

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

**COCN No.3079 of 2016
Date of decision: 27.07.2017**

Bhupinder Singh

..Petitioner

Versus

Gurmeet Singh

..Respondent

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. Parvinder Singh, Advocate
for the petitioner.

Ms. Anu Chatrath Kapur, Addl. A.G., Punjab
for the respondent.

Daya Chaudhary, J.

The present contempt petition has been filed under Section 12 of the Contempt of Courts Act, 1971 for non-compliance of order dated **02.07.2014** passed by Hon'ble the Apex Court in **Criminal Appeal No.1277 of 2014** titled as '**Arnesh Kumar vs. State of Bihar and another**'.

Briefly, the facts of the case are that petitioner-Bhupinder Singh was posted as ASI in Punjab Police in Police Line at Fatehgarh Sahib. FIR No.153 dated 22.10.2015 was registered against him under Sections 406, 448 and 506 of Indian Penal Code at Police Station Sirhind, District Fatehgarh Sahib and he was arrested in that case.

The present contempt petition has been filed for initiation of contempt proceedings on the ground that directions issued by Hon'ble the Apex Court in **Arnesh Kumar's case (supra)** have not been followed and non-compliance of said directions amounts to contempt of order/directions

issued by Hon'ble the Apex Court.

Learned counsel for the petitioner submits that the aforesaid FIR was registered on the basis of false allegations and the investigation of the case was not conducted fairly as the same was carried out due to professional rivalry and by keeping personal grudge against the petitioner. Learned counsel further submits that as per directions issued by Hon'ble the Apex Court in **Arnesh Kumar's case (supra)**, the arrest is not to be made unnecessarily and detention is not to be authorised mechanically. It is to be seen as to whether arrest of person against whom, the FIR has been registered, is necessary and for that certain parameters have been laid down under Section 41A Cr.P.C. Learned counsel also submits that it is mandatory to serve notice of appearance in terms of Section 41A Cr.P.C. upon the accused within two weeks from the date of institution of the case but no such notice was served upon the petitioner. Learned counsel also submits that the dispute between the petitioner and the complainant is of civil nature and there was no evidence to connect the petitioner with the alleged offence. The FIR was registered just to recover the possession of the house in dispute. At the end, learned counsel for the petitioner submits that the petitioner was arrested willfully without having any ground of arrest in the FIR and as such, there is violation of directions issued by Hon'ble the Apex Court in **Arnesh Kumar's case (supra)**.

Learned State counsel submits that the petitioner also filed anticipatory bail application before the Additional Sessions Judge, Fatehgarh Sahib and the Investigating Officer submitted before the Court that the petitioner was not cooperating with the investigation, hence his

custodial interrogation was necessary for recovery of articles. Learned State counsel further submits that as per guideline No.6 provided in judgment of Hon'ble the Apex Court, a notice of appearance in terms of Section 41A Cr.P.C. was to be served upon the petitioner. The petitioner was represented through an advocate. He was granted interim bail but subsequently, he misused this concession as he did not cooperate with the investigation. This fact was also brought to the notice of the Court and for that purpose, the custodial interrogation of the petitioner was necessary. A detailed inquiry was conducted on the basis of complaint made by the complainant. Even the preliminary inquiry was marked to then DSP, Sub Division Fatehgarh Sahib and in the preliminary inquiry, the allegations were inquired into and the investigation was completed wherein it was found that the petitioner with *malafide* intention tried to grab the movable and immovable property of the complainant. Thereafter, it was recommended to register FIR against the petitioner. Learned State counsel also submits that the legal opinion was also sought on the inquiry report and thereafter, it was recommended to register FIR.

Heard arguments of learned counsel for the parties and have also perused the documents available on the file.

Facts of the case are not disputed.

The relevant portion of the judgment of Hon'ble the Apex Court in **Arnesh Kumar's case (supra)**, which is necessary for resolving the controversy in hand, is reproduced as under: -

“13. Our endeavour in this judgment is to ensure that police officers do not arrest accused

unnecessarily and Magistrate do not authorise detention casually and mechanically. In order to ensure what we have observed above, we give the following direction:

(1) All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A of the IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41, Cr.PC;

(2) All police officers be provided with a check list containing specified sub-clauses under Section 41(1)(b)(ii);

(3) The police officer shall forward the check list duly filed and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;

(4) The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention;

(5) The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of police of the district for the reasons to be recorded in writing;

(6) Notice of appearance in terms of Section 41A of Cr.PC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the

District for the reasons to be recorded in writing;

(7) Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before High Court having territorial jurisdiction.

(8) Authorising detention without recording reasons as aforesaid by the judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

14. We hasten to add that the directions aforesaid shall not only apply to the cases under Section 498-A of the I.P.C. or Section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years; whether with or without fine.”

The petitioner filed anticipatory bail application before the Additional Sessions Judge, Fatehgarh Sahib and during the proceedings, it was submitted by the Investigating Officer that the petitioner was not cooperating with the investigation and his custodial interrogation was necessary for recovery of certain articles. By considering the submissions made by the Investigating Officer, the anticipatory bail application was also dismissed. It cannot be said that the petitioner was arrested unnecessarily. As per guideline No.6 of **Arnesh Kumar's case (supra)**, notice of appearance under Section 41A Cr.P.C. is required to be served upon the person against whom the FIR has been registered. The petitioner actively participated in the police inquiry and at that time, he was on interim

anticipatory bail. Recovery could not be effected from him and thereafter, his custodial interrogation was sought for effecting recovery. It was found in the inquiry that the complainant was not being allowed to enter into her house as her husband had already expired and the petitioner is brother-in-law of the complainant. The petitioner was also posted as ASI in the Police Department and he was threatening the complainant. The FIR was registered after detailed inquiry and after obtaining legal opinion of District Attorney, Legal. The arrest of the petitioner was necessary for effecting the recovery of certain articles.

Keeping in view the facts and law position as discussed above, there is no merit in the contentions raised by learned counsel for the petitioner and no ground is made out to initiate contempt proceedings against the respondent.

27.07.2017
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes