

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Contempt Case (C) No.510 of 2014

Gurvinder Singh Chadda, S/o Late Shri Mahendra Singh Chadda, aged about 52 years, R/o Shyam Nagar, Presently, known as Mother Teresa Ward, Raipur, Telibandha, District Raipur (C.G.)

Petitioner

Versus

1. K.R. Pisda, Secretary, State of Chhattisgarh, Department of Revenue, Mahanadi Bhawan, Mantralaya, New Raipur, Raipur (C.G.)
2. K.C. Verma, Additional Secretary, State of Chhattisgarh. Department of Revenue and Disaster Management, Mahanadi Bhawan, New Raipur, Raipur (C.G.)

---- Respondents/
Contemnors

For Petitioner: Mr. Kishore Bhaduri and Mr. Pawan Kesharwani,
Advocates.

For Respondents: Mr. Akash Pandey, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

17/09/2018

1. This contempt petition has been filed by the petitioner herein alleging non-compliance of order dated 31-10-2014 stating inter alia that despite the said order of this Court, lease of the petitioner has been cancelled on 5-12-2014 and his part of the suit property has already been bulldozed. Thus, a clear case is made out for civil contempt under Section 2(b) of the Contempt of Courts Act, 1971.
2. Return has been filed on behalf of respondent No.2 stating inter alia that order dated 5-12-2014 was passed bona fide as the order dated 31-10-2014 was never produced or communicated to the contemnors and the contemnors were not having any knowledge of the same as such, for want of knowledge, the order could not be complied with and

immediately after knowledge of the order dated 31-10-2014, the contemnors had stayed the order dated 5-12-2014 and also sought unconditional apology, as the order was never communicated to them.

3. Mr. Kishore Bhaduri, learned counsel appearing for the petitioner, would submit that order dated 31-10-2014 was passed in presence of counsel for respondents No.1 to 4 and 6 to 8 in the writ petition, despite that, the petitioner's lease has been cancelled and his part of building has been demolished which is flagrant violation of the order of this Court, as the State was duly represented and they must have informed the authorities and therefore it could not have been done. He relied upon the judgments of the Supreme Court in the matters of Hoshiar Singh and another v. Gurbachan and others¹, The Aligarh Municipal Board and others v. Ekka Tonga Mazdoor Union and others², Tapan Kumar Mukherjee v. Heromoni Mondal and another³ and J. Vasudevan v. T.R. Dhananjaya⁴.

4. Mr. Akash Pandey, learned counsel appearing for the respondents, would submit that since the order dated 31-10-2014 was never communicated to the respondents, they have stayed the order of communication of the order of cancelling the lease. It has also been filed along with the return as Annexure R-3 dated 17/19-12-2014. As such, it is a fit case where contempt case be closed as it is neither deliberate nor willful. He relied upon a decision of the Supreme Court in the matter of Suresh and others v. Imran Khan and others⁵.

5. I have heard learned counsel for the parties and considered their rival

1 AIR 1962 SC 1089

2 AIR 1970 SC 1767

3 AIR 1991 SC 281

4 AIR 1996 SC 137

5 1995 Supp (3) SCC 306

submissions and went through the record with utmost circumspection.

6. It is well settled that before a proceeding for contempt can succeed, it is of paramount importance to establish first, the service of the order of the Court said to have been disobeyed upon the person alleged to have committed contempt thereof; secondly, the precise act of contempt; thirdly, the precise responsibility of the contemnor in the act of contempt; and fourthly, the date of the alleged contempt being subsequent to the service of the order said to have been disobeyed. These are the four indispensable requisites and failure to establish any one of them must mean dismissal of the petition for contempt.
7. In **Hoshiair Singh** (supra), Their Lordships of the Supreme Court have authoritatively held that judgment or order should be served on the party against whom the order is granted and person cannot be held guilty of the contempt, if the order is not served to him and he had no knowledge about the order, it said to have been disobeyed and summarised the legal position as under: -

"The judgment or order should be served on the party personally, except in the following cases: (1) prohibitive orders, the drawing up of which is not completed; (2) orders embodying an undertaking to do an act by a named day; (3) orders to answer interrogatories or for discovery or inspection of documents; (4) where an order for substituted service has been made; (5) where the respondent has evaded service of the order.....

In order to justify committal for breach of a prohibitive order it is not necessary that the order should have been served upon the party against whom it has been granted, if it be proved that he had notice of the order aliunde, as by telegram. or newspaper, report, or otherwise, and knew that it was intended to be enforced, or if he consented to the order, or if he was present in Court when the order was pronounced., or when the motion was made, although he left before the order was pronounced.

The question of obedience or disobedience arises only after the party knows of the order and if the party does not know the order, no such question can arise."

8. In The Aligarh Municipal Board (supra), the Supreme Court has categorically held that in order to bring home a charge of contempt of court for disobeying its order, the complainant must prove that contemnors had knowledge of the order complained of beyond reasonable doubt. Paragraph eight of the report states as under: -

“8. ... In order to bring home a charge of contempt of court for disobeying orders of Courts those who assert that the alleged contemnors had knowledge of the order must prove this fact beyond reasonable doubt. As observed earlier it is of course not necessary to prove formal service of the order by official routine and knowledge of the exact order aliunde would suffice. In case of doubt, however, benefit ought to go to the person charged.”

9. Thus, in light of the aforesaid decisions of the Supreme Court, it is quite vivid that proceedings in the contempt are nature of quasi-judicial proceedings, it must be proved beyond doubt that the contemnors had knowledge of order passed by the Court to bring home the charge of contempt under Section 12 of the Contempt of Courts Act, 1971.
10. The question for consideration would be, whether the respondents were communicated with the order dated 31-10-2014 and they had the knowledge of that order and they have willfully disobeyed the order of this Court constituting civil contempt within the meaning of Section 2(b) of the Contempt of Courts Act, 1971.
11. It is correct to say that the order dated 31-10-2014 was passed in presence of counsel for the State and State authorities and it was directed that the lease granted to the petitioner on 3-8-1999 be not cancelled, but, however, the lease granted came to be cancelled on 5-12-2014 contrary to the order of this Court and part of the building was demolished. The contempt petitioner has filed the copies of notices served to the State authorities by this Court, but no document has been filed demonstrating that the order passed by this Court on 31-10-2014

was in fact communicated to the contemnors / respondents. It is true that the counsel representing the State ought to have communicated the order passed by this Court to the contemnors and he is under obligation to communicate the order to the respective State authorities, but in this case, the specific defence put forth by the contemnors is, they were never communicated about the order dated 31-10-2014 and as soon as the order was brought into their notice, they have stayed the order dated 5-12-2014 vide order dated 19-12-2014 filed as Annexure R-3.

12. The contemnors have filed their counter-affidavit on 20-12-2014 that they were never communicated with the copy of the order dated 31-10-2014, but no rejoinder-affidavit has been filed by the petitioner. However, an affidavit dated 3-2-2015 has been filed in which it has been stated by the petitioner that the order dated 31-10-2014 was communicated to all the respondents, but no document as to the service of order has been filed along with the contempt petition demonstrating acknowledgement by the contemnors or thereafter, except the copies of notices issued by this Court with the writ petition. It was the solemn duty cast on the part of the writ petitioner to communicate the order to the respondents / contemnors in order to make them responsible and liable to proceed for contempt which they have failed to comply.

13. In **Suresh** (supra), in identical fact-situation, the Supreme Court has held that in absence of evidence showing that litigant was aware of the prohibitory order, person cannot be punished for contempt under Section 2(b) of the Contempt of Courts Act, 1971. It was observed as under: -

“2. The proceedings in contempt are in the nature of quasi-criminal proceedings and it must be shown that the litigant in defiance or disobedience of the court's order proceeded to do any act which was in violation thereof.

Unless the litigant is aware of a prohibitory order made against him by the court there can be no desire or intention on his part to flout the court's order. Therefore, unless it is shown that the litigant was made aware of the order served on his lawyer it may not be possible to hold that despite the knowledge of the order he willfully decided to commit a breach of the order by acting contrary thereto. Proceedings in the nature of contempt being quasi-criminal it must be shown that the litigant was aware of the prohibitory order issued by the court and notwithstanding the same in breach thereof or in total disregard thereof he proceeded to continue with the construction. It being not disputed that there was no evidence to show that the lawyer to whom the prohibitory order was given had communicated that order in any manner whatsoever to the litigant, it is not possible to come to the conclusion that by continuing with the construction the litigant intended to commit a breach of the order or showed disrespect for the order. In that view of the matter if the High Court was disinclined to punish the litigant for contempt, be that under the Contempt of Courts Act, 1971 or under Article 215 of the Constitution of India, we see no reason why we should interfere with the impugned order in exercise of power under Article 136 of the Constitution. The special leave petition is, therefore, dismissed. No order on the application for impleadment.”

14. In view of the aforesaid legal position and for want of evidence to demonstrate that the respondents / contemnors were ever communicated with the order passed by this Court on 31-10-2014 and they had the knowledge of order dated 31-10-2014 on the date when they have allegedly violated the order of this Court, it cannot be held that the respondents / contemnors willfully disobeyed the order of this Court dated 31-10-2014 within the meaning of Section 2(b) of the Contempt of Courts Act, 1971.
15. Consequently, the contempt case is closed and the respondents are hereby discharged. No order to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge