

HIGH COURT OF CHHATTISGARH, BILASPUR**Contempt Case (C) No. 634 of 2017**

Ku. Kamini Mittal, daughter of late Shri R.N. Mittal, aged about 42 years,
resident of Moti Bag, Raipur, District Raipur (C.G.)

----Applicant

Versus

1. Santosh Pandey, The Upper Commissioner, Municipal Corporation, Raipur, District Raipur (C.G.)
2. Jai Shankar Uraon, The Tahsildar, Raipur, District Raipur (C.G.)
3. Sanjay Shukla, The Superintendent of Police, Raipur, District Raipur (C.G.)
4. Virendra Chaturvedi, Station House Officer, Police Station City Kotwali, Raipur, District Raipur (C.G.)

---- Respondents

For Petitioner	:	Mr. A.P. Sharma, Advocate.
For Respondent No. 1	:	Mr. Sourabh Shrama, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

03/01/2019

(1) Alleging that the respondents have not complied with the orders and directions issued by this court in W.P. (C) No. 2076 of 2017, dated 27.07.2017, the complainant is before this court in this contempt petition.

(2) Learned counsel appearing for the respondent No. 1 would submit that the respondent No.1 has moved the application for vacating interim relief dated 27.07.2018 and till the case is taken up for hearing on the application for vacating stay, contempt petition cannot be proceeded for hearing as per judgment of the Supreme Court in the

matter of **State of J and K Vs. Mohd. Yaqoob Khan and others**¹

(3) On the other hand, counsel for the petitioner would submit that there is no legal bar that contempt petition would not lie, till the application for vacating stay filed by the respondent is decided.

(4) I have heard learned counsel appearing for the parties.

(5) In the matter of **State of J & K Vs. Mohd. Yaqoob Khan & others (supra)**, their Lordships of the Supreme Court have held that so long the stay matter in the writ petition was not finally disposed of, the further proceeding in the contempt case was itself misconceived and no orders therein should have been passed. Relevant paragraphs of the report state as under :-

“6. We do not agree. The scope of a contempt proceeding is very different from that of the pending main case yet to be heard and disposed of (in future). Besides, the respondents in a pending case are at a disadvantage if they are called upon to meet the merits of the claim in a contempt proceeding at the risk of being punished. It is, therefore, not right to suggest that it should be assumed that the initial order of stay got confirmed by the subsequent orders passed in the contempt matter.

7. We, therefore, hold that the High Court should have first taken up the stay matter without any threat to the respondents in the writ case of being punished for contempt. Only after disposing it of, the other case should have been taken up. It is further significant to note that the respondents before the High Court were raising a serious objection disputing the claim of the writ petitioner. Therefore, an order in the nature of mandatory direction could not have been justified unless the court was in a position to consider the objections and record a finding, prima facie in nature, in favour of the writ petitioner. Besides challenging the claim on merits, the respondent was entitled to raise a plea of non-maintainability of a writ application filed for the purpose of executing a decree. It appears that at an earlier stage the decree in question was actually put in execution when the parties are said to have entered into a compromise. According to the case of the State the entire liability under the decree (read with the compromise) has already been discharged. The dispute, therefore, will be covered by Section

1 (1992) 4 SCC 167

47 of the Code of Civil Procedure. It will be a serious question to consider whether in these circumstances the writ petitioner was entitled to maintain his application under Article 226 of the Constitution at all. We do not want to decide any of these controversies between the parties at this stage except holding that the orders passed in the contempt proceeding were not justified, being premature, and must, therefore, be entirely ignored. The High Court should first take up the stay matter in the writ case, and dispose it of by an appropriate order. Only thereafter it shall proceed to consider whether the State and its authorities could be accused of being guilty of having committed contempt of court.”

(6) Reverting to the facts of the case in light of the principles of law laid down by the Supreme Court in the above-cited case (*supra*), as stated at the bar application for vacating stay filed on behalf of respondent No. 1 is pending consideration before the writ Court and the said application has to be considered and decided by the Writ Court and, therefore, instant contempt petition cannot be proceed further. However, the petitioner is at liberty to repeat the contempt petition, if the application for vacating stay is finally considered by the Writ Court and occasion so arises.

(7) With the aforesaid liberty, the contempt petition is closed.

Sd/-
(Sanjay K. Agrawal)
Judge

D/-

