme of our Constitution, it is the Courts and the higher judiciary that are the final arbitrators in the matter of disputes and their verdict howsoever unpalatable has to be accepted. The State today is the largest litigant and the attitude of some of its officers which betrays a degree of cussedness, defiance and high handedness is responsible for multiplying that litigation. An appeal remedy is prescribed in law and is required to be resorted to in those of the cases where there is a genuine grievance such as where another view may be reasonably possible or where **an** important point of law requires to be set at rest. We find that in the majority of "run of the mill" cases where there is virtually **nothing** that an appeal Court would do, such as in a situation presented by the present case where a mere interim order was passed and where no damage was done to the State's interest, officers indiscriminately take up the plea that appeals were intended. A Court hearing a contempt proceeding is certainly entitled to look at the nature of the order and arrive at its own judgment as to whether an order was such as genuinely warranted an appeal or whether the officer concerned was trying to hit back at the petitioner for having approached the Court by delaying reliefs through the subterfuge of resorting to an appeal. We consider it appropriate that when the aforesaid guidelines are made known by the heads of departments to the subordinate officers and it is pointed out to them that contempt is an act of misconduct and where an officer lands himself in contempt not only shall he be personally*

responsible for his own conduct but that the punishment awarded including fines shall have to be his own personal responsibility.”

(emphasis supplied)

30. Thus I reject the defence of the respondent that he was unaware of the order dt.13.7.2016 passed in CrI.M.P.No.10600 of 2016 in CrI.P.No.7839 of 2016 extending stay of arrest of petitioner.

31. Further the order of the High Court would have been passed before end of Court working hours (4.30 pm) on 13.7.2016 and the respondent ought to have verified about the extension of orders from the Office of the Public Prosecutor in the High Court before arresting the petitioner. The respondent ought to have contacted the office of the Public Prosecutor in the High Court for the State of Andhra Pradesh and ascertained whether there is any extension of the order granting stay of the petitioner's arrest before arresting the Writ Petitioner. He clearly failed to do so and is blaming the petitioner unfairly.

32. The respondent's plea that the petitioner should have produced a copy of the order dt.13.07.2016 in CrI.M.P.No.10600 of 2016 in CrI.P.No.7839 of 2016 at the time of his arrest is not tenable because the order copy of the order passed by the High Court at Hyderabad would not have been made available to the petitioner who was arrested at Chittoor on the same day evening. It would have been impossible for the petitioner to produce it at Chittoor on 13.07.2016 at the time of his arrest by the respondent.

33. Also the story set up by the respondent that the petitioner did not mention about the extension of stay granted by the High Court on 13.07.2016 at the time of his arrest at 08:00 p.m. on 13.07.2016 by respondent, is unbelievable since no accused, who had obtained an order staying his arrest, would keep quiet and not disclose it to the Police when he is sought to be arrested in spite of such order. Such a conduct of an accused is against normal human behaviour. In the present case, the Writ Petitioner, who is himself a lawyer, would not have kept quiet without revealing to the respondent that the High Court had extended the stay of his arrest on the same day, when he is sought to be arrested. So I also reject the plea of the respondent that the Writ Petitioner had not informed him about the extension of stay of his arrest by the Court on 13.7.2016.

34. In fact, the respondent has gone to the extent of stating in the counters filed by him on 26.10.2016 and 25.01.2017 that the Writ Petitioner did not produce copy of the order dt.13.07.2016 in the CrI.MP.No.10600 of 2016 in CrI.P.No.7839 of 2016 even when he was produced before the Magistrate on 14.07.2016. This statement is a false statement because the Magistrate has clearly mentioned in his docket order dt.14.07.2016 that internet copy of the order of the High Court extending the stay of arrest of the petitioner was filed before him with a memo and that was why, the Magistrate did not remand him to judicial custody.

35. The plea of the respondent that he was not aware of the order dt.13.07.2016 in CrI.MP.No.10600 of 2016 in CrI.P.No.7839 of 2016 at the time when he arrested the Writ Petitioner at 2000 hours on 13.07.2016, is therefore rejected as not *bonafide* and false. Therefore, the apology tendered by the respondent cannot be accepted and is rejected.

36. Personal liberty of a citizen is a very important human right. A citizen cannot be deprived of it when there is a Court order staying his arrest. Such a serious transgression by the respondent, a police officer of the rank of Deputy Superintendent of Police, has to be viewed without any lenience. Judicial Orders of the Highest Court in the State cannot be allowed to be disregarded. It is necessary to uphold the Rule of Law, enforce it and punish those who disregard the orders of this Court and deprive a citizen of personal liberty.

37. Recently, the Supreme court in *Subrata Roy Sahara v. Union of India*³, quoted it's earlier decision in *Supreme Court Bar Assn. v. Union of India*⁴ in relation to the necessity to enforce Court orders and punish the violators as under:

“ 20. In this context, the following observations made by this Court in *Supreme Court Bar Assn. v. Union of India* illustrate the point sought to be made: (SCC pp. 429-30, para 42)

“42. The contempt of court is a special jurisdiction to be exercised sparingly and with caution whenever an act adversely effects the administration of justice or which tends to impede its course or tends to shake public confidence in the judicial institutions. This jurisdiction may also be exercised when the act

³ (2014) 8 SCC 470

⁴ (1998) 4 SCC 409

complained of adversely effects the majesty of law or dignity of the courts. The purpose of contempt jurisdiction is to uphold the majesty and dignity of the courts of law. It is an unusual type of jurisdiction combining 'the jury, the Judge and the hangman' and it is so because the court is not adjudicating upon any claim between litigating parties. This jurisdiction is not exercised to protect the dignity of an individual Judge but to protect the administration of justice from being maligned. In the general interest of the community it is imperative that the authority of courts should not be imperilled and there should be no unjustifiable interference in the administration of justice. It is a matter between the court and the contemnor and third parties cannot intervene. It is exercised in a summary manner in aid of the administration of justice, the majesty of law and the dignity of the courts. No such act can be permitted which may have the tendency to shake the public confidence in the fairness and impartiality of the administration of justice."

38. Therefore, C.C.No.1905 of 2016 is allowed and I hold that the respondent is guilty of willful disobedience of the order dt.13.07.2016 in CrI.MP.No.10600 of 2016 in CrI.P.No.7839 of 2016.

39. I therefore sentence him to pay fine of Rs.1,500/-.

40. In view of this order, no order is necessary in C.C.No.1694 of 2016.

JUSTICE M.S.RAMACHANDRA RAO

Date :16-02-2017

Ndr/*