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Cont.P.No.1742 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH
AND
THE HONOURABLE MR. JUSTICE SUNDER MOHAN

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Bhavikha Jain M

... Petitioner

Vs.

1.Shankar Jiwal, IPS,
Director General of Police Tamil Nadu,
Post Box No.601,
Dr.Radhakrishnana Salai,
Mylapore,
Chennai-600 004.

2.Sandeep Rai Rathore, IPS,
Commissioner of Police,
Greater Chennai Police,
No.132, Commissioner Office Building,
EVK Sampath Road,
Vepery,
Chennai-600 007.

3.Palavesam,
Inspector of Police,
CCB-I, Chennai.

...Respondents



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PRAYER: Contempt Petition filed under Section 11 of the Contempt of Court Act, seeking to initiate contempt proceedings against the respondents and punish for wilfully disobeying the order passed by the Hon'ble Apex Court in Crl.A.No.1277 of 2014 dated 02.07.2014.

For Petitioner	: Mr.K.P.S.Palanivelrajan Senior Counsel for M/s.K.P.S.Law Associates
For Respondents	: Mr.A.Gokulakrishnan Additional Public Prosecutor

ORDER

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

This Contempt Petition has been filed to initiate contempt proceedings against the respondents and punish them for their wilful disobedience of the order passed by the Hon'ble Apex Court in Crl.A.No.1277 of 2014 dated 02.07.2014.

2. The petitioner herein has been arrayed as the second accused on a complaint registered as Crime No.172 of 2023 dated 07.07.2023 for the



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offences punishable under Section 420, 468 and 120B IPC. Since all the offences in which the petitioner has been implicated prescribe for a maximum punishment of 7 years of imprisonment only, a notice dated 07.06.2024 under Section 41 A Cr.P.C., was issued to the petitioner by the Sub Inspector of Police, Forgery Investigation Wing, Central Crime Branch, Chennai-7.

3. By placing reliance on the guidelines stipulated in the case of *Arnesh Kumar vs. State of Bihar & Another*, reported in (2014) 8 SCC 273, the learned Senior Counsel for the petitioner would submit that the notice under Section 41 (A) Cr.P.C., was served after a period of 11 months, which is against the dictum of the Hon'ble Supreme Court. He further submitted that, in an identical case in Cont.P.(MD).No.1412 of 2022, the Co-ordinate Bench at Madurai had taken cognizance of a similar disobedience and had issued notice to the contemnor, and therefore, the present Contempt Petition requires consideration.



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4. In the guidelines of ***Arnesh Kumar's case***, notice under Section 41

(A) Cr.P.C. requires to be served within two weeks from the date of institution of the case. Failure to comply with this time limit, would attract contempt proceedings. A relevant portion of the order of the Hon'ble Supreme Court reads as follows:

"11.6. Notice of appearance in terms of Section 41A of Cr.P.C be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the District for the reasons to be recorded in writing;

11.7. Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before High Court having territorial jurisdiction."

5. The aforesaid extract is self explanatory. Though the notice of appearance in terms of Section 41 A Cr.P.C., requires to be served on the accused within two weeks, the outer limit may be extended by the



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Superintendent of Police for reasons to be recorded in writing.

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6. In the affidavit in support of the Contempt Petition, nowhere has the petitioner mentioned that the two weeks time limit was not extended by the Superintendent of Police, nor did the learned Senior Counsel for the petitioner affirm during his arguments that such an extension was not obtained. On the other hand, when the notice under Section 41 A Cr.P.C., dated 07.06.2024 was sent to the accused, calling upon him to appear on 12.06.2024, he had hastily sent a contempt notice dated 11.06.2024 through his lawyer. The contempt notice, which was despatched on 11.06.2024 itself, was addressed to the Director General of Police, State of Tamil Nadu, Commissioner of Police, Chennai and the Inspector of Police, Forgery Investigation Wing, CCB, Chennai. This legal notice which has been produced before us, does not state that the extension of time was not obtained from the concerned Superintendent of Police. Apparently, the petitioner has not done due diligence on this aspect since he had instructed his lawyer to sent the notice even before attending the enquiry scheduled on 12.06.2024. This apart, we are unable to contemplate as to how a contempt



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notice could be sent to the Director General of Police, as well as the Commissioner of Police, who had absolutely no role to play in this case.

Not being contended with sending the contempt of notice against these two top ranking police officials, the petitioner has also impleaded the Deputy General of Police and Commissioner of Police, along with the concerned Inspector of Police, as 'contemnors' in the present Contempt Petition, with a prayer to initiate the contempt proceedings against all the three respondents.

6. In this background, we are constrained to remark that the very attempt on the part of the petitioner herein to hastily send a contempt notice, followed by filing of the Contempt Petition, without verifying as to whether the time limit stipulated in *Arnish kumar's* case was extended or not and by unnecessarily impleading the two top most ranking police officials, we are of the view that the entire attempt by the petitioner to initiate contempt proceedings is misconceived and may have been made with an ulterior motive.

7. The learned Senior Counsel, also made a faint attempt to impress



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upon this Court that in identical circumstances, the Madurai Bench of the Madras High Court had entertained a Contempt Petition for violation of the time limit prescribed for issuance of a notice under Section 41 A Cr.P.C., in the case of ***K.Janarthan vs. Vimala, Inspector of Police, Madurai City*** in Contp.(MD).No.1412 of 2022. Though a copy of the final orders passed therein dated 27.07.2023 has been produced in the typed set of papers annexed to the Contempt Petition, there is not a single averment in the contempt petition filed by the petitioner.

8. When we had clarified with the Senior Counsel as to whether the petitioner was arrested in the present case in connection with Cr.No.172 of 2023, he replied in the negative. When we sought for the status of the petition in the Contp.(MD).No.1412 of 2022 before the Madurai Bench, he admitted that the petitioner therein was indeed arrested by the concerned police, without issuing notice under Section 41 A Cr.P.C. We fail to understand as to how the case before us and the aforesaid Contempt Petition at Madurai Bench could be equated as similar cases. Nevertheless, we do not intend to go any deeper into this aspect, since the petitioner himself has



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omitted to make any reference to the alleged similar case in his affidavit filed before us.

9. Above all, on scrutiny of the notice sent to the petitioner under Section 41 A Cr.P.C., dated 07.06.2024, we find that the Sub Inspector of Police, Forgery Investigation Wing, Chennai, had informed the petitioner that he has been implicated for the offences under Section 379, 420, 465, 467, 468, 471 read with 120 B IPC. Apparently, the offences in Cr.No.172 of 2023 has been amended by inclusion of further offences, which includes the offence under Section 467 IPC for which the punishment prescribed under the code is imprisonment for life or imprisonment for 10 years and fine. The investigation officer, after registration of Cr.No.172 of 2023, will be well within his powers to amend and include further offences in the FIR during the course of the investigation. If that be so, the notice under Section 41 A Cr.P.C., may not be required to be sent at all. The inclusion of the offence under Section 467 IPC in the notice under Section 41 A Cr.P.C., has also been suppressed by the petitioner in his affidavit. We do not intend to elaborate further on this aspect.



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10. The petitioner who has approached this Court, by impleading unnecessary parties, suppressing material and vital facts with regard to the extension of time limit for sending the notice under Section 41 A Cr.P.C., and suppressing inclusion of Section 467 IPC in the aforesaid notice etc., has abused the due process of law thereby interfering with the justice delivery system. We record our dissatisfaction on the conduct of the petitioner and by comprehending that this vexatious proceedings could have been on some ill advice, we refrain from taking any further action on the petitioner.

11. Accordingly, this Contempt Petition stands dismissed.

[M.S.R., J]

[S.M., J]

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Index: Yes/No

Internet: Yes/No

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