

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

% **Date of Decision: August 18, 2023**

+ **CONT. APP.(C) 4/2022 & CM APPLs. 9944/2022 & 9945/2022**

S.I. KULDEEP

.....Appellant

Through: Mr. Udit Malik, ASC for GNCTD
alongwith Mr. Vishal Chanda,
Advocate.

Versus

RAKESH KUMAR

....Respondent

Through: Mr. Ajay Kumar Pipaniya and Mr.
Harjas Pratap Singh Anand,
Advocates.

CORAM:

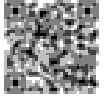
HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T (O R A L)

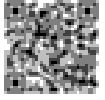
1. The appellant has preferred the present appeal against the impugned orders dated 28.10.2021 and 07.12.2021 passed in Cont. Cas.(C) No.480/2020 (hereinafter referred to as the “*contempt petition*”) whereby the appellant has been held guilty of contempt. The appellant has also assailed the order dated 31.01.2022 passed in the Review Petition No.16/2022 which was preferred in the said contempt petition.

2. As per facts, a group of senior citizens called the “*Varisht Nagrik Manch*” (hereinafter referred to as “*the group*”) booked a tour to Bhutan for the period from 17.03.2020 to 22.03.2020 and in lieu thereof, paid an amount of Rs.22 Lakhs to one travel agency called the “*Luxury Vacation and Holidays Pvt. Ltd.*”, of which the respondent herein is a Director. Though, the said tour got cancelled in the first week of March 2020, the

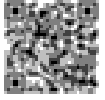


group did not get any refund of their money. This prompted the group to file a complaint bearing number LC-864 at PS.: Maurya Enclave, New Delhi and the appellant herein, serving in the Delhi Police as a Sub-Inspector since 20.11.2014, was appointed as the Investigating Officer therein. Thereafter, the appellant, vide one of the notices dated 21.08.2020, asked the respondent to join inquiry on the next day, however, the respondent, vide his reply declined to join the investigation as he had already been inquired thrice before. Meanwhile, during the preliminary inquiry, on the basis of the information qua the bank statements of the respondent received from ICICI Bank, an FIR No. 310/2020 under Sections 406/34 of the Indian Penal Code, 1860 was registered at PS.: Maurya Enclave, Delhi on 22.08.2020 and on 23.08.2020 the appellant arrested the respondent from his place of residence. Aggrieved thereby, the respondent on 26.08.2020, filed the contempt petition before the learned Single Judge alleging that the notice dated 21.08.2020 was not in consonance with the guidelines set out by the Hon'ble Supreme Court of India in *Arnesh Kumar vs State of Bihar and Another* (2014) 8 SCC 273 whereby it has been held that a notice under Section 41-A of the Code of Criminal Procedure, 1973 (hereinafter referred to as the "*CrPC*") is mandatorily to be served upon the accused, in this case the respondent. Taking note of the same, the learned Single Judge vide the impugned orders in the contempt petition sentenced the appellant to undergo simple imprisonment for one day and imposed a fine of Rs.2000/- as well as nominal costs of Rs.15,000/- to be paid to the respondent herein. Aggrieved thereby, the appellant preferred the Review Petition No. 16/2022, which was dismissed vide order dated 31.01.2022.

3. Learned counsel for the appellant contends that the appellant while



serving the notice dated 21.08.2020 upon the respondent was under the bona-fide impression that the notice would meet the requirements of a notice under Section 41-A of the CrPC. He also contends that it was only upon the failure of the respondent to join investigation as per the earlier notice dated 21.08.2020 and also to prevent him from committing any further offence and also for the proper investigation of the said complaint case, that the respondent was arrested by the appellant on 23.08.2020. As per the learned counsel for the appellant, issuance of notice under Section 41-A of the CrPC is not necessary where a person is required to be arrested by a police officer in exercise of powers conferred under Section 41(1) of the CrPC. He submits that the said contention was considered in the order dated 24.08.2020 passed by the learned MM, Tihar Court Complex. He also contends that the arrest of the respondent clearly fell under the ambit of Section 41(1)(b)(iii) of the CrPC. Relying upon *Afak Shabbir vs State of Maharashtra* 2012 SCC OnLine 1296 he contends that in exercise of the powers under Section 41(1)(b)(ii) of the CrPC, the police officer is empowered to arrest an accused provided he has a reason to believe that the said accused has committed an offence. Therefore the procedure stipulated in *Arnesh Kumar (supra)* qua a notice under Section 41-A of the CrPC is not attracted in the present case. He further contends that since the group and the respondent herein have already entered into a joint settlement dated 21.06.2021 and since the appellant has already tendered an apology before the contempt court vide an affidavit dated 22.11.2021, it would be prudent for this Court to take a lenient view in the present matter. Lastly, placing reliance upon *U.N. Bora Ex. Chief Executive Officer & Ors. vs Assam Roller Flour Mills* 2021 SCC OnLine SC 968 and *Smt. Pushpaben vs*



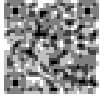
Narandas V. Badiani 1979 (2) SCC 394 he contends that contempt of court has to be a deliberate, conscious and intentional act and what is required is a proof beyond reasonable doubt since the proceedings are quasi criminal in nature. In the end, he submits that the nominal costs of Rs.15,000/- imposed upon the appellant vide the impugned order dated 07.12.2021, have already been deposited.

4. In response thereto, learned counsel for the respondent contends that the arrest of the respondent was a clear violation of the guidelines as laid down in *Arnesh Kumar(supra)* as well as the requirements of a notice under Section 41-A of the CrPC as enumerated in the Standing Order No.109/2020 of the Delhi Police. He further contends that the manner in which the arrest was made by the appellant for an offence which entails a maximum punishment of three years is highly unjustified. Further, he contends that since the entire evidence in the said complaint case was documentary and was already in possession of the appellant, therefore, there was no need to arrest the respondent.

5. This Court has heard the learned counsel for the parties and has also perused the documents on record.

6. Though it is trite that the issue of contempt is only between the contemnor and the Court and the respondent herein has neither any role to play nor is required to be heard, irrespective of that, this Court has heard the learned counsel for the respondent to reach substantial justice.

7. Without adverting to the merits and the legality of the position involved herein, in the considered opinion of this Court, though the appellant has erred in not following the guidelines as laid down in *Arnesh Kumar (supra)* qua a notice under Section 41-A of the CrPC, this Court



cannot lose sight of the fact that, *firstly*, the appellant has already tendered an unconditional apology to this Court vide an affidavit dated 22.11.2021, *secondly*, the group and the respondent have already entered into a joint settlement dated 21.06.2021, *thirdly*, the appellant has been in service for almost the last nine years and has a long journey ahead of him and *lastly*, he has already paid the nominal costs of Rs.15,000/- imposed upon him vide order dated 07.12.2021. Taking into account the aforesaid overall relevant factors, this Court is of the opinion that it would be in the interest of justice, if a lenient view is taken in the present matter and the appellant is not held guilty of contempt of court.

8. However, taking note of the fact that the arrest of the respondent was not in consonance with the requirements as laid down by the Hon'ble Supreme Court of India in *Arnesh Kumar (supra)* and also to remedy the grievance of the respondent to the best possible extent, this Court, allowed the present appeal and the orders dated 28.10.2021 and 07.12.2021 passed in the contempt petition whereby the appellant has been held guilty of contempt and sentenced to undergo simple imprisonment for one day, along with a fine of Rs.2,000/- are quashed. However, since the nominal costs of Rs.15,000/-, earlier imposed upon the appellant vide the impugned order dated 07.12.2021 passed by the learned Single Judge, has already been paid by the appellant, no order qua that is required to be passed.

SURESH KUMAR KAIT, J.

SAURABH BANERJEE, J.

AUGUST 18, 2023/rr