

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:-

The Hon'ble Justice Moushumi Bhattacharya.

CPAN 941 of 2022

in

WPA 19748 of 2022

Menka Gambhir

vs.

Union of India and Others

For the petitioner : Mr. Jishnu Saha, Adv
Mr. Ayan Bhattacharya, Adv.
Ms. Poulami Bhowmick, Adv.

For the Alleged contemnor : Mr. S.V. Raju, Ld. A.S.G.
Nos. 3 to 6 : Mr. Phiroze Edulji, Adv.
: Ms. Anamika Pandey, Adv.
Mr. Samrat Goswami, Adv.

For the alleged contemnor : Mr. Billwadal Bhattacharyya, ld. Dy.S.G.
No. 2

Last Heard on : 29.09.2022.

Delivered on : 30.09.2022.

Moushumi Bhattacharya, J.

1. The petitioner says that the alleged contemnors have wilfully disobeyed an order passed by this Court on 30th August, 2022 by which

the Enforcement Directorate (ED) was to question the petitioner in Kolkata and was also directed not to take any coercive steps against the petitioner during the pendency of the writ petition.

2. The petitioner seeks to make out a case, through learned counsel, that the alleged contemnors have acted in contumacious disregard of the second direction passed by the Court, namely not to take any coercive steps against the petitioner. Counsel seeks to rely on the following facts in support of this contention.

3. The petitioner was prevented from travelling to Thailand to meet her ailing mother from 10th to 22nd September, 2022. The petitioner was served with a summons dated 10th September, 2022 from the Directorate of Enforcement while the petitioner was detained at the Kolkata Airport. The petitioner was summoned at the ED office at 12.30 a.m. on 12th September, 2022. Counsel submits that the alleged contemnors resorted to coercive steps against the petitioner in preventing the petitioner from travelling to Thailand on 10th September, 2022.

4. Learned ASG appearing for the alleged contemnor nos. 3 to 6 being the Enforcement Directorate, urges that the acts complained of do not amount to wilful disobedience of the order passed by this Court. Counsel places a Look Out Circular (LOC) dated 25th March, 2022 for the petitioner which is to remain in force until a deletion request is

received by the Bureau of Immigration. Counsel submits that the petitioner chose to inform the ED of the proposed travel on the date of travel itself and that the ED hence did not have time to consider the request. Counsel submits that the ED has issued a summons on the petitioner requiring the petitioner to appear before the authority on 12th September, 2022 at 12.30 a.m. Counsel places a later communication by which ED apologized for the typographical error in calling for the attendants of the petitioner at 12.30. a.m. instead of 12.30 p.m. Counsel places emphasis on the fact that ED has not caused willful disobedience of the order in requiring the petitioner to appear before it for questioning.

5. The learned DSG appearing for the alleged contemnor no. 2 being the Immigration Officer, adopts the submissions made on behalf of the Enforcement Directorate and further submits that the petition lacks the degree of proof which is required in a quasi-criminal proceedings of the present nature. Counsel points to the fact that the relevant paragraphs of the petition have not been properly verified in accordance with relevant Rules of this Court. It is also submitted that the Immigration Officer cannot be made a party since the Immigration Officer was not a party to the writ petition and did not have any knowledge of the order passed by this Court therein at any point of time.

6. The issue which falls for consideration is whether, the alleged contemnors, in preventing the petitioner from travelling to Thailand,

have wilfully disobeyed the order passed by this Court. In essence, the question which is to be answered, is whether detaining the petitioner at the Kolkata Airport and disallowing her to travel would amount to taking coercive steps against the petitioner.

7. The expression “*coercive steps*” is generally understood to mean steps towards arrest and confinement of a person. Although the phrase has frequently been used in numerous orders, parties before the courts accept the meaning to be protection from arrest and detention. The words carry an unmistakable sense of forceful confinement in a manner so as to severely restrict the freedom of a person. In *Punit v. State & Anr.*, 2017 SCC OnLine Raj 4061; a Single Bench of the Rajasthan High Court construed the phrase “*no coercive steps*” to automatically mean that a person cannot be arrested.

8. In the present case, the petitioner seeks to fuse the petitioner’s detention at the Kolkata Airport and being prevented from travelling to Thailand with the protection granted to the petitioner against coercive steps being taken by the ED. Shorn of any underlying motives ascribed to the actions of the ED, the petitioner’s detention at the Kolkata Airport and disallowing her from travel does not amount to coercive steps as meant in the order passed by this Court on 30.8.2022. In coming to this view the attending circumstances assume significance.

9. The order was passed on 30.8.2022; the petitioner informed the ED on 10.9.2022 at 14:32 hours by mail that the petitioner intended to travel to Thailand on 10.9.2022 itself to meet her ailing mother. The petitioner furnished her co-ordinates during her stay in Thailand and enclosed her flight tickets with the communication. The very fact that the petitioner chose to inform the ED of her travel plan on the date of travel itself tilts the scales towards the steps taken by the ED and consequent to the petitioner's intimation. The petitioner was served with the summons from the Enforcement Directorate at the Airport and prevented from boarding the flight to Thailand. The case sought to be made out by the petitioner is further weakened by the production of a Look-Out Circular dated 25.3.2022 with reference to the petitioner. It is significant that the Look-Out Circular was issued much before the interim protection granted on 30.8.2022. It can thus be assumed that the petitioner was prevented from travelling outside India by the alleged contemnor no. 2 (Immigration Officer) by reason of the Look-Out Circular. This definitely takes the alleged contemnor no. 2 outside the parameters of the present contempt proceeding as also the fact that the alleged contemnor no. 2 was not a party to the writ petition and cannot be fastened with knowledge of the order passed by this court in the said writ petition. (Ref. *Parents Association of Students vs. M.A. Khan*; (2009) 2 SCC 641.)

10. With reference to the other alleged contemnors, namely the Enforcement Directorate, this Court is inclined to accept the contention that the ED simply issued the summons on the petitioner in furtherance of the direction on it to question the petitioner at its zonal office at Kolkata (as opposed to Delhi). Hence, it cannot be said that the ED acted in contumacious disregard of the order passed by this Court in summoning the petitioner for questioning at its Kolkata office.

11. On the other point raised in support of the contentions of the petitioner with regard to the unearthly hour for questioning, this Court is of the view that the same may amount to harassment but certainly not an act of contempt. In any event, 12.30 am was subsequently corrected to mean 12.30 pm by the communication forming part of records.

12. A proceeding in contempt must involve a conscious act of wilful and deliberate disobedience of an order of Court (Ref. *Dr. U.N. Bora vs. Assam Roller Flour Mills; (2022) 1 SCC 101*). Not only must the alleged contemnor have full knowledge of the order at the relevant point of time but must also act in deliberate violation of the same being fully conscious of the act and its consequences. The contumacious act must also relate to an order which is clear, unambiguous and is not capable of being given multiple interpretations. In this context, it must also be said that the direction on the alleged contemnors not to take any coercive steps against the petitioner was not specifically defined by

including certain actions and excluding others. Hence, the possible interpretations of that direction now sought to be given on behalf of the parties further absolves the alleged contemnors of any possible violation.

13. It follows that the petitioner is seeking a clarification of the interim order passed by this Court in the guise of the present contempt proceeding. There is little doubt that the petitioner cannot seek such clarification in the special and limited jurisdiction of a contempt proceedings. Reference may be made to an order passed by a learned Judge on 2.6.2022 in WPA 9723 of 2022 where the petitioners before the Court had specifically sought for permission to travel outside India for medical treatment during the pendency of proceedings initiated by the Enforcement Directorate. The aforesaid order strengthens the view that the petitioner should have come with an appropriate application for clarification instead of seeking an interim order in contempt proceedings.

14. In view of the above reasons this Court is not inclined to accept that the alleged contemnors have caused any wilful or deliberate violation of the directions passed by this Court in the order dated 30.8.2022 in detaining the petitioner and preventing the petitioner from travelling outside India. CPAN 941 of 2022 is accordingly dismissed without any order as to costs.

Urgent photostat certified copies of this judgment, if applied for, be supplied to the respective parties upon fulfillment of requisite formalities.

(Moushumi Bhattacharya, J.)