



Cont.P.No.2443 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2023

CORAM

THE HONOURABLE MR. JUSTICE **S.S. SUNDAR**
AND
THE HONOURABLE MR. JUSTICE **SUNDER MOHAN**

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Gandhimathi

... Petitioner

Vs.

R.Devi,
The Inspector of Police,
Sankari Police Station,
Salem District.

... Respondent

Contempt Petition filed under Section 11 of the Contempt of Courts Act, 1971 for the wilful and wanton disobedience of the order in H.C.P. No.1354 of 2023 dated 26.07.2023.

For Petitioner : Ms.D.Sahithya
for Mr.M.Elango

For Respondent : Mr.E.Raj Thilak,
Addl. Public Prosecutor
assisted by Mr.C.Aravind

ORDER

(Order of the Court was made by **S.S.SUNDAR, J.**)

This contempt petition is filed alleging wilful disobedience of the order of this Court in H.C.P. No.1354 of 2023 dated 26.07.2023.



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2. The brief facts which are necessary for the disposal of this contempt petition are as follows:

2.1 The petitioner filed a habeas corpus petition in HCP No.1354 of 2023 to produce her husband by name Shanmugam, son of Pattappan, who is aged 32 years. This Court, after recording the statement of learned Additional Public Prosecutor that the respondent police is hopeful of locating the detenu in six weeks, passed the following order on 26.07.2023:

'8. On the absentee being located, let the absentee be produced before the jurisdictional Magistrate with prior intimation to the HCP petitioner (absentee's wife). The jurisdictional Magistrate to proceed in accordance with law. We are informed that the jurisdictional Magistrate is Judicial Magistrate I, Sankari. We make it clear that all the rights of respondents 3 to 6 (private respondents) and anyone else concerned with this case are preserved as captioned HCP is disposed of in the Admission Board albeit with notice to official respondents.

9. If there is undue delay or if there is any other development, we make it clear that all the rights and contentions of the petitioner or anyone concerned for the absentee are preserved and left



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open for being raised in collateral or similar proceedings. Further we make it clear that it is open to the petitioner to come back to this Court not only with a similar but even same prayer if there are other developments and if the need arises. All the rights of all concerned are preserved.'

3. The above contempt petition is now filed on the ground that the respondent police has wilfully violated the judicial order. Though several allegations are made in the affidavit, this Court finds that the allegations are baseless and immature.

4. A status report was filed by the contemnor before this Court recording the steps she has taken pursuant to the directions of this Court. The details found in the status report would show that the respondent had taken several efforts and examined several persons to secure the detenu. In fact, the respondent has gone to several hospitals and has shown the photograph of the detenu to find whether any unidentified bodies are kept in mortuaries. A list of persons which had been enquired by the respondent would show that the respondent has taken genuine efforts in tracing the detenu.



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5. In paragraph 21 of the status report, the respondent also tendered unconditional apology on her part. The scope of the contempt in matters like this cannot be on the basis of literal interpretation of the orders. The order passed by this Court is general and it should be read in the context. A direction cannot be construed as mandatory. There cannot be a direction to do something which is not possible or which is not within one's reach.

6. Having regard to the steps the respondent had taken pursuant to the directions of this Court, this Court finds no disobedience much less wilful disobedience of the order of this Court. Therefore, this contempt petition is closed. However, we earnestly request the respondent to continue the process of investigation till the detenu is secured.

(S.S.S.R., J.) (S.M., J.)
13.12.2023

Index : Yes / No
Neutral Citation : Yes / No
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