

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

(101)

CRM-M No.13002 of 2017(O&M)

Date of Decision : 10.08.2022

Balwinder Singh @ Gora

...Petitioner

Versus

State of Punjab & ors.

....Respondents

CORAM : HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Nakul Sharma, Advocate,  
for the petitioner.

Mr. P.S. Bajwa, Addl.A.G., Punjab.

Mr. S.S. Sidhu, Advocate,  
for respondent No.3(Inspector Ranjit Singh).

Mr. Kamaldip Singh Sidhu, Advocate,  
for respondent No.4 (ASI Raman Kumar)

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AMOL RATTAN SINGH, J. (Oral)

Vide CRM-M-13002-2017, the petitioner sought to be admitted to anticipatory bail under the provisions of Section 438 of the Cr.P.C. in case he was arrested in the context of FIR No.18, registered at Police Station Cantt. Ferozepur, on 19.02.2016, alleging therein the commission of offences punishable under Sections 21/61 of the NDPS Act, 1985.

Notice of motion having been issued in this petition on 21.04.2017, and various affidavits having been filed at different points of time by different officers/police officials, as also the Director, prosecution, Punjab, in the meanwhile, notice was issued to two officials, i.e. Sub Inspector Ranjit Singh (former SHO, Police Station Cantt, Ferozepur) and

MHC Raman Kumar on 18.12.2017, as to why they should not be proceeded against under the provisions of the Contempt of Courts Act, 1971, for willfully disobeying the orders of the trial court (Judge, Special Court, Ferozepur), dated 17.05.2016 and 04.01.2017, as also of this Court (coordinate Bench) dated 03.08.2016, directing the investigating agency to produce before the trial court the call details records of the police officials as are stated to have arrested the petitioner on 19.02.2016 in the vicinity of 'Chungi No.7, near Cantt. Gawshala, Ferozepur Cantt', such records having been summoned on an application filed by the petitioner, stating to the effect that actually he was not at all arrested from that spot and that the recovery of narcotic drugs upon him was planted by the said officials who actually arrested him from the premises of the CIA Staff, Ferozepur, where he had been (allegedly) threatened to reach, failing which his brother, who had already been taken into custody (as alleged), would not be freed.

2. Thus, the trial Court having issued such directions for production of call details records of the mobile phones used by the police officials for the date and time in question, the said details were not provided.

3. Thereafter, the petitioner filed CRM-M-21666-2016 before this court which was disposed of on 03.08.2016, with the following being the operative part of that order:-

*“An effort was made by learned counsel for the petitioner to show that the entire recovery was planted. In this regard, the petitioner has moved an application before the trial Court to direct the prosecution to produce the mobile tower location of the police party to show that the police officials were nowhere near the place of alleged recovery. The aforesaid application was allowed as far as back on 17.5.2016, but till date, no*

*action has been taken thereon.”*

4. Despite the aforesaid order also, the call details records were not produced before the trial Court. Thereafter again the petitioner filed an application before the trial court, seeking that the call details records and tower locations of the mobile phones of the police officials concerned be furnished to that Court, with the learned Special Judge having again passed an order to that effect on 04.01.2017, reiterating that the order dated 17.05.2016 be complied with.

Yet again, the said order was not complied with.

5. Thereafter, as noticed in the order of this Court dated 04.09.2018, the Director Prosecution and Litigation, Punjab, had filed an affidavit dated 06.02.2018, stating therein that the aforesaid application of the petitioner was sent to the police station for necessary compliance; and the concerned SHO, i.e. SI Ranjit Singh, vide his letter dated 28.04.2016 had intimated that fact to the SSP, Ferozepur, (who during that period was one Mr. Manvinder Singh, who subsequently was reported to have died).

Consequently, notice was ordered to be issued to the aforesaid Manvinder Singh on 04.09.2018 by this Court, as to why he should not be proceeded against and punished for contempt of court in the face of the order of the trial court dated 17.05.2016, with a direction also issued to Ravinder Kumar Bakshi, who was stated to be the SSP, Ferozepur, between 27.07.2016 and 23.12.2016, as to why he should also not be proceeded against in the same manner, for violation of the order of this Court dated 03.08.2016.

Vide the same order dated 04.09.2018, notice was also issued to ASI Balwinder Singh, to file an affidavit 'in similar terms'; that being so in

view of the fact that SI Ranjit Singh had named him as the person who was to obtain the record. (Learned counsel appearing for the aforesaid Ranjit Singh submits that as a matter of fact ASI Balwinder Singh had been directed by Sub Inspector Ranjit Singh to attend the Court on the next date of hearing at the trial Court, on 29.04.2016, i.e. prior the order of 17.05.2016 being passed).

Learned counsel appearing for SI Ranjit Singh (later Inspector) also points out that as per Ranjit Singhs' affidavit dated 07.02.2018, he had entrusted it to ASI Balwinder Singh to procure the call detail records on 28.04.2016, and even the order passed by this Court on 03.08.2016 was to be complied with by ASI Balwinder Singh.

Ravinder Kumar Bakshi (former SSP, Ferozepur), filed an affidavit dated 01.10.2018, effectively stating therein that he had inspected the police file and had come to know that on 17.05.2016 no police official was present in the trial Court and that the order passed on that date by that Court was never received in the office of the SSP, or even in the Police Station Cantt, Ferozepur, but as regards the order passed by this Court on 03.08.2016, reference to that was entered by ASI Mahal Singh vide DDR No.40 of the same date in the police station register; and it was 'marked directly by the Incharge, litigation' in the SSPs' office, to the SHO Police Station Cantt. for compliance, whereas actually it should have been brought to the notice of the SSP because the 'litigation incharge' was not authorized to have directly marked it as such.

He also goes on to state that had the orders been brought to his notice, he would have ensured compliance thereof.

Learned counsel appearing for SI Ranjit Singh however again

points to the affidavit dated 07.02.2018, to submit that the said official had duly done his duty by first bringing it to the notice of the office of the SSP that the trial court had directed that the call details records be produced before it on the next date of hearing (17.05.2016); and thereafter even upon this Court's order dated 03.08.2016 having been passed, the matter was marked down to him from the office of the SSP and consequently, to obtain the call details records from the phone companies concerned, ASI Balwinder Sinngh had been deputed to do the needful.

As regards Manvinder Singh, former SSP, it was also informed by learned State counsel to this Court (as recorded in one of the orders passed at that stage), that he had been SSP, Ferozepur in April/May, 2016, but had unfortunately passed away.

Today, pursuant to the order dated 09.08.2022, Mr. Surinder Lamba, SSP, Ferozepur, is present in Court and Mr. Bajwa, learned Additional Advocate General, Punjab, submits that the original file as was earlier in fact produced before this Court on 01.06.2017 (as per his instructions), is not traceable and with Mr. Lamba submitting that an inquiry in that regard will be held, with him having taken over as the SSP on 21.07.2022 only.

A perusal of all the pleadings before this Court till date, (which is rather large in number with various affidavits having been filed by various authorities including the former SSP, Ferozepur, as also the Director, Prosecution and Litigation, Punjab), reveals that without a doubt, the order passed by the trial Court on 28.04.2016, directing that the call details records of the mobile phones numbers of the police party as is stated to have apprehended the petitioner on 19.02.2016, were to be

obtained, but with them not having been produced in court on 17.05.2016.

Whether or not that order was ever actually conveyed to the police authorities is not clear, though very obviously the responsibility for that would have been on the Investigating Officer who should have been present in the trial court on 17.05.2016 and who learned counsel for the petitioner submits was actually SI Parveen Kumar, who in fact is the person against whom the petitioner was levelling an allegation to the effect that he effected the arrest of the petitioner other than at the place as was shown in the FIR.

Thereafter, as regards the order of this Court (co-ordinate bench) dated 03.08.2016, directing that the order passed by the trial court dated 17.05.2016 be complied with, the affidavit of the former SSP Ferozepur, Mr. Gaurav Garg (dated 01.06.2017), states to the effect that ASI Mahal Singh attended the hearing in this Court on 08.03.2016 and he entered that in the *Rapat/Roznamcha* (DDR) vide Report No.40 and he also orally disclosed that fact to SI Ranjit Singh, the then SHO Police Station Ferozepur Camp, and to MHC Raman Kumar

Thereafter, the order of this Court was received in the office of the SSP and an e-mail dated 06.08.2016 was issued by the litigation branch of the SSPs' Office for compliance of the said order, which was again sent to SI Ranjit Singh for taking action and in fact with the said order having been subsequently received from the Sessions Court, another letter dated 09.08.2016 was also issued by the Litigation Branch to SI Ranjit Singh for taking action (Reference the entries made in the

dispatch register on 06.08.2016 and 09.08.2016, such entries being No.238-5A and 251-5A respectively).

It is next stated that the action to be taken was 'mark to Investigating Officer, ASI Balwinder Singh' for taking action but Head Constable Raman Kumar failed to give any clarification or proof conveying it to ASI Balwinder Singh.

It is again to be noticed that as regards the order of this Court and those of the trial Court, it is stated in the affidavit of the Director of Prosecution and Litigation, Punjab, dated 06.02.2018, that as per the Additional Public Prosecutor who had attended the case on 17.05.2016, he had directed the 'Naib Court', Kulwant Singh, to determine as to whether the order (dated 17.05.2016) had been complied with or not. However, as the police was very well aware of the matter, no written information was given by the Naib Court to the SSP.

Before going on conclude the matter, the orders passed by the trial Court dated 17.05.2016, by this Court on 03.08.2016 and again by the trial Court on 04.01.2017, are reproduced hereinbelow.

Order dated 17.05.2016 (Annexure P-3):-

“XXX      XXX XXX XXX

An application has been filed by accused Balwinder Singh seeking direction to Additional Public Prosecutor/Senior Superintendent of Police, Ferozepur/Investigating Officer to place on file the mobile call details and tower location. It is the plea of the accused that the Investigating Officer of the present case is SI Parveen Kumar who has

mobile no.9780002185. He was accompanied by HC Satnam Singh, who has mobile number 9646292386 and HC Narinder Singh who has mobile no.9417122184. The applicant wants to prove that the alleged occurrence had never taken place and the said police officials were not at the place of alleged recovery. Hence the application.

2. Learned counsel for the applicant in order to support his case relied upon “**Suresh Kumar Vs. Union of India**” reported in **2015 (3) RCR (Criminal) 340.**”

3. In view of the facts stated in the application and observations made by Hon'ble Apex Court in the aforesaid case, since the accused can be allowed to summon call record of concerned mobile telephones of concerned police officials to show that police were not near the location of recovery but were at some other location, a necessary direction in this context be issued to Senior Superintendent of Police, Ferozepur to get the needful done. Application disposed off accordingly.

Order dated 03.08.2016 (Annexure P-6):-

“XXX XXX XXX XXX

An effort was made by learned counsel for the petitioner to show that the entire recovery was planted. In this regard, the petitioner has moved an application before the trial Court to direct the prosecution to produce the mobile tower location of the police party to show that the police officials were nowhere near the place of alleged recovery. The aforesaid application was allowed as far as

back on 17.05.2016, but till date, no action has been taken thereon.

In these circumstances, the respondent-State is directed to take the necessary action to the aforesaid order dated 17.05.2016 forthwith.”

Order dated 04.01.2017 (Annexure P-8):-

“XXX      XXX XXX      XXX

An application for exempting personal appearance of accused Balwinder Singh has been filed again on the ground that he is suffering from high fever. Perusal of the file shows that on the last few dates the accused is not appearing and has been filing application for exemption of his personal appearance on the ground that he is not well, but no medical certificate is attached. Hence, the application is kept pending with the direction to the counsel to produce medical certificate from a qualified doctor on the next date and to produce the accused. For further proceeding to come up on 16.01.2017.

An application for issuance direction to the SSP, Ferozepur to supply/provide call details and tower location of the concerned police officials has been filed by the counsel for the accused. Perusal of the file would reveal that on 17.05.2016 the Court had directed to SSP, Ferozepur to bring on record the call details as mentioned, in the application but as stated in the application compliance of the directions has not been made. Additional PP for State seeks time to verify the same. Meanwhile further directions for compliance of order dated 17.05.2016 be issued again for the

next date.”

As a conspectus of the entire matter, after going through the relevant parts of the voluminous file, what emerges is that undoubtedly the orders passed by the trial court, and this Court, directing the call details record of the police party as is stated to have arrested the petitioner, were duly conveyed at least to the SHO of the Police Station, i.e SI Ranjit Singh, as also, obviously, to some of the police officials subordinate to him such as MHC Raman Kumar and SI Balwinder Singh, and possibly another person (HC Sukhdev Singh, as has been referred to from the inquiry report by learned counsel appearing for MHC Raman Kumar).

What unfortunately is not coming out clearly is as to whether any of the orders were actually put up to the SSP concerned, with the order dated 17.05.2016 seemingly not having been put up to anybody, but the earlier order in that context, dated 28.4.2016, passed by the trial court, having been conveyed at least to the office of the SSP; as was the order of this Court dated 03.08.2016, with even a letter for compliance thereof having been issued by the person incharge of the litigation branch in the office of the SSP.

Though it would be difficult for this court to accept completely that the SSP was never made aware of any of the orders, including the order of this court, yet simply on an inference in that context, obviously nobody can be punished for wilfully disobeying court orders.

Consequently, 'granting benefit of doubt' in that regard to

Ravinder Kumar Bakshi who was the SSP Ferozepur between 27.07.2016 to 23.12.2016, no finding is recorded as regards his role if any in disobeying the orders of the trial court and this Court; and as regards the other officials working under the supervision of the SHO, i.e. then SI Ranjit Singh, (since stated to have retired), i.e. SI Parveen Kumar, ASI Balwinder Singh, and HC Raman Kumar, they being persons who again were working under orders of the SHO, I am not inclined to hold them to have deliberately disobeyed the orders of this court.

However, the SHO himself, whose prime duty was to ensure compliance of the orders of the trial court as also of this court, cannot be held to be not guilty of deliberate disobedience of those orders.

It is also to be observed by this Court that the call details records, if obtained, was evidence which, if gathered, may have been vital for the trial court to determine as to whether the petitioner was actually arrested from the spot where he was shown to have been arrested from, in the FIR, or whether he was arrested from a completely different place altogether.

Naturally, if that evidence had been produced before the trial Court, either to support the case of the prosecution or to disprove it, the proceedings in the trial court would have gone accordingly.

However, this court is not to comment on the guilt or innocence of the petitioner in these proceedings, with him already having been convicted by the trial court and with an appeal filed by him, which would be heard by this court.

Hence, to conclude these proceedings, this court finds retired

Inspector Ranjit Singh (former SHO Police Station, Ferozepur), guilty of wilfully disobeying the orders of the trial court dated 28.04.2016, 07.05.2016 and 04.01.2017, and of this court dated 03.08.2016.

The question then is as to what punishment should be imposed on him.

With the evidence in question no longer available, a harsh punishment, in the opinion of this court, should be actually imposed upon him, and on those others under his command who may be equally guilty of such obedience, he being the person actually responsible for the orders to be carried out as the SHO of the Police Station; however, he already having retired from service, with the matter having remained pending for a long time, a punishment of a fine of Rs.50,000/- is imposed upon him, to be deposited with the Registry of this Court within a period of one month from today.

The inquiry with regard to how the original record went missing as regards implementation of the orders of the trial court and this court, would be held by the respondent-State, to be completed within four months.

For that purpose, the file be put up before this Court on 12.12.2022.

(AMOL RATTAN SINGH)  
JUDGE

10.08.2022  
monika//

*Whether reasoned/speaking?*    *Yes*  
*Whether reportable?*                *No*