

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

COCP No.2951 of 2015

Date of Decision: October 25th, 2018

Dr. O.P. Singla

...Petitioner

Versus

Shri Lalit Jhamb and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. S.S. Behl, Advocate
for the petitioner.

Mr. Naveen Dahiya, Advocate
for Mr. Ravinder Malik, Advocate
for the respondents.

AUGUSTINE GEORGE MASIH, J.

This contempt petition has been filed under Article 215 of the Constitution of India read with Section 12 of the Contempt of Courts Act, 1971, for punishing the respondents for willfully, deliberately and intentionally misstating and disobeying the order dated 23.07.2015 (Annexure P-1) passed by this Court in CRM-M No.23849 of 2015 and thereafter dishonouring the undertaking given by the respondents in Court on 01.09.2015 (Annexure P-2) in CRM No.27740 of 2015 in CRM-M No.23849 of 2015 that he would deposit ₹50 lakh with the Registrar of this Court in the name of the petitioner herein.

2. Briefly the facts are that the petitioner, a senior citizen and a practicing doctor at Ambala, the respondents being his patients knew that they were dealing in real estate business. They allured him with a fraudulent and deceitful intention to purchase 50 kanals of land at Village Kardhan, Tehsil and District Ambala at the rate of ₹1 lakh per kanal. Petitioner, believing the respondents, agreed to purchase the said land and made payment of ₹50 lakh by way of various cheques in the name of the

respondents, which were encashed. When the petitioner insisted upon

documents, the respondents prepared an agreement to sell for 8 kanals only and on insistence by the petitioner, they stated and assured that there has been some delay but promised to get the agreement to sell executed in full soon. Instead of transferring the land in the name of the petitioner or executing the agreement for sale, respondents demanded various amounts from the petitioner, which were paid through cheques on different dates. At times, they threatened the petitioner to cancel the special power of attorney, which had been executed in favour of the petitioner. Respondents, on one pretext or the other, had been delaying the matter, when ultimately the petitioner came to know that the respondents have sold the same land, which the petitioner was being promised, to one Surinder Gupta, who had got registered an FIR against the respondents. He, therefore, got registered FIR No.199 dated 26.06.2015 under Sections 406, 420, 383, 506, 120-B of IPC at Police Station Ambala Cantt. On registration of the FIR, respondents firstly approached the Sessions Court at Ambala seeking anticipatory bail, which was rejected by the learned Additional Sessions Judge vide order dated 15.07.2015.

3. Respondents then filed petition for grant of anticipatory bail in this Court bearing CRM-M No.23849 of 2015, which came up for hearing on 23.07.2015, when this Court on the statement given by the counsel for the respondents, on instructions from one Rohtash Chaudhary, who was a relation of the respondents, that the petitioners (respondents herein) were willing to deposit ₹50 lakh without prejudice to the rights in the controversy between the parties, issued notice of motion to the State believing the statement given by the counsel for the respondents and ordered that the needful be done within a period of one month and the amount of ₹50 lakh be deposited with the Registrar of this Court in the name of the complainant

(petitioner herein), who shall retain the same in a fixed deposit and the arrest of the respondents shall remain stayed subject to certain conditions. The Court further made it clear that in the eventuality of the respondents not adhering to the statement made before the Court, they shall be liable for all consequences arising out of the misstatement made before the Court and shall also be construed as an obstruction in the course of justice.

4. Respondents filed SLP No.6663 of 2015 (Criminal) challenging the order dated 23.07.2015 (Annexure P-1) passed by this Court taking a plea therein that they have never instructed Rohtash Chaudhary to make such a statement or to give an undertaking on their behalf. The said Special Leave Petition was dismissed by the Supreme Court on 14.08.2015. Without disclosing this fact of dismissal of SLP, respondents filed an application i.e. CRM No.27740 of 2015 in the main case for extension of time to fulfill the undertaking which has been given to the Court on behalf of the respondents. The said application came up for hearing before the Court on 01.09.2015, where applicant-respondent No.1 herein, who was present in Court, gave an undertaking in his hand in Court that he will pay the amount as indicated in the order dated 23.07.2015 with the Registrar of this Court on or before 22.09.2015. The said undertaking was taken on record and the time was accordingly extended as prayed.

5. Despite the undertaking given to this Court, the respondents did not comply with the same as no amount, as committed, was deposited, however, hearing was deferred to 22.09.2015, when on this date, on the statement of the counsel for the respondents-contemners that an agreement has been entered into between the parties that they will execute the sale deed of the property in dispute with 18% cut-off in favour of the petitioner-complainant within ten days of payment of remaining amount of

₹15 lakh and will hand over to the complainant the property in dispute.

6. Petitioner filed the present contempt petition on 29.09.2015, which came up for hearing on 20.11.2015, when notice of motion in the present contempt petition was issued to the respondents.

7. Miscellaneous application i.e. CRM No.34660 of 2015 was preferred by the petitioner for recall of the order dated 29.09.2015, which was allowed on 22.01.2016 and the case was ordered to be listed as per roster. Ultimately the main petition i.e. CRM-M No.23489 of 2015 came up for hearing on 23.07.2016 (Annexure R-10), when the Court keeping in view the various orders which have been passed by this Court and the facts and circumstances of the case, proceeded to dismiss the same by observing that the respondents did not have a valid title to transfer the land in favour of the complainant and not only the present case has been registered against the respondents but there has been various cases registered against them.

8. Reply to the contempt petition has been filed. Respondent No.1-Lalit Jhamb has taken a plea that he had also not given any instruction to Rohtash Chaudhary to the effect that he was willing to deposit ₹50 lakh without prejudice to the rights in the controversy between the parties. It has also been asserted that the allegations against the respondents are baseless and false, rather after the inquiry which has been held, the police authorities have come to a conclusion that the allegations are baseless and the dispute, if any, was of a civil nature and no criminal offence is made out. Respondent No.2 asserts that she had not figured during the proceedings at any stage when the case for grant of anticipatory bail was listed before the Court. She had neither instructed Rohtash Chaudhary nor empowered him to give an undertaking on her

behalf at any stage. It has further been pleaded that it was her husband Lalit Jhamb-respondent No.1, who has given an undertaking in the Court on 01.09.2015 in his own hand and, therefore, she should not be held liable for having violated any undertaking given to this Court and thus, should be discharged.

9. The present contempt petition came up for hearing on various dates and, when taken up on 20.09.2018, following order was passed:-

“On issuance of theailable warrants and in compliance thereto, the report, which has been submitted by the Registry, reads as follows:-

“Bailable warrant issued to respondent No. 1 received back with the report that he is confined in Raipur Jail, Chhatisgarh. In pursuance of production warrant issued by CJM, Ambala, respondent No. 1 Lalit Jhamb has been produced. The Superintendent of Jail, Raipur has been directed to produce Lalit Jhamb before the Hon'ble Court on date fixed. Bailable warrant to respondent No. 2 has been served.”

In compliance with the order dated 13.08.2018, Mr. Diyan Sahare, Constable No. 1685, Police Lines Raipur, has come present in Court and has produced Lalit Jhamb-respondent No. 1 in custody.

On 24.01.2017, following order was passed:-

“It is apparent that both husband and wife i.e. Lalit Jhamb (accused No.1)/respondent no.1 and Smt.Kanchan (accused no.2)/ respondent no.2 have violated the terms of conditional anticipatory bail granted to them vide order dated 23.7.2015 (P-1) subject to deposit of Rs.50 lacs in the Registry of this Court. They did not deposit the aforesaid amount as stipulated. However, the period of deposit was subsequently extended on the undertaking of Lalit Jhamb till 22.9.2015. Still the required deposit in terms of the conditional bail order (P-1) was never made wherein it is clearly noticed that non-deposit would visit the accused party with certain consequences.

Accused no.1-Lalit Jhamb was subsequently arrested and is stated to be in judicial custody in the present FIR No.199 dated 26.6.2015 under Sections 406,420, 383,506,120-B IPC, PS Ambala Cantt.

After hearing counsel for the parties, it is evident that both Lalit Jhamb and Smt.Kanchan have violated the conditions of anticipatory bail availed by them.

Adjourned to 13.2.2017 on which date Smt.Kanchan shall remain present in Court for the purpose of sentence.

Learned counsel for the respondents undertakes to inform the respondent-Smt.Kanchan for compliance of today's order.”

A perusal of the above order would show that both the respondents have been virtually held guilty for violation of the conditions of anticipatory bail availed by them.

Request for adjournment has been made by the proxy counsel for the respondents on behalf of Mr. Ravinder Malik, counsel for the respondents, who is stated to be unwell and, therefore, had to leave the Court, which is accepted and the hearing of the case is deferred to 21.09.2018.

In view of the above, direction is issued to Mr. Diyan Sahare, Constable No.1685, Police Lines Raipur, Chhatisgarh to produce Lalit Jhamb-respondent No. 1 before the Superintendent, Model Jail, Buraill today itself, who shall, on such production, admit and lodge Lalit Jhambrespondent No. 1 in Model Jail, Buraill to be produced in custody in this Court tomorrow i.e. 21.09.2018 at 2 P.M.

Mr. Diyan Sahare, Constable No.1685, Police Lines Raipur, Chhatisgarh shall also appear before this Court while respondent No. 1-Lalit Jhamb is produced by the Jail authorities.

It goes without saying that respondent No. 2, who is present in Court today, shall also be present in Court tomorrow.

*Copy of the order be given **dasti** under signatures of the Bench Secretary of this Court.”*

In pursuance to the above order, respondent No.1-Mr. Lalit Jhamb was produced in Court and respondent No.2-Smt. Kanchan had also appeared in Court. Both the respondents were made aware of the charges against them. Respondent No.1-Mr. Lalit Jhamb had shown his helplessness to deposit the amount before the Court and admitted that he is confined in Raipur Jail, Chhattisgarh, and also admitted that there are various criminal cases registered against both the respondents. He prays for a lenient view to be taken in the matter. Respondent No.2-Smt. Kanchan has taken a plea that she had not given any undertaking to the Court and, therefore, has not committed any contempt of Court and, thus, be discharged.

10. Counsel for the parties as well as the respondents in person were heard and thereafter, the case has been adjourned for pronouncement of the order for today.

11. Having considered the facts and circumstances of the case, the arguments and submissions of the counsel for the parties as also the pleas of the respondents who appeared in Court, this Court has gone through the various orders which have been passed by this Court in CRM-M No.238849 of 2015 from time to time and has also observed the conduct of the parties, wherein the petitioners have sought anticipatory bail from this Court.

12. First two orders, which have been passed by this Court, go to the root of the issue involved in the case i.e. with regard to the undertaking which has been given to the Court, which is alleged to have been violated by the respondents. These two orders dated 23.07.2015 and 01.09.2015 (Annexures P-1 and P-2 respectively) as passed by this Court in CRM-M No.23849 of 2015 read as follows:-

(A) ORDER dated 23.07.2015

“Learned counsel for the petitioners on instructions from one Rohtash Chaudhary, who is a relation of the petitioners, states that the petitioners are willing to deposit a sum of Rs.50 lakh without prejudice to their rights in the controversy between the parties.

Notice of motion for 22.9.2015.

Let the needful be done and the amount of Rs.50 lakh be deposited before the Registrar of this Court in the name of the complainant. The Registrar shall retain this amount in a fixed deposit till further orders. If the said amount is deposited in terms of this order within one month from today, the arrest of the petitioners shall remain stayed subject to the following conditions:-

- i) They will make themselves available for investigation as and when required to do so.*
- ii) They will not leave the country without the prior permission of the Court.*
- iii) They will not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police official.*

It has been made clear to the learned counsel for the petitioners that in the eventuality of the petitioners not adhering to the statement made before this Court, they shall be liable for all consequences arising out of the mis-statement made before this Court which shall be construed to be an obstruction in the course of justice.”

(B) ORDER dated 01.09.2018

CRM No.27740 of 2015 in CRM-M-No.23849 of 2015

“The applicant-petitioner Lalit Jhamb is present in Court. He has submitted an undertaking under his hand that he will pay the amount as indicated in the order dated 23.7.2015 with the Registrar of this Court on or before 22.9.2015. The said undertaking is taken on record.

List on 22.9.2015, the date already fixed.”

The first order indicates that the counsel for the respondents had made a statement on instructions of a relation of the respondents. Respondents availed of the benefit of the said order as their arrest was stayed but they failed to comply with the conditions imposed by the Court, rather approached the Supreme Court by filing SLP No.6663 of 2015 by taking a plea that no such instructions were given by them to their relative Rohtash Chaudhary that they would deposit the amount of ₹50 lakh, which was dismissed on 14.08.2015. It is thereafter that an application i.e. CRM No.27740 of 2015 was filed by the respondents without mentioning the filing of the SLP and its dismissal, which led to the passing of the order dated 01.09.2015, wherein the applicant i.e. respondent No.1 herein, who was present in Court, furnished an undertaking under his own hand that he will pay the amount as indicated in the order dated 23.07.2015 with the Registrar of this Court on or before 22.09.2015, which undertaking was taken on record. This fact is not disputed that respondent No.1 has indeed given an undertaking in writing to this Court in his own hand. It is also not disputed that the benefit of the order dated 23.07.2015 was availed of by both the petitioners i.e. stay of the arrest of the petitioners, which continued till the dismissal of their petition i.e. CRM-M No.23849 of 2015 for grant of anticipatory bail by this Court on 23.07.2016.

13. It would not be out of way to mention here that while obtaining the order dated 01.09.2015, nothing was mentioned in the application i.e. CRM No.27740 of 2015 preferred by respondent No.1, where prayer was for extension of time to fulfill the undertaking given to the Court, by the respondents about the filing of the SLP or dismissal thereof. What, therefore, can be culled out from the above facts is that both the respondents had availed of the benefit of the order dated 23.07.2015 passed by this

Court, whereby their arrest was stayed till 22.09.2015 initially and thereafter when it was extended from time to time, on one pretext or the other at the request of the petitioners to do particular thing or act, which was not done showing the *mala fide* intention of the respondents, till the dismissal of their petition on 23.07.2016.

14. Hon'ble Supreme Court has in various judgments such as *Sahdeo @ Sahdeo Singh Versus State of U.P. and others 2010(3) SCC 705*, *Dr. (Mrs.) Roshan Sam Boyce Versus B.R. Cotton Mills Ltd. and others 1990(2) SCC 636* laid out the principles, nature of the proceedings where the proceedings for contempt can be initiated, burden of proof, procedure which can be followed and thereafter the conclusion to be drawn on the basis of the pleadings and evidence on record and finally the punishment, if any. Although while exercising powers under Article 215 of the Constitution of India, the High Court has to evolve its own procedure but the principles of natural justice are mandated to be followed with much greater vigour than in other proceedings, especially in the light of the fact that these proceedings are quasi criminal in nature. Therefore, the burden of proof as well as the standard of such proof in contempt proceedings have to be the same as are required in criminal proceedings, meaning thereby the charges not only have to be made clear to the person, who has been arrayed as a contemner but opportunity has also to be given to him to meet the same despite the procedure being summary. Formal framing of charge may not be necessary but what is required is that the gist of specific allegations must be brought to the notice of the contemner and he should also be made aware of his right to defend himself, which would include leading evidence and even cross-examining the witnesses at the request or demand of the respondent, who have come forward to prove allegations against such contemner.

While coming to a conclusion that there has been intentional violation of the orders or undertaking given to the Court, the Court must be fully satisfied, rather sure that the person was not under any misapprehension as to the scope of the order and that the order was unambiguous and thus, capable of only one interpretation and that person despite that had intentionally disobeyed the order. Meaning thereby the party was under no misapprehension as to the scope of the order and there was no mistake or inadvertence or misunderstanding of the meaning and purport of the order and rather the act or omission was intentional and deliberate. The same principles would apply where an undertaking is given to the Court, which the party is aware that it would not be able to comply with, leading to the breach of the same as the undertaking is given to the Court on the faith, which the Court reposes in such a undertaker believing it to be correct and grants a benefit or sanctions a particular course of action, which leads to a conclusion that a misconduct has been committed amounting to contempt. Obviously the intention on the part of the person followed by the conduct and act or omission is the core to the conclusion to be drawn by the Court.

15. A person on appearance either in person or through a counsel or even through an affidavit in Court without personally appearing, gives an oral or written undertaking to Court or when he clearly and expressly conveys the same which finds mention in the Court order and fails to honour that undertaking then a willful breach of the undertaking would amount to an offence of the contempt of Court. This is so far the reason that such person, a contemner now, by making a false representation, has obtained the benefit by playing a fraud on the Court itself and, therefore,

institution into disrespect and disrepute. It is the duty of the Court to punish a person who tries to pollute and obstruct the course of justice or brings the judicial institution to disrepute to serve the dual purpose of the vindication of the public interest and to restore the dignity and reputation of the Court. This power, obviously, has to be exercised with great caution, care and circumspection.

16. In the present case, the detailed facts as discussed above, leads us to a conclusion that there has been a deliberate breach of undertaking given to the Court, which at least respondent No.1 was fully aware that he would not be able to honour and thereafter also when the time which was fixed by this Court had elapsed, without disclosing the filing of the SLP and the dismissal thereof, moved an application for extension of time, which benefit was also granted by this Court on a written undertaking given to the Court in his own hand, which had not been fulfilled although the benefit of the orders was taken and availed of by the respondents, leads to a conclusion that respondent No.1 has intentionally and deliberately committed a willful breach of undertaking given to the Court which amounts to the contempt of this Court.

17. The above conclusion is further fortified from the fact that after passing of the order dated 23.07.2015 by this Court, whereby on instructions of a relative, counsel had stated that the petitioners would deposit ₹50 lakh with the Registrar within one month, challenged the same in SLP before the Hon'ble Supreme Court by taking a plea that no such instructions were given to the relative, which was dismissed. It is, thereafter, an application was filed for extension of time where written

18. As regards respondent No.2, since she has not given any undertaking to the Court and had not given any affidavit in the petition, which was filed for grant of anticipatory bail i.e. CRM-M No.23849 of 2015, this Court giving her benefit of doubt despite she having availed of the fruits of the order dated 23.07.2015, order dated 01.09.2015 passed in CRM No.27740 of 2015 in CRM-M No.23849 of 2015, discharges her from the charges.

19. Respondent No.1-Mr. Lalit Jhamb, who has been produced in custody in Court by Gauri Shankar Sahu, Constable No.2106, Police Lines, Raipur, Chhattisgarh, in compliance with the order dated 21.09.2018, is held guilty for contempt of Court punishable under Section 12 of the Contempt of Courts Act.

20. Let he be heard on the quantum of sentence at 02:00 PM.

October 25th, 2018

Puneet

**(AUGUSTINE GEORGE MASIH)
JUDGE**

Present: Mr. S.S. Behl, Advocate
for the petitioner.

Ms. Kiranjeet Kaur, Advocate
for Mr. Ravinder Malik, Advocate
for the respondents.

I have heard the submissions made by learned counsel for the petitioner as also the counsel for the contemner and the contemner as well, who is present in Court as he has been produced in custody by Gauri Shankar Sahu, Constable No.2106, Police Lines, Raipur, Chhattisgarh.

be imposed upon the petitioner for his conduct, especially keeping in view the fact that he is involved in other similar cases as well.

On the other hand, learned counsel for the contemner prays for a lenient view to be taken in the light of the fact that respondent No.1- Lalit Jhamb is suffering from heart ailment and is in custody since long. Contemner has also made a request that it was a mistake committed by him and he would not repeat the same ever.

Having considered the matter in the totality of facts and circumstances and as per the submissions of the counsel as well as the contemner, respondent No.1-contemner deserves a stern punishment to be given to him because of he having, not only, given a written undertaking to this Court, thereafter, made various commitments to the Court which were not honoured by him. However, in the light of the fact that the contemner is suffering from heart disease, taking a lenient view, he is punished with a simple imprisonment for a term of 15 days with fine of ₹2,000/- and in default of payment of fine, to further undergo simple imprisonment for five days. The order of punishment shall remain in abeyance for a period of 30 days for enabling respondent No.1-Mr. Lalit Jhamb to avail of his remedy of statutory appeal.

Custody of the contemner is handed over to Gauri Shankar Sahu, Constable No.2106, Police Lines, Raipur, Chhattisgarh, who shall take the contemner to Raipur Central Jail, Chhattisgarh, from where he has been brought in compliance with the order passed by this Court on 21.09.2018. In case the contemner is released on bail in the case in which he is in custody in said Jail prior to expiry of 30 days for which the sentence has been suspended as above, he would be released from custody in this

matter on furnishing his bail/surety bonds to the satisfaction of

Chief Judicial Magistrate, Ambala.

Copy of this order be given ***dasti*** to the contemner as well as Gauri Shankar Sahu, Constable No.2106, Police Lines, Raipur, Chhattisgarh, under signatures of Bench Secretary of this Court.

The contempt petition stands disposed of with above observations.

October 25th, 2018
Puneet

(AUGUSTINE GEORGE MASI H)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: Yes