

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

CONTEMPT APPEAL NO. 1 OF 2023
IN
CONTEMPT PETITION NO. 332 OF 2019
IN
CRIMINAL WRIT PETITION NO. 656 OF 2016 (D)

APPELLANT/ :

Original Petitioner

Ms. Savita D/o Prabhakar Rohankar,
Age : 44 years, Occ : Agriculturist,
R/o Sukli (Gurao), Post Karanja,
Tahsil Nandgaon Khandeshwar,
District Amravati.
Mob.No.9021140273.

V E R S U S

RESPONDENT/ :

Original Respondent

Deepak S/o Rajpalsingh Thakur,
Age : 61 years, Occ : Retired,
R/o Behind Ajhar Hussain D.Ed.
College, Ratanlal Plot, Akola,
Tahsil and District Akola.

Ms. S. P. Rohankar present in-person.

Shri S. B. Gandhe, Advocate for respondent-sole.

CORAM:- VINAY JOSHI AND

VALMIKI SA MENEZES, JJ.

DATED : 10/07/2023.

ORAL JUDGMENT : (PER VINAY JOSHI, J.) :

1. Heard finally with the consent of learned counsel appearing for the parties.

2. This contempt appeal raises challenge to the order dated 11/11/2022 passed by this Court in Contempt Petition

No.332/2019 by which the Contempt Petition was disposed of with liberty to the petitioner to move afresh, in case, the contemnor aggravates the contempt by filing another application for discharge on the ground of sanction. The said order is subject matter of challenge on various grounds. Rather, the grounds which were already taken in earlier two Contempt Petitions.

3. Heard appellant lady in-person and Shri Gandhe, learned counsel for respondent – contemnor. Perused the entire record. The litigation is having long drawn history which is already referred by this Court (Para 3 to 10) in order dated 06/06/2022 in Civil Application (CAN) No.42/2022 in Contempt Petition No.332/2019. For the sake of convenience, the same is reproduced as below :-

"3. The proceeding bears a checkered history. Initially father of applicant namely Prabhakar has filed a criminal case against the non-applicant – Deepak (contemnor), which was registered as Regular Criminal Case No.197/2013. The contemnor has filed a discharge application in said proceedings, which came to be rejected on merits vide order dated 13.05.2015. In discharge application inter alia the contemnor has raised a technical issue of sanction to prosecute. The said order of rejection was challenged by the contemnor in Revision Application, however, said revision came to be dismissed by the Sessions Court vide order dated 13.07.2016. Being aggrieved by the said rejection, the

contemnor has approached this Court by filing Criminal Writ Petition No.656/2016. The said Writ Petition was withdrawn with a liberty to file fresh application for discharge only on merits of the case, meaning thereby the technical objection about sanction was precluded to be raised before the Magistrate.

4. In said background, the contemnor filed second discharge application raising a technical issue about sanction, which was again rejected by the learned Magistrate vide order dated 08.11.2017. Since the contemnor has raised the issue of sanction against the directions of this Court, the present applicant has preferred a Contempt Petition. In said proceedings the contemnor has admitted his mistake of raising the issue of sanction despite earlier order of this Court, therefore, tendered an unconditional apology to this Court. Having regard to the fact that the contemnor has tendered unconditional apology, it was accepted and the contempt petition was disposed of.

5. The matter never ends, as after disposal of the contempt petition on 27.02.2018 once again the contemnor moved another application seeking discharge i.e. third application, on 05.11.2019. Pertinent to note that in the said application also once again the technical issue of sanction was raised. In view of that the present applicant has filed second Contempt Petition No.332/2019 contending that despite specific directions of this Court in Criminal Writ Petition No.656/2016, once again the technical issue has been raised, and therefore the contempt.

6. This Court on prima facie satisfaction of the contemptuous act on the part of the contemnor, has framed

charge against him vide order dated 13.10.2021. Thereafter vide order dated 29.11.2021, the Contempt Petition was disposed of with certain observations. Though this Court has passed an order of sentence, however, considering that the contemnor was a retired fellow, the order was kept in abeyance with a rider that if the contemnor commits further contemptuous act, then the order of sentence would be revived. Besides that, the contemnor was directed to pay costs of Rs.25,000/- within a stipulated period as he has repeatedly filed applications by which the applicant/lady was harassed.

7. Within stipulated time the amount of costs of Rs.25,000/- was not paid, however, lateron with the permission of this Court the initial cost of Rs.25,000/- and additional cost of Rs.5000/- was deposited in this Court.

8. Virtually the contempt petition was disposed of, however, it was with a caveat to revive the sentence under certain contingencies. Taking thread of this, the present application is taken out by the applicant lady pointing out that after disposal of the second contempt petition on 21.11.2021, the contemnor has filed another application on 15.01.2022 in the Court of Magistrate stating that in discharge application he is seeking to delete the grievance about sanction and urged the Court to consider the application on merits. According to the applicant, already twice discharge application was rejected by the Magistrate. The contemnor was cautioned by this Court for not to do any further contemptuous act, however, once again he has revived his prayer for discharge and therefore, a valid cause for revival of the earlier order.

9. It is contended on behalf of the contemnor that filing of discharge application to the Court of Magistrate would not

ipso facto amount to contempt. Accused has right to apply for discharge as provided under the Code of Criminal Procedure. However, the facts of the case are some what different as the first discharge application was rejected on merits and the said order is maintained upto this Court. Thereafter, as liberty was granted by this Court, second discharge application was filed though precluded to raise issue of sanction, however, that point was also canvassed and it was rejected by the Magistrate. In the circumstances everything has come to an end. However, inspite of challenging the second rejection to the higher forum, once again third discharge application was filed before the same Court which was itself improper. However, this Court has taken note of the said fact while deciding the second contempt petition and therefore that needs no consideration once again.

10. After disposal of the second contempt petition, the contemnor has filed application [Exh.99] dated 15.01.2022 once again requesting the Magistrate to consider his third discharge application on merits. Infact there was no propriety to file such third discharge application for the same cause, which was nothing but, an abuse of the process of the Court. However, it is informed that the concerned Magistrate has also dealt with the third discharge application on merits, and ultimately it was rejected. The trial Court has also framed a charge and the matter is fixed for evidence, meaning thereby the issue of discharge is now closed."

4. In continuity, we may note that this Court vide order dated 29/11/2021 held that the respondent has committed contempt for which appropriate order was passed. However, in

pursuance of said order, the respondent has not deposited costs of amount of Rs.25,000/- within stipulated period. Later on, respondent (contemnor) has applied to this Court vide Civil Application (CAN) No.14/2022 seeking permission to deposit the amount. This Court vide order dated 07/03/2022 has allowed the said application subject to additional costs of Rs.5,000/-. There is no dispute that in pursuance of said order, the respondent - contemnor has deposited Rs.25,000/- + Rs.5,000/- = Rs.30,000/- on 09/03/2022. The said amount was admittedly withdrawn by the petitioner. Thereafter, the petitioner has sought revival of the order dated 29/11/2021, which was dealt by this Court vide order dated 06/06/2022. However, the matter remained pending.

5. Learned Single Judge vide impugned order dated 11/11/2022 has noted that after passing of order dated 29/11/2021, there is no complaint about the breach of directions and therefore, nothing survives in this petition and it was disposed of. There is no dispute that after passing of order dated 29/11/2021, no fresh discharge application was filed by the contemnor. It is petitioner's grievance that thereafter, respondent has filed an application (Exh.99) withdrawing his allegations pertaining to sanction by filing application dated 15/01/2022. Admittedly, it was a third discharge application filed much earlier

than the order dated 29/11/2021 and it was considered too. The respondent's application to withdraw the point of sanction is rather in tune with the multiple orders of this Court and therefore, filing of said application cannot be termed as violation of order of this Court.

6. It is petitioner's grievance that though this Court in its order dated 29/11/2021 directed the respondent to deposit Rs.25,000/- within four weeks, however, the said amount was not deposited within stipulated period and thus, there is contempt. At the cost of repetition, we may say that later on, this Court by subsequent order dated 07/03/2022 has allowed the respondent to deposit the amount with further costs of Rs.5,000/- which was complied. Since this Court has permitted to deposit cost amount, we do not see any actionable breach. Rather, it was intent of the order (passed in second contempt) to desist the respondent from filing repeated discharge applications on the ground of sanction. Thereafter, the respondent has neither filed discharge application nor anything is brought to our notice to show further contemptuous act. By the time, charges are framed and the matter is for evidence. Considering all above aspects, we see no illegality in the order of this Court dated 11/11/2022 by which the Contempt Petition No.332/2019 was disposed.

7. In view of the above, appeal being devoid of merit, stands dismissed.

[VALMIKI SA MENEZES, J.]

[VINAY JOSHI, J.]

Choulwar