

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

CR No.2322 of 2020 (O & M)

Date of Decision: 12.10.2020

Nilambari Vijay Jagadale

...Petitioner

Versus

Dayanand Saini

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Gautam Dutt, Advocate,
for the petitioner.
(Presence marked through video conference).

ARUN MONGA, J. (ORAL)

An unconditional apology by petitioner Ms. Nilambari Vijay Jagadale, qua the contempt reference order assailed herein, has been tendered in course of hearing through her affidavit dated 10.10.2020. A soft copy of the same has been sent via an e-mail due to pandemic restrictions. Let a hard copy thereof be filed in the Registry.

2. Petition herein is for setting aside impugned order dated 18.03.2020 passed by learned Judicial Magistrate 1st Class, UT, Chandigarh, whereby it has been held that petitioner, the then SSP, committed civil contempt punishable under section 12 of the Contempt of Court Act, 1971(for brevity, the Act). In the premise, JMIC referred the matter to this Court for taking further appropriate against her/contemnor, for committing violation of his orders dated 01.06.2017, 15.07.2017, 31.08.2017, 30.01.2018 and 05.04.2018,

3. On a query of this court, it transpires that so far, no reference as contemplated in the impugned order, has been received in this Court from the learned Judicial Magistrate, for carrying out further contempt proceedings under the Act.

4. Succinct background first. Petitioner is an IPS Officer from Punjab Cadre and was posted as Senior Superintendent of Police, UT, Chandigarh on deputation till 21.8.2020. Currently she is posted in her parent cadre as AIG, Cyber Crime cum Director, Digital Investigation Training and Analysis Centre (DITAC) and State Crime Records Bureau (SCRB), Punjab Police. Impugned order shows that in a criminal case bearing FIR No.476 dated 25.08.2008, registered under Sections 406, 467, 468 and 120-B IPC at Police Station Sector 39, Chandigarh, an incomplete challan had been presented by the Investigating officer SI Harjinder Singh. On 25.03.2009, IO suffered a statement before trial Court/JMIC that he would presenting a supplementary challan after obtaining the original documents viz. promissory notes, cheques and affidavits which had not been annexed with the challan. However, supplementary challan was not presented. The complainant filed an application for further investigation in the matter and presenting supplementary challan. The said application was allowed on 01.03.2017. A direction was given to SI Harjinder Singh, EOW to further investigate the matter and present the supplementary challan. Notwithstanding, despite lapse of more than 8 years of registration of FIR, the Investigating agency did not present supplementary challan. Vide JMIC orders dated 01.06.2017, 15.07.2017, 31.08.2017, 30.01.2018 and 05.04.2018, the SSP/petitioner was asked to personally look into the matter and take further necessary action. Yet, nothing happened. Neither supplementary challan was presented nor did the petitioner even respond or appear before the trial Court.

5. In the aforesaid premise, complainant moved an application dated 22.10.2018 before the Judicial Magistrate for initiating contempt proceedings against the petitioner and three others (including I.O. Lakhvir Singh, SI,

Economic Offences Wing, Chandigarh). Reply thereto was filed but being not satisfied with it, impugned order was then passed by the Judicial Magistrate.

6. I have heard learned counsel for the petitioner and gone through the record of case. Contempt reference to a High Court by a court subordinate to it and/or further contempt proceedings thereof is essentially a matter between contemnor and the court. That apart, having sifted through the case record, which *ex facie* speaks for itself, no notice to respondent (complainant in trial court) in the present proceedings is deemed necessary by this court.

7. At the outset, learned counsel argues that the Court below had exceeded its jurisdiction under Section 10/ 12 of the Act by hearing the contempt application and returning the finding on the said application. Section 10 *ibid* does not confer any power on trial court to take cognizance and record findings, as has been done by the Judicial Magistrate. It is contended that this power vests only in the High Court. It is submitted that the matter remained pending with the Judicial Magistrate, without issuance of notice, for more than a year from the date of the complainant's application dated 22.10.2018. Its notice was belatedly issued to the petitioner on 04.02.2020.

8. It is further submitted that the reply filed in the contempt application brought forth all the factual aspects, including an order dated 22.10.2018, Annexure P/17, passed by a co-ordinate Bench of this Court in CRM-M 50468 of 2018, issuing certain directions, which are being complied with.

9. Learned counsel contends that four of the orders of the Judicial Magistrate, which the petitioner is alleged to have violated, were also part of the said CRM-M 50468 of 2018 before this court. He further submits that this Court while disposing of said petition (CRM-M 50468 of 2018) observed that the prosecution was unable to submit the supplementary challan in the absence

of CFSL report. As per the requirement of CFSL, unless the original record lying in the Judicial Record Room was sent for examination, a report of the CFSL can not be prepared/submitted. It is further submitted that all this was in the notice/knowledge of the Judicial Magistrate, when the impugned order was passed.

10. Arguing further, learned counsel submits that the order issuing notice on the application u/s 14(1) of the Act and recording of finding of having committed civil contempt is per se illegal and without jurisdiction. Section 14 is attracted only when alleged contempt is in the face of the Supreme Court or a High Court, which is clearly not the case here. As such, the application itself was not maintainable under Section 14. That being the position in law, JMJC could not have been entertained the application for contempt at the first place itself.

11. It is also submitted by learned counsel that, assuming that Court below had power under Section 10 of the Act, even then it has again gone beyond its jurisdiction to record finding that the petitioner had committed civil contempt U/s 12 of the Act. Impugned order clearly suffers from a jurisdictional error and on this ground itself the order under challenge is nullity. Court below was not competent to entertain the petition under Section 10 of the Act. It is only a High Court, which can take cognizance of contempt of any Court subordinate to it. Whereas, in this case the Court below has not only taken cognizance but gone ahead to record the finding of guilty against the petitioner, which is further a jurisdictional error. He thus argues that Section 10 of the Act does not confer any power on any subordinate Court to initiate action on a petition U/s 10 and 12 of the Act. As such the order issuing notice to petitioner itself was unwarranted, illegal and beyond jurisdiction.

12. Before advertng to the aforesaid submissions/arguments, the relevant parts containing the direction given by the learned Judicial Magistrate in the orders dated 01.06.2017, 15.07.2017, 31.08.2017, 30.01.2018, and 05.04.2018 are reproduced below:

- (i) Order dated 01.06.2017 wrongly mentioned in the impugned order as 01.06.2016 (Annexure P/3):

“On request, now case is adjourned to 10.06.2017 (wrongly mentioned in the order as 10.06.2016) for remaining examination of above said witnesses i.e. PW 5 &6.....Summons to PW 1 Sarwar Khan, PW2 Naresh Kumar and PW3 Dharambir be issued for that date.”

- (ii) Order dated 15.07.2017 (Annexure P/3B)

“...In such circumstances, time is extended till 31.08.2017 for filing supplementary challan. Meanwhile notice be issued to SI Lakhmir Singh to show cause as to why he has not complied with the order till date. A separate letter be issued to SSP, Chandigarh for taking necessary action.”

- (iii) Order dated 31.08.2017(Annexure P/3C):

“ Nether supplementary challan filed nor any intimation is received. Notice be issued to IO ASI Lakhmir Singh for 13.11.2017 to explain about the status of further investigation.

A separate letter be issued to SSP, Chandigarh for taking necessary action.”

- (iv) Order dated 30.01.2018 (Annexure P/3D):

“File taken up today as 31.01.2018 is declared holiday.

Supplementary challan not received. Summons be issued to .SI Lkhmir Singh as well as SI Harjinder Singh for 05.04.2018 to show cause as to why supplementary challan has not been filed till date despite specific orders of this Court. Meanwhile, separate letter be issued to office of SSP, Chandigarh regarding immediate compliance of order dated 01.03.2017 passed by this Court vide which matter was directed to be further investigated within a period of three months, but till date no report regarding further investigation has been filed. Defence counsel be informed accordingly about the next date. Next date: 05.04.2018.”

- (v) Order dated 05.04.2018 (Annexures P/3E):

“An application filed by IO Lakhmr Singh seeking extension of time for filing supplementary challan on the ground that the investigating agency could not receive the original documents from the record room of the Court. Heard.

Perusal of the file shows that despite specific directions by this Court, further investigation has not been concluded. There

appears to be no plausible justification as the original record which is stated to be lying in record room can be inspected by the concerned experts by visiting the record room after getting permission. In such circumstances, separate letter be issued to the office of the SSP, Chandigarh to personally look into the matter so that no further unjustified delay be caused in completing further investigation.

Now case adjourned to 31.05.2018 for awaiting supplementary police report.”

13. In paras 13-14 of the impugned order dated 18.03.2020 Annexure P/1, it has been observed/directed by Learned Magistrate thus:

“13. The issue before this Court is not whether the original documents have been obtained or not but is with regard to the wilful disobedience of the orders passed by the Court on various dates by contemnor No. 1 (the petitioner herein) and the manner in which they were treated. There is no evidence on file to show that any difficulty was expressed by contemnor No. 1 to comply with the said orders rather it is for the first time that such a situation has been mentioned in the reply to the contempt petition by an officer who is not facing the contempt petition and was not even competent to file the said reply as the present case not a State case but a contempt petition where the contemnor has to appear in his individual capacity and to satisfy the court that there is no wilful disobedience..

14. The present case is a glaring example where the Courts are bang taken for a ride by certain officers who have no respect of law and any leniency would itself be a travesty of justice.

Sec 10 of the Contempt of Courts Act, 1971 provides power to the Hon’ble Court to punish for the contempt of Subordinate Courts. Thus, in view of the above discussion, this court is of the considered opinion that contemnor No. 1 Nilambari Jagdale, SSP, Chandigarh.”

14. Relevant part of the reply dated 09.03.2020, Annexure P/14, to the complainant’s application for action under the Contempt of Court Act filed before the learned Judicial Magistrate, is as under:

*“11. That the contents of para 11 is denied for want of knowledge. However, on 3.01.2018, an application was moved by ASI Lakhmir Singh now SI before the then learned ACJM, UT, Chandigarh for obtaining the original record/documents from record room but on 4.01.018, the learned Court ordered that “*** as the original record is lying in the record room, the same cannot be provided for sending the same to CFSL, if*

the same is required for the purpose of comparison, applicant is directed to move fresh application for seeking photographs of said documents or other relevant material. Hence the present application in hand stands disposed of****". The copy of such order dated 4.01.2018 is enclosed herewith as Annexure A. After receiving the said orders from the learned Court, on 26.10.2018 a letter was written to the Director, CFSL Sector 36, Chandigarh for clarification that whether photographs of the original documents lying in record room could be compared as per requirement of present case or otherwise. The same request is attached herewith as Annexure B. In this regard, on 26.03.2018, a written reply was received from the office of CFSL Sector 36, Chandigarh with the remarks that "****a report based on the scientific examination of the documents can be prepared on the actual examination of the original documents for the manifest reason that the photograph/photocopy does not provide many characters that considered essential and absolute and in the matter of examination on which the Lab results are based. So, it is requested that original documents may be sent for examination." The same reply is attached herewith as Annexure C. Subsequently, on 19.04.2018, again a fresh application was submitted before the then learned Court of CJM, UT, Chandigarh to issue directions to the Record Keeper of District Court, Sector 43, Chandigarh to provide the original record pertaining to the present matter for filing of supplementary challan. The copy of the same application is attached herewith as Annexure D. During the course of further investigation, notices for appearance were issued to the complainants in the present case upon respective residential addresses. Besides this, some of the complainants have been expired. On 4.01.2019, Sh. Dharamvir and Sh. Dayanand (complainants) joined the investigation in the present case. During discussion of the facts of the case, both informed that victims of the said case have filed separate petition vide CRM-M-50468-2018 in Hon'ble Pb. & Hr. High Court, Chandigarh to transfer the investigation of the present case to CBI. During the hearing of the above said petition, on 27.09.2019 HMJ Arvind Singh Sangwan passed the orders that "**** The Chief Judicial Magistrate, Chandigarh before whom the case is pending as stated in the aforesaid applications as well as incharge of the Record Room are directed to send the entire record after properly page marking it to CFSL, Chandigarh through a special messenger and the Director, CFSL, Chandigarh is directed that on receiving the same, a receipt will be issued for obtaining the record and after comparison, the same will be returned back by the CFSL to Court concerned. The Additional Chief Judicial Magistrate and the Incharge Record Room are further directed to do the needful within a period of one month from today and report of the CFSL be submitted to the Court within a priod of three months thereafter." The said orders are attached herewith as Annexure E. On 08.11.2019, the then Ld. CJM, UT, Chandigarh has disposed of the application dated 19.04.2018 submitted by ASI Lakhmir Singh now SI".

15. The order dated 27.09.2019 Annexure P/17, referred to and attached as Annexure E with reply Annexure P/14 herein was passed by a coordinate Bench (Arvind Singh Sangwan J.,) of this Court in CRM-M-50468 of 2018 seeking directions for entrustment of the investigation of the same FIR/ case to some other independent investigating agency like CBI. Its relevant part reproduced in reply Annexure P/14 and already extracted herein above, does not need repetition.

16. I shall now proceed with my narrative/discussion and opinion thereof.

17. Material facts and points which emerge in the case are as under :-

17.1 The complainant's application dated 22.10. 2018 for initiating contempt proceedings against the petitioner and three others (including IO Lakhvir Singh); reply dated 09.03.2020 to the contempt application and the very first page of the impugned order herein show that SI Lakhmir Singh, Investigating Officer, was a respondent party in the application for contempt action. The reply thereto was signed and filed by him. There seems an obvious typographical mistake of his name (Lakhvir Singh instead Lakhmir Singh) in the contempt petition, which got carried over to the impugned order in memo of parties.

17.2 There is no provision in the Contempt of Courts Act mandating that the person against whom a contempt petition is filed, must or most essentially or mandatorily appear in person for filing a reply thereto, even if there is no such direction by the Court to that effect. In any case, the learned Judicial Magistrate clearly observed contrary to record that reply to the contempt petition was by an officer (IO) who was not facing contempt and/or was not even competent to file that reply.

17.3 Impugned order, on the other hand, does not even reveal if any specific direction was ever issued against the petitioner to appear herself and/or file her personal reply. In such a situation, the Magistrate was not at all justified in commenting adversely against the petitioner's conduct for not personally appearing before him and/or not filing a separate reply in her individual capacity.

17.4 Order dated 01.06.2017 (Annexure P/3) absolutely does not contain any direction, whatsoever, to or against the petitioner. There was/is thus no question of its deliberate violation or non-compliance otherwise on the part of the petitioner.

17.5 Orders dated 15.07.2017(Annexure P/3B), 31.08.2017(Annexure P/3C), 30.01.2018 (Annexure P/3D), and 05.04.2018 (Annexures P/3E) are all general in nature and non-specific. None of these stipulates or spells out what precise action was required to be taken by the petitioner personally.

17.6 Reply dated 09.03.2020 was accompanied by a copy of the order dated 27.09.2019 (Annexure P/17) passed by a Co-ordinate Bench of this Court disposing of the complainant's petition bearing No. CRM-M-50468-2018 for transfer of the investigation to CBI. Its relevant extract was also reproduced in para 11 of reply, and yet, it was given a complete short shrift by the Magistrate.

17.7 While disposing of CRM-M-50468/2018, seeking directions for entrustment of the investigation of case FIR No. 476 dated 25.08.2008 under sections 406,467,468,471 and 120-B IPC to CBI, after noticing the relevant facts and circumstances, appropriate directions as already reproduced above were issued by a learned Single Judge (Arvind Singh Sangwan, J) of this Court. These directions show the implicit satisfaction of this Court with the

explanation qua delay in filing supplementary challan as the original documents in the judicial record room were necessary and required to be submitted to the Central Forensic Science Laboratory for expert's examination. Those original documents had not been provided by the Court concerned despite requests by the local police.

17.8 To say the least, judicial discipline and propriety required the Magistrate to give due weight-age and respect to the view taken by this Court. Instead, the Magistrate ignored the view of this Court, by observing, contrary to the record, that there was no evidence on the file to show that any difficulty was expressed by the petitioner to comply with his (Magistrate's) orders. His observations that rather it was for the first time that such a stand had been mentioned in the reply to the contempt petition; or the response was by an officer who was not facing contempt; or an incompetent officer had filed reply et alia, fly in the face of the record.

17.9 Irrespective of the order dated 27.09.2019 passed by this Court, the other facts and circumstances stated in reply (Annexure P/14) by themselves provided an adequate and satisfactory explanation for the delay in filing of supplementary challan. Reasons for delay were not attributable to the local police. The original record was concededly lying in the Judicial Record Room and was not provided to police despite applications, owing to which the supplementary challan could not have been filed in Court. It is nobody's case that original record was not required to be sent to CFSL. It cannot be, therefore, said that the petitioner was in any way blameworthy for delay in the submission of supplementary challan or of violating various orders passed by learned Magistrate.

18. Let us now look at the scenario from another angle. Assuming, that any significant part of delay in submission of supplementary challan was attributable to the investigating officer (who was then a subordinate of the petitioner), even then, at the most it would not be more than an administrative/superintendence lapse on the part of the petitioner. But certainly not any deliberate or intentional or wilful disobedience of Court's order. In any case, on that account, the petitioner could not have been hauled up for contempt of Court.

19. Even otherwise, de hors merits of the case, order dated 04.02.2020 issuing contempt notice to the petitioner appears to be hit by Section 20 of the Act. The contempt application was filed before JMFC way back on 22.10.2018 for alleged non compliance of orders dated 01.06.2017 and four other orders. Notwithstanding, contempt notice was issued to the petitioner for the first time on 04.02.2020 for the alleged 'violation' of the orders passed by the trial Court. No Court can initiate any proceedings under the Contempt of Courts Act 1971, either on its own motion or otherwise, after the expiry of period of one year from the date on which the contempt is alleged to have been committed. Record prima facie reflects that application was filed by the complainant on 22.10.2018, but the Learned Magistrate initiated proceedings qua the petitioner only on 04.02.2020 by issuing notice to the petitioner. Reference may be had to judgments cited by the learned counsel for the petitioner rendered in *M/s Indian Oil Corporation Ltd. Vs. M/s Shiv Oil Careers and others* 2016(4) PLR 367, *ICICI Bank Vs. Kusum Aggarwal* 2013(41)RCR (Civil)329 and *Mam Chand Vs. Halcyon Pharmaceutical Ltd* 2011(1)RCR (Crl.)232.

20. Under Section 2 (b) of the Contempt of Court Act, wilful disobedience of an order of the Court is the *sine qua non* to attract civil contempt. Its essential ingredients must be satisfied before applicability of its penal provisions. In the instant case, to my mind, there seems no element of wilful disobedience on the part of the petitioner of any of the orders passed by the learned Judicial Magistrate so as to attract civil contempt of court.

21. The penal provisions of the Contempt of Courts Act have to be invoked with due circumspection, judicial restraint and sparingly. Their undue and indiscriminate use, particularly against public officers in connection with their official work, tends to unnecessarily embarrass, humiliate and demoralise them, thereby adversely affecting the discharge of their public functions without enhancing the dignity, respect and image of the Courts.

22. As an upshot of the discussion above, I am of the opinion that the impugned order dated 18.03.2020 passed by the Judicial Magistrate cannot be sustained both on facts and in law.

23. None-the-less, affidavit dated 10.10.2020 has been filed by the petitioner, tendering an unconditional apology and stating that being a Government Servant she has always served the administration and performed her duties with utmost diligence at different postings. While performing her duties she has always complied with the orders of the Courts to the best of her ability, having the highest regard for the judiciary of this country and cannot even think of not complying with the orders of any Hon'ble Court much less violating any such orders.

24. In the premise, the petition is allowed. The impugned order dated 18.03.2020, Annexure P/1, is set aside. Since the main case is disposed of, pending application/s, if any, shall also stand disposed of accordingly.

OCTOBER 12, 2020
vandana

(ARUN MONGA)
JUDGE

Whether speaking/reasoned :	Yes/No
Whether reportable :	Yes/No