

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT NAGPUR

CIVIL APPLICATION (CAO) NO. 188 OF 2021

AND

CONTEMPT PETITION NO. 56 OF 2021

(COURT ON IT'S OWN MOTION...VS.. ANOOP MADHUKARRAO KUMRE, SUPDT. CENTRAL
PRISION, NAGPUR)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri F.T.Mirza, Amicus Curiae
Shri P.K.Sathianathan, Advocate for Respondent.

CORAM : Z.A.HAQ & AMIT B. BORKAR, JJ.

DATED : FEBRUARY 26, 2021.

CRI.APPLN.NO. 188/2021.

Though the respondent-Anoop Madhukarrao Kumre should have remained present today, in view of the affidavit filed on his behalf pointing out the difficulty in remaining present, his presence is dispensed with.

The application is **allowed** accordingly.

CONTEMPT PETITION NO.56/2021.

Heard.

2. We are constrained to take cognizance *suo-motu* of the inaction on the part of the respondent in not giving due effect to and implementing the directions issued by this Court by order dated 2nd February 2021 by which it was directed that the accused in Criminal Appeal No.53 of 2018 viz. Ravishekhar Bhaskar Londekar be released forthwith. A complaint was made on behalf of the accused-Ravishekhar Bhaskar Londekar that though the writ of the order passed by

this Court on 2nd February 2021 directing that he be released forthwith, the respondent-Superintendent Central Prison, Nagpur had not taken any steps to ensure the release of accused-Ravishekhar Bhaskar Londekar and consequently the accused was required to spend one night in Central Prison inspite of the directions given by this Court to release him forthwith.

3. To ascertain the truthfulness of the complaint made by accused-Ravishekhar Bhaskar Londekar, we had called upon the respondent to file affidavit, and accordingly the respondent had filed affidavit sworn on 3rd February 2021. This affidavit showed that the respondent had not taken any action whatsoever to implement the directions given by this Court to release the accused-Ravishekhar Bhaskar Londekar forthwith and as we doubted that there was an attempt to cover-up the matter, we had called upon the respondent to file additional affidavit which was filed on 4th February 2021. On going through both the affidavits, we observed that there was variance in the stand of the respondent and therefore, one more opportunity was given to the respondent to explain his case, and the respondent had filed affidavit sworn on 5th February 2021.

4. As we found that again there was variance in the stand of the respondent, we passed order dated 8th February 2021 directing issuance of notice to the respondent in Form No.I under Rule 9 of the Rules to Regulate Proceedings for Contempt under Article 215 of the Constitution of India and the Contempt of Courts Act, 1971 (under Chapter XXXIV of the Bombay High Court Appellate Side Rules, 1960).

5. We requested Shri F.T.Mirza, Advocate to act as Amicus, which request he accepted.

6. In response to the notice issued as per order dated 8th February 2021, the respondent has filed affidavit sworn on 25th February 2021 explaining his stand and also tendering unconditional apology.

7. We are not satisfied with the stand taken by the respondent regarding inaction on his part in taking steps to ensure implementation of the directions issued by this Court by the order dated 2nd February 2021, directing that the accused-Ravishekhar Bhaskar Londekar be released forthwith. The tenor of the explanation of the respondent shows that he had completely brushed aside the directions given by this Court to release the accused- Ravishekhar Bhaskar Londekar forthwith and had overlooked the issue of personal liberty of the accused. At the time of hearing, though an attempt was made on behalf of the respondent to defend his inaction relying on the fact that, as per the procedure, the prisoners cannot be released after 05:00 p.m., there is no explanation as to why efforts were not made to take action as per Clause 19 of Part-II of Chapter XXXIV of the Maharashtra Prison Manual, which reads as follows:

“19. Notwithstanding anything contained in the preceding rule, the Superintendent may, having regard to any special reasons given by the District Magistrate in that behalf, release any prisoner between the hours of 6 p.m. and 7 a.m.”

Even otherwise, it goes without saying that whenever specific directions are issued by the Competent Court, the same are required to be obeyed in letter and spirit

and if there is any prohibition in law and if the concerned officer is of the opinion that the directions given by the Court could not be implemented in view of such prohibition under any statute/law, it is the duty of the concerned officer to immediately move the Court looking to the seriousness of the matter for appropriate clarification. The concerned officer cannot sit as an Appellate Authority over the directions issued by the Competent Court and refuse to take action. Such casualness, if tolerated, there will not be any meaning to the established principle of “Rule of Law” which is the foundation of functioning of the institutions in democratic set up.

8. On assessing the facts on record in the affidavit filed by the respondent, it is clear that the respondent had not taken any steps to implement the directions given by this Court by order dated 2nd February 2021, to release the accused-Ravishekhar Bhaskar Londekar forthwith. The inaction on the part of the respondent shows wilful disobedience of the directions given by this Court and it amounts to civil contempt as per Section 2(b) of the Contempt of Courts Act, 1971.

9. Though we find that the explanation given by the respondent for the blunder committed by him is not sufficient, we do not propose to stretch the matter further, and we accept the unconditional apology tendered by him. In normal course, after accepting the unconditional apology we would have dropped the proceedings as the superior Court never takes pride in taking any action against the contemnor once the apology is accepted. However, at the same time, the conduct of the concerned person becomes relevant.

In Criminal Writ Petition No. 524 of 2020 Division Bench of this Court has passed an order on 26th November 2020 of which paragraph Nos.3 and 11 are relevant and are reproduced as under:

“3. The reply filed on behalf of the respondent No.2 is far from satisfactory, rather it borders upon interfering in the administration of justice. We say so with all sense of responsibility. The least that is expected from the State is to be correct on facts and straight forward in submissions. The reply filed on behalf of the respondent No.2, does not fulfill any of these parameters. The reply is misleading and also takes a ground which is not stated in the impugned order, for resisting this petition. It appears that the respondent No.2 has taken the issue quite personally and, therefore, while filing an affidavit, he has displayed his utter dislike for the petitioner. Being a public servant, it is expected of respondent No.2 to be fair in performance of his duty and treat all the inmates of the jail as well as his staff members with equality. But, that has not been done by the respondent No.2. This time we would not pass any order which may be adverse to the interest of respondent No.2, but, we would like to put respondent No.2 and the officers like him who are public servants on guard by what we have said just now.

11. The respondent No.2 is requested to be cautious in performing of his duty and refrain from any attempt from giving false information to the Court or misleading the Court while filing his reply on affidavit in future.”

As the respondent has repeated the mistake within a span of about 10 weeks, though we accept the unconditional apology tendered by the respondent, we are of

the view that entry about this order should be taken in Service Book of the respondent, so that officer of such high rank does not again commit such blunder.

10. We are conscious that if cognizance is taken, charges should be framed against the Contemnor and the procedure as laid down in the Rules to Regulate Proceedings for Contempt under Article 215 of the Constitution of India and the Contempt of Courts Act, 1971 (under Chapter XXXIV of the Bombay High Court Appellate Side Rules, 1960) should be followed. However, in view of the proposed action, we have proceeded in the matter further without framing charges.

11. Hence, we pass the following order:

- i) The unconditional apology tendered by the respondent-Anoop Madhukarrao Kumre is accepted and the notice issued to the respondent as per order dated 8th February 2021 in Form No.I under Rule 9 of the Rules to Regulate Proceedings for Contempt under Article 215 of the Constitution of India and the Contempt of Courts Act, 1971 (under Chapter XXXIV of the Bombay High Court Appellate Side Rules, 1960) and the proceedings pursuant to it are dropped.
- ii) The Deputy Inspector General of Prisons, Nagpur is directed to take entry about this order in the Service Book of the respondent-Anoop Madhukarrao Kumre.

- iii) The directions should be complied within 15 days and affidavit of compliance, along with photocopy of Service Book with the entry which would be taken as per this order, should be filed on record of this Contempt Petition along with affidavit of the Deputy Inspector General of Prisons Nagpur, by 15th March 2021.
- iv) We proposed to impose costs on the respondent and to direct disbursement of the amount as honorarium to Shri F.T.Mirza, Advocate, who acted as Amicus, however, Shri. F.T.Mirza, Advocate declined to accept the honorarium. Hence, no orders are passed regarding costs.

We appreciate the efforts of Shri F.T.Mirza, Advocate in assisting the Court.

The Contempt Petition is **disposed** in the above terms. No costs.

(AMIT B. BORKAR, J)

(Z.A.HAQ, J.)

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