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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 30.05.2022

+ **CONT.CAS(C) 487/2022**

SMT MANJEET

..... Petitioner

Through: Ms. Azra Rehman, Ms. Sommya
Chaturvedi, Advs.

versus

KULDEEP

..... Respondent

Through: Mr. Anilendra Pandey, Mr. Sandeep,
Advs.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

JASMEET SINGH, J. (ORAL)

1. This is a petition seeking contempt proceedings against the petitioner for violating the order dated 28.01.2022 passed by this Court in CRL.REV.60/2022.
2. It is submitted by Ms. Azra Rehman that the petitioner is guilty of violating the directions contained in the order of 28.01.2022 with *mala fide* intentions as the petitioner has utilized the amounts which were directed to remain unutilized vide the directions of the order of 28.01.2022.
3. It is further submitted by Ms. Rehman that the respondent was aware of the order 28.01.2022 as he had filed a caveat and he was served with the advance copy.
4. On 28.01.2022, this Court had directed as under:

"1. The present revision petition has been filed under Section 397 Cr.P.C. read with Sections 401/482 Cr.P.C. on behalf of the petitioner/revisionist seeking quashing/setting aside of the



impugned order dated 03.12.2021 passed by the learned Principal District & Sessions Judge, South-West District, Dwarka Courts, New Delhi in CA No. 12/2021.

2. *Mr. Salman Khurshid, learned Senior Counsel for the petitioner/wife submits that the petitioner had instituted a complaint under Section 12 of the PWDV Act against the respondent/husband. He submits that vide order dated 20.11.2019 passed by the Trial Court, the respondent was restrained from creating any third party rights by disposing of his share in the ancestral property. It is submitted that the aforesaid order was modified vide order dated 08.01.2021 and the respondent was permitted to dispose of his share of ancestral land, subject to him depositing the sale consideration in the form of an FDR in his name pledged to the Court. He further submits that vide the impugned order, the Sessions Court has set aside the order dated 08.01.2021 and directed release of amount stated to be deposited in the form of an FDR in favour of the respondent/husband.*

3. *Issue notice to the respondent by all permissible modes, including electronic, returnable on 25.04.2022.*

4. ***On instructions, it is submitted that the FDR amount is still lying with the Trial Court. Accordingly, till the next date of hearing, the directions contained in the impugned order qua release of the FDR shall remain stayed.***

5. ***A copy of this order be communicated electronically to the concerned Trial Court.”***

5. The brief background of the facts is that the petitioner and respondent were married as per Hindu rites and ceremonies on 19.02.1999, and were blessed with one daughter named Riya on 25.07.2001 and a son named, Aryan on 23.09.2003. The petitioner is stated to be suffering from grave torture, trauma, and misbehaviour at the hands of the respondent/husband. The petitioner filed the application before the learned CMM u/s 12, 18, 19, 20, 22 of the Protection of Women from Domestic Violence Act, 2005 praying for residence and monetary relief and compensation.



6. Subsequently, the Mahila Court passed an order on 20.11.2019 restraining the respondent from creating any third party interest/disposing of his share in the ancestral property till the order on the application. The respondent then filed an application stating that some of his share of land falling in Khasra No. 69 is sought to be purchased by the Government for construction of a canal and he is unable to sell the same due to the stay order dated 20.11.2019.

7. The Court vide its order dated 08.01.2021 held that since the sale of land is for public purpose, it ordered vacation of stay and permitted the respondent to sell the particular part of land which fell within the Government notification dated 01.05.2019 to the concerned department. However, it was directed that the proceeds of the said sale of land would be placed in a fixed deposit in the name of the respondent in the court till further orders.

8. It further directed that the FDR has to be notarized by the court and the same proceeds cannot be utilized by the respondent husband till further orders.

9. The respondent husband then preferred an appeal before the Principal District and Sessions Judge against this order dated 08.01.2021.

10. The Principal District and Sessions Judge on 02.02.2021 stayed the operation of the order dated 08.01.2021 passed by the learned MM, Mahila Court. On 03.12.2021, the Principal District and Sessions Judge set aside the order of 08.01.2021 passed by Mahila Court.

11. It is this order which was challenged in CRL.REV. 60/2022 and on 28.01.2022, the order as noted above came to be passed.

12. When this contempt petition was filed on 04.05.2022, this Court had



issued notice and directed the respondent to file a counter-affidavit. The counter-affidavit has been filed, wherein besides reiterating the above, it has been stated that there was no FDR ever prepared or deposited in compliance of the order dated 08.01.2021.

13. It is further stated in the reply that on 29.12.2021 money was released by the U.P. Government department to the respondent.

14. Hence on the date the amount was released in favour of the respondent, there was no stay of any kind operating against the respondent.

15. In rejoinder, Ms. Rehman states that the amount has been utilized by the respondent on 29.01.2022 i.e. after passing of the order dated 28.01.2022.

16. I have heard the learned counsel for the parties. The present petition is a contempt petition for intentionally and *mala fide* violating the directions issued by this Court.

17. Contempt proceedings are extraordinary proceedings and are to be utilized with circumspection and only in rarest of the rare cases where deliberate, intentional and *mala fide* violations of the orders are required to be shown before the Court to initiate a contempt action. In the Supreme Court Judgment of **Kanwar Singh Saini v. High Court of Delhi**, [(2012) 4 SCC 307], the Court has observed the following in contempt proceedings:

“38. The contempt proceedings being quasi-criminal in nature, the standard of proof required is in the same manner as in other criminal cases. The alleged contemnor is entitled to the protection of all safeguards/rights which are provided in the criminal jurisprudence, including the benefit of doubt. There must be a clear-cut case of obstruction of administration of justice by a party intentionally to bring the matter within the ambit of the said provision. The case should not rest only on surmises and conjectures. In Debabrata Bandhopadhyaya v. State of W.B. [AIR 1969 SC 189 : 1969 Cri LJ 401], this Court observed as under: (AIR p. 193, para 9)



“9. A question whether there is contempt of court or not is a serious one. The court is both the accuser as well as the judge of the accusation. It behoves the court to act with as great circumspection as possible making all allowances for errors of judgment and difficulties arising from inveterate practices in courts and tribunals. It is only when a clear case of contumacious conduct not explainable otherwise, arises that the contemnor must be punished. ... Punishment under the law of contempt is called for when the lapse is deliberate and in disregard of one's duty and in defiance of authority. To take action in an unclear case is to make the law of contempt do duty for other measures and is not to be encouraged.”

(emphasis added)”

18. In the present case as noted above, the order of 08.01.2021 was stayed on 02.02.2021 and thereafter, vacated on 03.12.2021, the amount was released in favour of the respondent on 29.12.2021 when there was no restriction or stay operating against the respondent. The order of 28.01.2022 is neither retrospective nor reads as such. On the date, order dated 28.01.2022 was passed, the respondent had already received the amounts on a date (i.e. 29.12.2021) when there was no stay in operation against the respondent. There was no FDR lying with the trial court when the order dated 28.01.2022 was passed. As noted above, there needs to a clear cut case of contempt made out against the contemnor. In the present matter, there is no wilful disobedience or deliberate lapse or contumacious conduct on part of the Respondent.

19. In this view of the matter, I find no merit in the contempt petition and the same is dismissed.

JASMEET SINGH, J

MAY 30, 2022/dm

[Click here to check corrigendum, if any](#)