

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2018

CORAM:

THE HONOURABLE MR. JUSTICE S. VAIDYANATHAN

Contempt Petition No.2714 of 2015

S.Selvakumar

... Petitioner

vs.

1. Vijayasanthi

2. Marie Christian @ Paul
Inspector of Police,
Thirunallar Police Station,
Karaikal District,
Puducherry State.

... Respondents

Contempt Petition filed under Section 11 of the Contempt of Courts Act, for the wilful disobedience of the order dated 06.10.2015 passed by this Court in CrI.O.P.No.23336 of 2015.

For Petitioner : Mr.T.Kannan

For 1st Respondent : Mr.R.Sankarasubbu

For 2nd Respondent : Mr.Bharat Chakravarthy
Public Prosecutor (Pondy)

O R D E R

This Contempt Petition is filed for the wilful disobedience of the order dated 06.10.2015 passed by this Court in CrI.O.P.No.23336 of 2015.

2. According to the Contempt Petitioner/Selvakumar,

his marriage with the 1st Respondent/Contemnor viz.

Vijayasanthi was solemnized on 30.01.2012 at Vedaranyam,

Nagapattinam District and through the wedlock, the 1st Respondent/Contemnor gave birth to a male child viz. S.Ravivarman, on 09.12.2012. Thereafter, due to some misunderstandings with the Contempt Petitioner, the 1st Respondent/Contemnor left her marital home on 28.03.2015, leaving her child there. However, she lodged a complaint before the 2nd Respondent/Police that the Contempt Petitioner took away her child aged 2 1/2 years without her consent and had also hurt her.

3. Later, the 2nd Respondent/Police registered a complaint in Crime No.99/2015 on 02.09.2015. Thereafter, the Contempt Petitioner filed CrI.O.P.No.23336 of 2015 seeking Anticipatory Bail and this Court, by an order dated 06.10.2015 granted Anticipatory Bail to the Contempt Petitioner subject to the condition that he shall hand over the child to the 1st Respondent/Contemnor within 48 hours, before the Investigation Officer from the date of receipt of a copy of the order. It was further observed in the said order that the Contempt Petitioner is entitled to have the child for two days during the weekends with the right of visitation of the child, which cannot be prevented by the 1st Respondent/Contemnor, who is the mother of the child.

4. It is further stated by the Contempt Petitioner that he complied with the order of this Court and handed over the child to the 1st Respondent/Contemnor on 11.10.2015 before the Investigation Officer. Thereafter, when the Contempt Petitioner went to the 1st Respondent/Contemnor's house at Thirunallur on 17.10.2015 to bring the child during the weekends, the 1st Respondent/Contemnor deliberately refused to show the child to him for two days. Hence, the Contempt Petitioner made a complaint on 17.10.2015 against the 1st Respondent/Contemnor and requested the 2nd respondent/Police to take action against her for disobeying the order of this Court made in Crl.O.P.No.23336 of 2015. Since there was no proper response on his complaint, the Contempt Petitioner lodged a complaint in this regard to the District Superintendent of Police, Karaikal on 26.10.2015 and also lodged complaints dated 31.10.2015 and 09.11.2015, respectively, to the S.S.P. Karaikal at Pondicherry. Since no action was taken on such complaints, the Contempt Petitioner is before this Court.

5. The 1st Respondent/Contemnor has filed a counter affidavit, wherein, she has stated that the Contempt Petitioner had kidnapped her son, Ravivarman, aged 3 years, forcefully on 31.08.2015 and that she lodged a complaint before the Inspector of Police, Thirunallar Police Station,

to regain the custody of her child and the same was registered in Crime No.99 of 2015. In this regard, she moved H.C.P.No.2336 of 2015 before this Court and as a counter blast, the Contempt Petitioner filed Crl.O.P.No.23336 of 2015 seeking Anticipatory Bail. According to the 1st Respondent/Contemnor, she was not aware of the order passed in Crl.O.P.No.23336 of 2015 and hence, she moved a Petition vide SR.No.25288 of 2016, seeking to modify the order passed therein and the said Petition is pending as on date, without being numbered.

6. It is the further case of the 1st Respondent/Contemnor, that her child is very weak and psychologically affected on seeing the grievous injuries inflicted on her by the Contempt Petitioner and that she never wilfully disobeyed the orders of this Court and sought modification of the order dated 06.10.2015 passed in Crl.O.P.No.23336 of 2015.

7. Mr.T.Kannan, learned counsel for the Contempt Petitioner submitted that during the pendency of the Habeas Corpus Petition and the Anticipatory Bail Petition, the Contempt Petitioner was asked to hand over the child to the 1st Respondent/Contemnor, which was complied with and hence, the Habeas Corpus Petition was closed. At no point of time, the Contempt Petitioner had the custody of the

child after handing over the child to the 1st Respondent/Contemnor, despite the order of this Court stating that the Contempt Petitioner is entitled to have the child for two days during the weekends.

8. It is his contention that the 1st Respondent/Contemnor refused to permit the Contempt Petitioner, who is the father of the child to take the child, spend time with him and to have visitation rights. According to him, the attempts of the Contempt Petitioner to spend time with the child even in the Court premises, were futile, as the 1st Respondent/Contemnor was always accompanying the child and never allowed the child to even look at his father. Thus, according to the learned counsel, the 1st Respondent/Contemnor wilfully committed contempt of the order of this Court, for which act, she shall be punished with appropriate fine. In this regard, he also cited a decision of the Delhi High Court in the case of Aman Oberoi vs. Tina Oberoi in Cont.Case (C) No.295/2008, dated 08.07.2008, wherein, it is held as under:

"6. Although, it is a clear case of contempt committed by the wife, but I consider that it would not be appropriate to send the wife to the jail, since that would cause further trauma of the child and it would be appropriate if a fine of Rs.25,000/- is imposed on the wife for defying the order of the Court. A fine of Rs.25,000/- is imposed on the respondent. In case of default

of depositing the fine, she shall suffer a simple imprisonment for a period of two weeks.

7. The sentence awarded shall remain suspended for a period of four weeks. She is given an opportunity to mend her ways and comply with the order of Court. If she continuously obeyed the directions of the Court regarding visitation rights, the sentence shall remain suspended. However, it is made clear that in future non-compliance of the order shall amount to further contempt of Court."

9. In reply, Mr.R.Sankarasubbu, learned counsel appearing for the 1st Respondent/Contemnor, submitted that pursuant to the order of this Court dated 06.10.2015 in CrI.O.P.No.23336 of 2015, the 1st Respondent/Contemnor made attempts to make the child see his father, but, she was humiliated by the Contempt Petitioner and hence, the child was scared to see his father. He further submitted that before filing of the said Anticipatory Bail Petition, since the child was taken by the Contempt Petitioner, the 1st Respondent/Contemnor had to file H.C.P.No.2336 of 2015 to retrieve the child and during the pendency of the said Habeas Corpus Petition, the child was handed over to the 1st Respondent/Contemnor and hence, the said Habeas Corpus Petition was closed.

<https://hcservices.ecourts.gov.in/hcservices/> 10. Learned counsel appearing for the 1st Respondent/Contemnor further submitted that during the

pendency of the Contempt Proceedings, on several hearings, the Contempt Petitioner as also the 1st Respondent/Contemnor were present before this Court and the child was also produced and taken to the Creche near the Family Court Campus, and when the Contempt Petitioner was asked to spend time with the child, unfortunately, the child did not co-operate and at no point of time, the 1st Respondent/Contemnor interfered with the child spending time with his father. According to the learned counsel, the 1st Respondent/Contemnor never disobeyed the order of this Court and that she has tendered an unconditional apology and sought modification of the order dated 06.10.2015 passed in CrI.O.P.No.23336 of 2015.

11. Heard the parties and their respective counsel. Perused the material documents available on record.

12. As regards contempt of the order of this Court, this Court enquired the 1st Respondent/Contemnor as to why she did not allow the Contempt Petitioner to have visitation rights of the child during the weekends. She replied that her child is of tender age and psychologically affected and hence, she is unable to part with the child even temporarily. She tendered apology and pleaded that she never committed wilful contempt of the order of this

13. It is true that during the pendency of the present Contempt Petition, the 1st Respondent/Contemnor brought the child to Court on all hearings and made attempts to spend time with his father. But, for reasons best known, the child, owing to his tender age, was not even willing to look at his father. In fact, on more than one occasion, when the child and his parents along with their respective counsel were in my Chambers, I made attempts to send the child with his father. But, the child was even willing to go with the Contempt Petitioner's Advocate and spend time with her, but was reluctant to go with his father.

14. As the dispute is between the husband and wife, the Court becomes the custodian of the child and in the interest of the child and the family, though several attempts were made for uniting the couple, unfortunately, all attempts failed. Since H.M.O.P. proceedings in respect of the parties are pending, this Court cannot render any finding in this Petition as to the custody of the child and it can be decided only in a Petition seeking custody of the child, that may be filed by the Contempt Petitioner.

15. This Court appreciates Mr.T.Kannan, learned counsel for the Contempt Petitioner and Mr.R.Sankarasubbu, learned counsel appearing for the 1st Respondent/Contemnor

for making genuine attempts in uniting the couple to lead a peaceful life. However, the Advocates, themselves have expressed that their attempts to unite the couple, became futile.

16. At the end of arguments, Mr.R.Sankarasubbu, learned counsel appearing for the 1st respondent/Contemnor submitted that even if this Court comes to the conclusion that there is contempt by the 1st respondent/Vijayasanthi, it is certainly not wilful and that she may be pardoned and in any event, she may not be imprisoned, taking into account the tender age of the child.

17. In a Contempt Petition, the Court will have to see as to whether the order under Contempt has been complied with or not. On the basis of the records available and the facts stated supra, it is seen that the 1st respondent/Contemnor has not complied with the order of this Court, by not allowing the Contempt Petitioner to spend time with the child during weekends. Though the 1st Respondent/Contemnor produced the child before this Court when attempts were made to unite the couple, there is no attempt made by the 1st Respondent/Contemnor to allow the child to be with his father. But for the Habeas Corpus Petition, the Contempt Petitioner would not have handed over the child to the 1st Respondent/Contemnor. Having achieved the purpose of getting the child by filing a

Habeas Corpus Petition, the 1st Respondent/Contemnor did not evince any interest to send the child with his father, in spite of the orders of this Court and hence, she has wilfully and deliberately disobeyed the order of this Court, and has thereby committed Civil contempt.

18. Hence, taking note of the totality of the circumstances and in view of the decision cited supra and the provisions under Section 12 of the Contempt of Courts Act, 1971, this Court imposes a sum of Rs.2,000/- (Rupees Two Thousand only) as fine, for contempt of the order of this Court, to be payable by the 1st Respondent/Contemnor in favour of Bala Vihar, No.10, Halls Road, Kilpauk, Chennai 600 010, on or before 20.03.2018 failing which, the Contemnor/Vijayasanthi will have to undergo simple imprisonment for a period of seven days.

19. Undoubtedly, husband and wife relationship between the Contempt Petitioner and the 1st Respondent/Contemnor has become strained and it certainly has an impact on their child, whose custody is a major issue now. If a child has to be grow up as a good human being, the love and affection of its father and mother are necessary. In the case on hand, the 1st respondent/mother of the child is quite adamant in sending the child with his father. This Court is not aware as to whether she has molded the child not to see or talk with his father. Even

assuming that the mother has poisoned the child's mind not to even look at him, certainly, such attitude of the mother is not going to help her. Even if she succeeds in getting the custody of the child, as time passes, the child will certainly crave for fatherly love and affection, by comparing himself with that of other children in the School and neighborhood. Eventually, the child will turn to be adamant and the 1st Respondent/mother of the child, as a single parent, will have to heed to all the wishes of the child, thereby, making the child a 'spoilt one'. This Court, not only in the interest of justice, but, with good conscience, advised the 1st Respondent/Contemnor in this regard, i.e. to allow the child spend time with his father.

20. It is made clear that any observation made by this Court touching the merits of the matter is only for the disposal of the Contempt Petition and it will not have any bearing in any of the Family Court matters pertaining to the dispute between the Contempt Petitioner and the 1st Respondent/Contemnor, as regards the custody of the child. As the 1st respondent alone has committed contempt of Court and no contempt is committed by the 2nd Respondent/Police, the 2nd Respondent is discharged from the Contempt proceedings.

This Contempt Petition is closed with the above directions and observations. Consequently, connected Sub. Application No.904 of 2015 is closed. List this matter 'for reporting compliance' on 26.03.2018.

SD/-
ASSISTANT REGISTRAR (COMM.CASES)
aeb

//Certified to be true copy//

Dated at Madras this the day of 2018.

COURT OFFICER (O.S.)

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kr/CO/19/02/2018

one cc to Mr. T. Kannan, Advocate.SR.No.1114.

One cc to Mr. R. Sankarasubhu Advocate,SR, No.1117.

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