

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

COCN No. 468 of 2018

Date of Decision: 10.12.2019

Bharat

.....Petitioner

Versus

Sh. Shyam Sunder Prasad

.....Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. V.K. Jindal, Advocate
for the petitioner.

Mr. Deepak Manchanda, Addl. AG Haryana.

AVNEESH JHINGAN, J.(oral)

The petitioner was convicted and sentenced in case bearing FIR No. 414 dated 6.1.2004 registered at Police Station City Bhiwani under Section 302 read with Section 34 IPC. He was to undergo life imprisonment and to pay a fine of Rs.10,000/-. The appeal filed against the conviction was dismissed. The petitioner relying upon the policy for pre-mature of release of the life convict, made a request vide letter dated 12.4.2002, the same was considered by the State Level Committee but was declined being not covered under para 2(a) (xiii) of the Policy of 2002.

Aggrieved of the said order, criminal writ petition No. 558 of 2017 was filed. The writ petition was allowed on 1.11.2017, the order dated 3.4.2017 rejecting the request was set aside. The respondents were directed to reconsider the case of the petitioner for his pre-mature release in accordance with law. The needful was to be done within six weeks from the date of receipt of certified copy of the order.

The present petition is filed pleading wilful disobedience of direction of this Court as the needful was not done within time prescribed.

Pursuant to notice, reply by way of affidavit was filed, annexing order dated 10.4.2018 whereby the petitioner has been ordered to be released pre-maturely. It is pleaded that he was released from District Jail , Bhiwani, on 2.5.2018.

Learned counsel for the petitioner submits that directions of this Court were to do the needful within six weeks and there is delay in doing needful.

Learned State counsel submits that release cases are to be dealt with by State level Committee. It was circulated on 22.12.2017, the matter was taken up by the Committee and thereafter an order was passed. It is submitted that due to procedural requirements and number of members involved in the Committee, the delay had occurred.

Considering the fact that the petitioner has been pre-maturely released and in view of the explanation put forth, no case is made out for initiating contempt proceedings against respondent.

The law is well settled that it is not in every case that contempt is to be initiated unless there is wilful disobedience of directions of this Court. Reliance is placed upon decision of Apex Court in **Niaz Mohammad and others Versus State of Haryana, 1994(6) SCC 332**, wherein it was held as under:

"9. Section 2(b) of the Contempt of Court Act, 1971 (hereinafter referred to as 'the Act') defines "Civil Contempt" to mean "wilful disobedience to any judgment, decree, direction, order, writ, or other process of a court...". Where the contempt consists in failure to comply with or carry out an order of the court made in favour of the party, it is a civil contempt. The person or persons in whose favour such order or direction has been made can move the Court for initiating proceeding for contempt against the

alleged contemner, with a view to enforce the right flowing from the order or direction in question. But such a proceeding is not like an execution proceeding under CPC. The party in whose favour an order has been passed, is entitled to the benefit of such order. The Court while considering the issue as to whether the alleged contemner should be punished for not having complied and carried out the direction of the Court, has to take into consideration all facts and circumstances of a particular case. That is why the framers of the Act while defining civil contempt, have said that it must be willful disobedience to any judgment, decree, direction, order, writ or other process of a court. Before a contemner is punished for non compliance of the direction of a court the Court must not only be satisfied about the disobedience of any judgment, decree, direction or writ but should also be satisfied that such disobedience was willful and intentional. The Civil Court while executing a decree against the judgment debtor is not concerned and bothered whether the disobedience to any judgment, or decree, was willful. Once a decree has been passed it is the duty of the court to execute the decree whatever may be consequences thereof. But while examining the grievance of the person who has invoked the jurisdiction of the Court to initiate the proceeding for contempt for disobedience of its order, before any such contemner is held guilty and punished, the Court has to record a finding that such disobedience was willful and intentional. If from the circumstances of a particular case, brought to the notice of the court, the Court is satisfied that although there has been a disobedience but such disobedience is the result of some compelling circumstances which it was not possible for the contemner to comply with the order, the Court may not punish the alleged contemner."

There is nothing on record to establish that there is intentional or wilful disobedience of direction of this Court.

Dismissed.

However, the petitioner shall be at liberty to avail remedy in accordance with law for redressal of the surviving grievance if any.

10.12.2019
reema

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable:	No