

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

COCP No.834 of 2016 (O&M)

Reserved on: 14.10.2022

Date of decision: 17.10.2022

Court on its own motion

....Petitioner

Versus

Yogesh Chaudhary, Chief Judicial Magistrate, Rewari

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: By Order.

Ms. Supriya Garg, Advocate
for the respondent.

ARVIND SINGH SANGWAN J.

Vide this order, a reference made by this Court on its own motion, is decided.

Brief facts of the case are that on 19.02.2016, this Court while deciding CRM-M No.32467 of 2015 and CRR No.3410 of 2015, arising out of FIR No.143 dated 14.05.2007 registered under Sections 420, 448, 380 IPC, at Police Station City Rewari against one Purshottam Dass Soni, by his own mother Rawati Devi, has made the following observations:-

“Thus, the sole question that comes up before this court in these petitions is whether the learned Courts below in their spirit of dispensation of justice have exceeded their jurisdiction quite in oblivion to the said orders passed by this Court and the likely result of such an intentional lapse on the part of the presiding Officer of the trial Court. The general principle is that once a stay order has been passed should be deemed to take effect as soon as

it is passed irrespective whether it is communicated or not. Since such order of stay both in CRM Nos. 5961 and 5962 of 2014 were meant for the Court, wherein no one else is involved in for obedience being served immediately and becomes effective without even communication to the Court concerned. In this case it is writ large on the records that these orders of stay were well communicated by this Court to the Court below and which apparently has set up a subterfuge to escape such a serious misconduct on the part of the Presiding Officer to the orders of the higher Court. Thus, to the mind of this Court even if such a Court proceeds with the case showing ignorance what to say of being in knowledge of the stay order such a Court will not only render itself liable to administrative action which is quite independent but also the result of whatever proceedings are made consequent after passing of the stay order which will be deemed to be without jurisdiction and, thus, a nullity. Thus, as soon as this Court passed order in the present case on 13.2.2015 and 18.2.2015 as the case may be the learned Chief Judicial Magistrate, Rewari and even the learned Appellate Court of learned Additional Sessions Judge, Rewari both were divested of their jurisdiction to pronounce any further order and, therefore, the judgment of conviction is a nullity which the learned Chief Judicial Magistrate acted without jurisdiction and his decision has, thus, ceased to hold good being a mere nullity and needs to be outrightly disregarded. Such orders are certainly not immune to review by way of revision or petition under Section 482 Cr.P.C. as it is the very basic fundamental rule of law that stood destroyed by such an outrageous conduct of the Court below. Furthermore, orders dated 11.9.2015 issued by learned Chief Judicial Magistrate, Rewari by way of issuance of non-bailable warrants of the petitioner consequent upon passing of stay

order by this Court are also without jurisdiction and needs to be set aside, therefore, the orders cancelling the bail and forfeitures of bail bonds are outrightly set aside holding that same too were exercised without jurisdiction. Exercising inherent power this Court deems it appropriate to hold that all the orders passed by the Court below subsequent to the stay order of this Court are a nullity whatever consequences they may be of.

In the light of this intentional gross misconduct and total arrogance by then learned Chief Judicial Magistrate, Rewari as well as his utter disrespect and disregard to judicial orders of Superior Court entails not only initiation of contempt of Court proceedings as well as separate administrative action against him. Registrar Judicial to do the needful as per law and rules. The same be also intimated to the Hon'ble Administrative Judge, wherever, this officer is presently posted.

In the light of what has been discussed and detailed above all the impugned orders/judgment of conviction passed by the Court below are hereby set aside and, thus, quashed. Both the instant petitions stand allowed in those terms.”

CRM-M-32467-2015

Prayer in the petition i.e. CRM-M No.32467 of 2015, filed under Section 482 Cr.P.C., is for quashing of the order dated 11.09.2015, passed by Sh. Yogesh Chaudhary, CJM, Rewari passed in Criminal Case No.267 dated 19.07.2007, vide which the learned trial Court cancelled the bail of the petitioner and bail bonds have been forfeited to the State.

CRR-3410-2015

Prayer in the revision petition i.e. CRR No.3410 of 2015, is for setting-aside the impugned order/judgment dated 11.08.2015 passed by the Additional Sessions Judge and against the judgment dated 18.02.2015 passed by the Court of Sh. Yogesh Chaudhary, Chief Judicial Magistrate, Rewari, convicting the petitioner for offence punishable under Sections 420 and 448 IPC and ordering to heard the convict on quantum of sentence on 19.02.2015.

It is worth mentioning that the accused Purshottam Dass has filed the application through his counsel for being impleaded as a party, however, the same was dismissed on 28.12.2019 by this Court by observing that since the proceedings are initiated by the Court on its own motion, he has no *locus standi* to file the application.

Brief facts of the case are that on 14.05.2007, one Rawati Devi, got the aforesaid FIR registered against her own son Purshottam Dass, with regard to fabrication of the gift deed in favour of his wife.

The evidence of the prosecution was closed on 11.11.2013 and thereafter, the victim filed an application under Section 311 Cr.P.C. for leading additional evidence, which was dismissed on the same day.

In a revision, the Additional Sessions Judge vide order dated 24.01.2014 set-aside the order dated 11.11.2013 and granted an opportunity to the victim to lead her evidence.

Purshottam Dass, filed CRM-M No.5961 of 2014, for quashing of the order dated 24.01.2014 and vide order dated 18.02.2014, while issuing notice of motion, the trial Court was directed

to adjourn the proceedings on the date fixed, ***‘however, this order was never extended’.***

In compliance thereof, the trial Court adjourned the case for few dates and ultimately, listed the case for 23.12.2014. Later on, in terms of the Action Plan of this Court, the trial Court found that the case is old case of year 2007 and therefore, issued a notice to the accused Purshottam Dass for 05.12.2014. On that day, Purshottam Dass appeared and took time to file the certified copy of the stay order passed by this Court, to show that the stay order is continuing, however, having failed to do so on 15.12.2014, the prosecution was directed to lead the evidence examine the prosecution witnesses. On conclusion of the prosecution witnesses, the statement of accused Purshottam Dass was recorded under Section 313 Cr.P.C. on 14.01.2015.

Thereafter, on 19.01.2015, the accused examined 03 defence witnesses.

The evidence of the defence was closed on 13.02.2015 and in the meantime, in the aforesaid CRM-M No.5961 of 2014, this Court directed staying of passing of final judgment on 13.02.2015.

However, this order was not communicated to the trial Court and on 18.02.2015, the final arguments were heard and the accused also submitted his written submissions.

Even in the written submissions, it was not brought to the notice of the trial Court that there was any interim stay regarding passing of the final judgment by the trial Court.

On 18.02.2015, the trial Court convicted the accused/Purshottam Dass and fixed the case on 19.02.2015, for

quantum of sentence, when an application was filed by the accused/Purshottam Dass that on 18.02.2015, he has informed the Court through Reader regarding the stay order passed by this Court on 13.02.2015 and a photocopy of the same is available on the website of the High Court.

When the respondent/Presiding Officer sought an explanation from the Reader of the Court, it was found that neither the accused intimated him nor the stay order passed by the High Court was uploaded on the website and therefore, he had no information as on 19.02.2015, regarding any order passed by this Court.

Thereafter, the Presiding Officer wrote a letter on 24.02.2015, seeking guidance from the Registrar General in this regard.

It is worth noticing that in the meantime, on 17.03.2015, the accused Purshottam Dass filed COCP No.635 of 2015 and the same was decided on 17.03.2015, by passing the following order:-

“This petition has been filed under Section 16 of the Contempt of Courts Act, 1971 for willful disobedience of the orders dated 18.02.2014 and 13.02.2015 passed by this Court in Crl. Misc. No.M-5961 of 2014 titled as “Purshottam Das v. State of Haryana”.

In brief, the petitioner's mother lodged an FIR No.143 of 2007 against the petitioner under Sections 420/448/380 IPC in which, after the challan was put in, the Magistrate framed the charges on 23.11.2007. The prosecution evidence was closed on 11.11.2013. The complainant also filed a revision petition against the order dated 11.11.2013 by which the prosecution evidence was closed. The said revision petition was allowed on 24.01.2014 by the Additional Sessions Judge, Rewari

directing the trial Court to examine the evidence mentioned by the complainant but the application filed by the complainant under Section 311 of the Code of Criminal Procedure, 1973 (here-in-after referred to as the "Cr.P.C.") was dismissed on 08.01.2014.

Aggrieved against the order dated 24.01.2014, the petitioner filed Crl. Misc. No.M-5961 of 2014 in which notice of motion was issued on 18.02.2014 and the trial Court was directed to adjourn the proceedings pending before it beyond the date given by this Court.

It is averred that on 21.02.2014, the proceedings were adjourned to 11.03.2014, in compliance of the order dated 18.02.2014 but on the adjourned date, the present respondent asked the petitioner to file an affidavit that the order passed by the High Court on 18.02.2014 was still in operation. An affidavit was filed by the petitioner in that regard and the case was adjourned to 02.09.2014 for awaiting further orders from the High Court. On 17.11.2014, the case was further adjourned to 23.12.2014 to await the order of the High Court but it is alleged that on 28.11.2014, the hearing of the case was suo motu preponed to 05.12.2014. The said order dated 28.11.2014 reads as under:-

"From the perusal of the file, it came into my notice that no stay order passed by the Hon'ble High Court is placed on file. Hence, notice to the accused and his counsel be issued for 5.12.2014."

On 24.12.2014, the witness PW3 Beshaswar Singh was examined and the case was adjourned to 14.01.2015 for remaining prosecution evidence and the remaining PWs were summoned. On 14.01.2015, further evidence was recorded and the prosecution evidence was closed. The statement of the accused was also recorded under Section 313 Cr.P.C. and the case was adjourned for the

evidence of DWs for 19.01.2015. Thereafter, the defence witnesses were examined. Thereafter, this Court passed the order dated 13.02.2015 in Crl. Misc. No.M-5961 of 2014 in the following manner:-

“Adjourned to 16.03.2015 for arguments, at the request of learned counsel for the petitioner.

At the same time, passing of the final judgment by the trial Court is hereby stayed, till further orders.”

On 18.02.2015, order of conviction was announced and the case was listed for 19.02.2015 for hearing the petitioner-convict on the quantum of sentence.

Counsel for the petitioner has submitted that the respondent, who happened to be the Chief Judicial Magistrate, Rewari, has committed the contempt for disobeying the order passed by this Court both on 18.02.2014 and 13.02.2015. However, he has fairly admitted, during the course of hearing, that a certified copy of the order dated 13.02.2015 was produced before the respondent only on 19.02.2015, though it is tried to be argued that the respondent was orally informed about the order passed by this Court on 13.02.2015. It is also argued that there was no occasion for the respondent to proceed with the case despite the order dated 18.02.2014.

I have heard learned counsel for the petitioner in detail and perused the available record.

Insofar as the order dated 18.02.2014 is concerned, it was passed at the time when notice of motion was issued in Crl. Misc. No.M5961 of 2014 and the trial Court was directed to adjourn the proceeding pending before it beyond the date fixed i.e. 07.03.2014 for which the notice was issued by this Court. It is not mentioned in the petition that this order was repeated by this Court on the request of the petitioner, therefore, it was observed by the respondent that there is no stay of proceedings and hence, he started

the proceedings again. If the petitioner was so aggrieved, he should have filed the contempt petition immediately thereafter or filed an application for stay rather, he participated in the proceedings inasmuch as got recorded his statement under Section 313 Cr.P.C. and also examined his witnesses in defence. Therefore, he has no right to make complaint against the respondent of violating the order dated 18.02.2014.

As regards the order dated 13.02.2015, it is admitted by the petitioner that the certified copy of the order dated 13.02.2015 was not produced before the respondent before passing the order dated 18.02.2015 rather it was produced before the Court on 19.02.2015, therefore, the mere statement of the petitioner could not have been accepted by the Court below for the purpose of adjourning the case.

Thus, in view of the aforesaid discussion, I do not find that the respondent has committed any kind of contempt by willfully violating the orders passed by this Court on 18.02.2014 and 13.02.2015.

In view thereof, the present contempt petition is found to be totally frivolous and hence, the same is hereby dismissed with costs of Rs.10,000/- which shall be deposited by the petitioner with the Legal Services Authority, Rewari within 30 days from the date of receipt of certified copy of the order.

March 17, 2015

(Rakesh Kumar Jain)

Judge”

The accused Purshottam Dass, thereafter, filed SLP(C) No.17183 of 2015, arising out of final order dated 17.03.2015 passed in COCP No.635 of 2015. The same was listed before the Hon'ble Supreme Court on 31.07.2015 and was dismissed *in limine*.

In the meantime, the accused has also filed an appeal against the judgment and conviction and order of sentence on 11.08.2015 and notice was issued by the Lower Appellate Court. Purshottam Dass, filed CRR No.1340 of 2014, in which he alleged violation of the order dated 18.12.2014 as well as the order dated 13.02.2015 but still the factum of filing of COCP as well as the order of the Hon'ble Supreme Court, both the Courts dismissed the contempt petition vide orders dated 17.03.2015 and dated 31.07.2015.

Later on, the bail bonds of the petitioner were cancelled by the trial Court as he could not procure the bail order within the time granted by the Court, enabling him to file an appeal.

Thereafter, Purshottam Dass filed CRR No.32476 of 2015, challenging the order dated 11.09.2015 vide which his bail bonds were cancelled and non-bailable warrants were issued and stated that there is a violation of the previous orders passed by this Court. The petitioner specifically stated that the respondent wilfully violated the orders dated 18.12.2014 and 13.02.2015. Yet again, he somehow failed to mention order dated 17.03.2015 passed in COCP No.635 of 2015, whereby this Court dismissed his contempt petition alleging violation of the same orders that he even failed to mention the order dated 03.07.2015 whereby the Hon'ble Supreme Court dismissed his SLP(C) No.17183 of 2015 against the order dated 17.03.2015.

In the present CRM-M No.32476 of 2015, this Court has taken suo moto action of initiation of contempt proceedings against the Presiding Officer/Chief Judicial Magistrate, Rewari.

Reply has been filed in which, the respondent has explained all the reasons and has also given complete details, as noticed above.

It is worth noticing that on 26.10.2018, this Court passed the order directing the Registry of the Court to submit a reply. The operative part of the said order dated 26.10.2018, passed in COCP No.834 of 2016, reads as under:-

“The present contempt petition has been initiated by the Court on its own motion against the respondent on the basis of non-compliance of the orders dated 18.02.2014 and 13.02.2015.

It is the contention of learned counsel for the respondent that on receipt of the order dated 18.02.2014, the Court below had simply adjourned the matter on 24.02.2014 but as regards the order dated 13.02.2015, which was passed by this Court, whereby passing of final order by the trial Court was stayed, was not received by the Court below till 19.02.2015 and, therefore, the respondent has proceeded to pronounce order dated 18.02.2015. She, therefore, contends that the present contempt petition would not survive in the light of these facts.

To be clear with regard to the factual aspect, let the Registry of this Court give the details with regard to the date on which the order dated 13.02.2015 passed by this Court, contempt of which is alleged to have been committed by the respondent, was conveyed to the Court below as also the date on which it was received so that atleast the factual aspects are not disputed as it would be based upon the records.

Hearing of the case is deferred to 14.01.2019.

Let the report be submitted by the Registry one week prior to the next date of hearing.”

The Registrar (Judicial) of this Court, in compliance thereof, submitted the following report:-

“On 17.12.2018, Joint Registrar (Judicial) was asked to hold an enquiry and to record the statements of concerned dealing official and Superintendent of Criminal and Coordination Branches and submit report. Accordingly, Joint Registrar (Judicial) has recorded the statements of Shri Sandeep Chauhan, Superintendent, Criminal Branch, Shri Sudhir Kumar, Junio Assistant, Criminal Branch, Smt. Renu Sharma, Superintendent, Civil Revision Branch and has submitted the report, which may kindly be perused at Flag ‘R’.

In his report, Joint Registrar (Judicial) has concluded that order dated 13.02.2015 passed by this Court in CRM-M-5961-2014 was conveyed by the Registry through e-mail to the office of District and Sessions Judge, Rewari on 19.02.2015 at 10:49 AM, which was duly received by them on that day. Besides this, copy of the order dated 13.02.2015, was also sent through ordinary post by Despatch Branch on 20.02.2015 to the office of District and Sessions Judge, Rewari on 20.02.2015, which reached their office on 26.02.2015.”

Counsel for the respondent has argued that the *suo motu* contempt proceedings are initiated without giving an opportunity of hearing or a show cause notice. It is further submitted that in case an opportunity of hearing was granted to the respondent, he could have brought the order dated 17.03.2015 passed in COCP No.635 of 2015, filed by Purshottam Dass as well as the order dated 03.07.2015 vide

which the SLP filed by him was dismissed by the Hon'ble Supreme Court *in limine*.

Counsel for the respondent has also contended that even while initiating the contempt proceedings, the Bench has passed certain adverse remarks by passing strictures against the respondent.

Counsel for the respondent has relied upon the judgment of in ***“S.C. Dhingra vs NCT of Delhi”*, 2014(13) SCC 768**, wherein the Hon'ble Supreme Court has quashed the order of the High Court, in which adverse remarks were passed against a subordinate Judicial Officer without affording an opportunity of hearing. The Hon'ble Supreme Court has held that it amounts to transgressing limits of decorum of the Court and expunged the adverse remarks. It is further argued that since the order dated 18.02.2014 directing the trial Court to adjourn the case was never extended, the case being the oldest case of the Action Plan pertaining to the year 2007, the respondent issued a notice to the accused Purshottam Dass about extension of stay order, however, nothing could be produced and in the intervening period, the case was adjourned on four dates, when the statement under Section 313 Cr.P.C. of the accused Purshottam Dass was recorded as well as 03 defence witnesses were examined. Thus, the respondent, in such circumstances, had every reason to believe that there is no extension of stay order.

Counsel for the respondent has further relied upon the judgment ***“Asian Resurfacing of Road Agency vs CBI”*, 2018 (16) SCC 299**, wherein the Hon'ble Supreme observed that the order

granting stay by a higher Court is not to operate for more than 06 months and the trial Court is to resume the proceedings unless there is a stay order extending the same. It is, thus, submitted that since there was no extension of stay order, the contempt proceedings have been wrongly initiated.

Counsel for the respondent has further argued that there is no complaint pending against the respondent, who is performing his duty as a Judge with due diligence and has earned good ACRs, showing him to be a Judge above board. It is further submitted that this contempt petition is pending for the last 06 years and even during the intervening period, there is no complaint against the respondent and he is earning good ACRs and therefore, the adverse remarks passed by this Court in the order dated 19.02.2016, are liable to be expunged.

After hearing the counsel for the respondent and going through the entire record, I find merit in the arguments raised by counsel for the respondent, for the following reasons:-

(a) Before taking the suo motu action, no opportunity of hearing was granted to the respondent and straightway some adverse remarks were also passed while initiating the proceedings. It is a matter of record that prior to this order dated 19.02.2016, COCP No.635 of 2015 filed by the accused Purshottam Dass was dismissed by this Court with Rs.10,000/- costs vide order dated 17.03.2015. SLP (C) No.17183 of 2015, filed by the accused Purshottam Dass, was also dismissed by the Hon'ble Supreme Court on 31.07.2015.

Had an opportunity of show cause notice was issued to the respondent or an opportunity of hearing was granted to the respondent, he could have very well

explained about the dismissal of the contempt proceedings by the accused, which could have avoided unnecessarily taking up of the suo motu action by this Court.

(b) In the light of the judgment of the Hon'ble Supreme Court in S.N. Dhingra's case (supra), the adverse remarks passed in the order without affording an opportunity of hearing are liable to be quashed.

(c) Even on merits, in compliance of the order dated 26.10.2018, directing the Registry to hold an enquiry and submit a report, the Registrar (Judicial) has submitted a fact finding report dated 20.12.2018 that the order dated 13.02.2015 passed by this Court in CRM-M No.5961 of 2014 was conveyed by the Registry through e-mail to the office of the District & Sessions Judge, Rewari on 19.02.2015 at 10:49 AM and by ordinary post, the same order was sent by Dispatch Branch on 20.02.2015, which reached the office of the District & Sessions Judge, Rewari on 26.02.2015.

Apparently, the order dated 13.02.2015 was never uploaded even on the website of the High Court till 19.02.2015 and therefore, the respondent being the Presiding Officer/Chief Judicial Magistrate, Rewari had every reason to believe that there is no extension of stay order as at no point of time, the accused Purshottam Dass, filed any affidavit that on 13.02.2015, the stay order has been extended.

It is worth noticing that prior to this date, the case was adjourned on four occasions and the statement of the accused Purshottam Dass was recorded under Section 313 Cr.P.C. and thereafter, he produced 03 defence witnesses, which also support the version of the respondent that the accused once himself was participating in the trial and he never produced any such

order of extension of the stay order and therefore, the Judge had pronounced the judgment on 18.02.2015 holding the accused Purshottam Dass guilty for the offence of cheating his own mother.

All the above facts were duly considered by the contempt Bench, which passed a detailed judgment dismissing the contempt filed by the accused Purshottam Dass by imposing Rs.10,000/- costs. Even the SLP, filed by the accused Purshottam Dass before the Hon'ble Supreme Court, was dismissed much prior to initiation of the suo motu proceedings against the respondent/Judge.

(d) As a cost of repetition, it is again observed that if a show cause notice or opportunity of hearing was granted to the respondent, he could have very well explained the conduct of the accused Purshottam Dass, who was facing the trial as well as dismissal of the contempt proceedings filed by him and dismissal of the SLP before the Hon'ble Supreme Court.

(e) A perusal of the paperbook of CRM-M No.5961 of 2014, filed by the accused Purshottam Dass, would show that he has deliberately concealed the factum of filing the contempt petition and dismissal of the same, filing the SLP as well as dismissal of the same and therefore, before initiating the suo motu action of contempt against the then, Chief Judicial Magistrate, Rewari, an opportunity of hearing was required to be given to him to explain his position.

(f) Even otherwise, as per the Action Plan, the case pertained to the year 2007 and was one of the oldest case and before proceedings in the trial, the respondent/Judge issued a notice to the accused Purshottam Dass to explain if there is any extension of stay order and having failed to do so, the trial Judge proceeded further and as noticed above, allowed

proposed additional evidence on 09.02.2015 by passing an order, statement of accused under Section 313 Cr.P.C. was recorded and even 03 defence witnesses were examined as there is no extension of stay order by this Court.

In view of the judgment of the Hon'ble Supreme Court in Asian Resurfacing of Road Agency's case (supra), the Magistrate was legally justified in proceeding with the case as there was no extension of stay order beyond six months.

(g) Even otherwise, nothing has come on record that the respondent, in any manner, is prejudiced against the accused Purshottam Dass and rather has acted, in accordance with law and has conducted the trial by adopting a due procedure of law and therefore, in the absence of any mala fide, the initiation of the contempt proceedings are not justified.

(h) The respondent is facing the contempt proceedings for the last 06 years and has to engage a counsel and to bear the litigation expenses, without any fault and on account of the deliberate concealment of facts by the accused Purshottam Dass, who concealed the factum of dismissal of his contempt petition as well as SLP before the Hon'ble Supreme Court.

In view of the above, the initiation of the contempt proceedings against the respondent are hereby dropped and the adverse remarks/strictures passed against the respondent, the then Chief Judicial Magistrate, Rewari, are expunged.

A copy of this order be sent to the Hon'ble Administrative Judge.

Considering the fact that the respondent/Judge is maintaining good service record and has become a victim of the deliberate concealment of facts by the accused Purshottam Dass and had to face the litigation for a period of 06 years and had to pay the litigation expenses, it is directed that the District Legal Services Authority, Rewari, will pay the costs of Rs.1.00 lac to the respondent, the then Chief Judicial Magistrate, Rewari, towards the litigation expenses.

Further considering the fact that while passing the order dated 19.02.2016, while initiating the contempt proceedings against the respondent simultaneously, this Court has also set-aside the impugned orders/judgment of conviction, (as no order of sentence was passed, at any stage), primarily the said observation are due to not adhering to the stay order, the right of the complainant/victim in the main FIR is yet to be decided, therefore, it will be open for the complainant/victim or the prosecution to move an appropriate application before the successor Chief Judicial Magistrate, Rewari, for revival of trial and to pass afresh order and in that eventuality, the Chief Judicial Magistrate, Rewari will pass, a fresh order, in accordance with law after affording an opportunity of hearing to all concerned.

Disposed of.

(ARVIND SINGH SANGWAN)
JUDGE

17.10.2022

yakub

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