



2024:DHC:600



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

Date of decision: 25.01.2024

+ **CRL.M.C. 2023/2022**

ISH KUMAR

..... Petitioner

Through: Mr.Lalit Valecha, Ms.Taniya
Bali, Mr.Sameer Chopra,
Mr.Fawaz Aftab, Advs.

versus

STATE OF NCT OF DELHI & ORS.

..... Respondents

Through: Mr.Shoaib Haider, APP with
Insp Manjeet.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed by the petitioner under Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') challenging the order dated 11.02.2022 (hereinafter referred to as the 'Impugned Order'), passed by the learned Metropolitan Magistrate-10, South-East District, Saket Courts, Delhi, in CT Case No.6261 of 2020 titled as ***Ish Kumar v. Nadir Shah & Ors.***, dismissing an application filed by the petitioner herein under Section 15(2) of the Contempt of Courts Act, 1971 for initiating contempt proceedings against the concerned DCP/ACP/SHO and IO.



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2. It is the case of the petitioner that:-
- (a) the petitioner is in the business of the dealing in second hand cars. He was approached by the accused persons including one Delhi Police Inspector proposing to sell a Mahindra Scorpio car for a total sale consideration of Rs.11,00,000/-. The accused had demanded Rs.5,00,000/- in cash. The petitioner paid Rs.37,000/- vide a bank transfer, while Rs.13,000/- to the accused persons was paid by the petitioner in cash on the same day. The balance amount was to be paid on the next day. When the balance token money of Rs.4.5 lakhs was being paid in cash, he was surrounded by the accomplice/associates of the accused persons claiming themselves to be from the Income Tax Department. They forced the petitioner to sit in their car and he was taken to Sarai Kale Khan, where he was threatened on the gun point. He continued to receive threats and demand of Rs.50,00,000/- from the respondents.
- (b) Due to such threats, he was forced to leave Delhi and travel to Udaipur, Rajasthan. From there, he went to Jaipur. The petitioner states that he was abducted and kidnapped from Hotel Cygnett Inn Grand, Jaipur, Rajasthan for ransom and was brought to Delhi where he was beaten. He alleges that he was kept in the unauthorized custody.
- (c) He made a complaint in this regard to the higher authorities in the Delhi Police but no action was taken.
- (d) Faced with the harassment, he filed a petition before this



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Court being W.P.(CRL.) No.1525/2020 titled as ***Ish Kumar v. State & Ors.*** This Court, vide its order dated 01.10.2020, was pleased to allow the petitioner to withdraw the said petition with liberty to approach the concerned Magistrate with an application under 156(3) of the Cr.P.C.

- (e) The petitioner thereafter, filed an application under Section 156(3) of the Cr.P.C. being CC No.6261/2020. The learned MM, vide its order dated 09.10.2020, directed the ACP (PHQ) Vigilance and the concerned SHO to file the status report.
- (f) On an application filed by the petitioner, the learned MM, vide its order dated 13.10.2020, directed the DCP/ACP to ensure preservation of the CDRs of the accused persons and the relevant CCTV footage.
- (g) As the compliance report was not filed, by an order dated 22.10.2020, the learned MM directed the compliance report to be filed by the concerned DCP/ACP/SHO.
- (h) In purported compliance thereto, a report dated 23.10.2020 was filed by the Inspector Prem Kumar (IO), wherein, in order to mislead the learned MM, he only stated that he had sent a letter / notice under Section 91 of the Cr.P.C. to the service provider to preserve the CDRs and to the Manager/owner of Hotel Cygnett Inn Grand, Jaipur, Rajasthan to preserve the CCTV footage dated 30.07.2020.
- (i) The application filed by the petitioner under Section 156(3) of the Cr.P.C. was dismissed by the learned MM vide order



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dated 03.11.2020.

- (j) The petitioner approached this Court in challenge to the said order by way of CRL.M.C. No.2193/2020 titled as ***Ish Kumar v. State of NCT of Delhi & Ors.***, which was dismissed as withdrawn vide order dated 11.11.2020, granting liberty to the petitioner to approach the Court of Sessions.
- (k) Apprehending the destruction of evidence, the petitioner filed another petition, being CRL.M.C.NO.2366/2020 titled as ***Ish Kumar v. State (NCT of Delhi) & Ors.***, which was dismissed as withdrawn vide order dated 03.12.2020, again with liberty being granted to the petitioner to approach the Court of Sessions.
- (l) Revision Petition filed by the petitioner against the order dated 03.11.2020, being C.R. No.313/2020 titled as ***Ish Kumar v. State***, was allowed vide order dated 05.02.2022, remanding the matter back to the learned MM to decide the application filed by the petitioner under Section 156(3) of the Cr.P.C., afresh.
- (m) At this stage, the petitioner filed another application before the learned MM, seeking a direction for preservation of the relevant CCTV footage of 30.07.2020 of Hotel Cygnett Inn Grand, Jaipur, Rajasthan, CDRs of the accused persons.
- (n) Vide order dated 16.03.2021, the learned MM directed the concerned DCP to file a report on the non-compliance of the order passed.
- (o) A report dated 06.04.2021 was filed by the Additional DCP



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(South-East).

- (p) The petitioner then filed the application seeking initiation of the contempt proceedings against the DCP/ACP/SHO and IO. The said application, however, has been dismissed by the Impugned Order.
- (q) In the meantime, a report dated 10.08.2021 was filed before the learned MM stating that the CDRs have been preserved. It was further stated that the CCTV footage of Hotel Cygnett Inn Grand, Jaipur, Rajasthan was available to be preserved only for a period of four days and therefore, was not available.
- (r) The learned MM, in its order dated 11.08.2021, recorded that there appears to be an active connivance between the police officials and the staff of the Hotel Cygnett Inn Grand, Jaipur as far the preservation of the CCTV footage is concerned. Directions were issued to the DCP for taking steps to recover the overwritten CCTV footage and calling for a report from Joint CP regarding the lapse on the part of the concerned DCP and IO with respect to the preservation of the CCTV footage pursuant to the earlier order dated 13.10.2020 of the Court.
- (s) In the Verification Report, it was reported that the claim that the CCTV footage can be preserved only for four days was incorrect inasmuch as the Hotel Cygnett Inn Grand, Jaipur, Rajasthan had informed the IO that the CCTV footage is retained for a period of 15 days.



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- (t) The learned counsel for the petitioner submits that by a reply dated 23.04.2021 received under the Right to Information Act, 2005, the petitioner has also been informed that the allegations levelled against the Inspector Rajinder Singh, ASI Jai Kumar and ASI Vikas were substantiated. He submits that therefore, there was a clear attempt made by the respondents to mislead the Court thereby committing a criminal contempt.
- (u) The petitioner thereafter filed a petition before this Court under the Contempt of Courts Act, being CONT.CAS(C) NO.903/2021 titled as ***Ish Kumar v. Govt. of NCT of Delhi Mr.Santosh Kumar Tripathi & Ors.***, which was dismissed as withdrawn vide order dated 03.12.2021, granting liberty to the petitioner to approach the Court in altered circumstances and pursue his remedies in the pending proceedings.
- (v) The learned MM, however, vide the Impugned Order dated 11.02.2022, has dismissed the applications filed by the petitioner seeking initiation of contempt proceedings against the respondents.
3. The learned counsel for the petitioner submits that as there was a clear attempt made by the respondents to mislead the Court, the dismissal of the applications by the learned MM by its Impugned Order was erroneous and incorrect.
4. On the other hand, the learned APP appearing for the State/respondent no.1 submits that due action has been taken on the complaint made by the petitioner in form of preservation of the CDRs. As far as the CCTV footage is concerned, he



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maintains that the same is stored only for four days and, therefore, could not be retrieved. He further submits that in the investigation, in fact, no substance was found in the allegations made by the petitioner.

5. I have considered the submissions made by the learned counsels for the parties.
6. As far as the main allegation of the petitioner in his complaint/application under Section 156(3) Cr.P.C is concerned, the same is pending enquiry of the learned MM. This Court, therefore, restrains itself from making any observation thereon.
7. As far as the dismissal of the applications filed by the petitioner seeking initiation of the contempt proceedings against the respondents by the impugned order is concerned, I find no merit in the challenge to the same.
8. The learned MM in the Impugned order dated 11.02.2020, has *inter alia* observed as under:

“Now coming to the facts of the case, upon the filing of application of complainant, this court had issued direction to concerned DCP/ACP to ensure the preservation of CCTV footage of Hotel Cygnett Inn Grand Jaipur dated 30.07.2020. As per the compliance report dated 23.10.20 filed by IO Inspector Prem Kumar sufficient steps were taken by him to comply with the order of the court. Even the notice under section 91 Cr.P.C. sent by the IO was duly acknowledged by the employee of Hotel Cygnett Inn Grand. Copy of the same is on record. It is to be noted that the court nowhere in its order directed the police officials to place the CCTV footage on record immediately. However, as the complainant kept on making the submission that the CCTV



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footage has not been preserved, therefore by way of abundant caution a report was also called from concerned DCP. In his reply dated 10.08.2021 he then informed the court that the CCTV footage is not available as the device had the capacity to store the CCTV footage for only 4 days. After receiving of said reply this court called for a detailed report from concerned Joint CP regarding lapses on the part of concerned DCP and IO, if any, with respect to the preservation of CCTV footage.

The joint CP in his reply stated that in compliance of the order of this court dated 03.08.2021 Inspector Sandeep Kumar Ahlawat got the reply of notice dated 14.10.2020 from the manager of Hotel Cygnett Inn Grand Jaipur through WhatsApp on 07.08.2021 wherein he informed about the limited storage capacity of the DVR. He further stated in his reply that IO as Inspector Prem Kumar failed to obtain reply from the hotel manager in respect of limited storage capacity hence, appropriate proceedings were initiated against him.

*Therefore, considering the entire sequence of events, this court is of the view that the act of police officials would not amount to committing criminal contempt of court. It cannot be said that the police officials flouted the order of this court. The act of concerned DCP/ACP/SHO/IO has in no way scandalised or lowered the authority of this court, neither it has prejudiced or interfered in due course of judicial proceeding nor it has interfered with the administration of justice in any manner. It has been held by Hon'ble Supreme Court in *Mrityunjay Das v. Sayed Hesibur Rahaman*, (2001) 3 SCC 739 that "Exercise at powers under the Contempt of Courts Act shall have to be rather cautious and use of it rather sparingly after addressing itself to the true effect of the contemptuous conduct."*

9. I find no infirmity in the above observation. The proceedings for

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contempt is a matter between the Court and the alleged contemnor. In the present case, the learned MM found that no contempt has been committed by the respondents. The impugned order cannot be challenged by the petitioner in form of the present petition. In case the petitioner is of the opinion that the respondents have in any manner been derelict in conducting proper investigation, the remedy of the petitioner is not in form of invoking the contempt jurisdiction of the Court.

10. Accordingly, I find no merit in the present petition. The same is dismissed.
11. There shall be no order as to costs.

NAVIN CHAWLA, J

JANUARY 25, 2024
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[Click here to check corrigendum, if any](#)