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

Judgment reserved on: 30.10.2023

Judgment pronounced on: 05.01.2024

+ **CONT.CAS(C) 1580/2023**

VIJAY KUMAR AGARWAL

..... Petitioner

Through: *Petitioner-in-person*

versus

MS KADAMBARI AWASTHI

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

: **JASMEET SINGH, J**

1. The present contempt petition is filed for initiation of contempt proceedings against the respondent, i.e. learned CMM, Karkardooma Courts, Delhi, for issuing of Non-Bailable Warrants ('NBWs') against the petitioner *vide* order dated 03.10.2023 passed in FIR No. 524/2002 (Cr. Case No. 4387/2016) titled 'State vs Vijay Kumar' which according to the petitioner is in violation of the law laid down by the Hon'ble Supreme Court in *Inder Mohan Goswami and Anr. v State of Uttaranchal and Ors, (2007) 12 SCC 1* and the judgment of this court in CrI. MC No. 1157/2008 dated 11.04.2008 titled '*Mrs. Mani Shandily and Anr. v the State and Anr.*'
2. The brief facts of the case, as alleged by the petitioner, are that on



21.12.2002, the petitioner was criminally assaulted and grievously wounded by one Mr. Dhiraj Sharma, an alleged tenant of the petitioner. The petitioner lodged telephonic and written complaints dated 22.12.2002, 25.12.2002, 25.12.2002, 01.01.2003, 01.01.2003 and 26.03.2003 with the PCR and SHO, Pandav Nagar, Police Station, Delhi however to no avail. Consequently, a complaint case, i.e. CT Case No. 47855/2016, titled 'Vijay Kumar Agarwal v Dhiraj Sharma and Ors.' was filed by the petitioner.

3. The petitioner submits that Mr. Dhiraj Sharma, i.e. the respondent in the complaint case filed by the petitioner, along with a Mr. Pinaki Ghosh (*hereinafter referred to as the opposite parties*) on 26.12.2002 lodged an FIR No. 524/2002 u/s 457/380/341 IPC against the petitioner for his alleged refusal to return a sum of Rs. 1800/- to the opposite parties. It is submitted that the main grievance in the FIR is that the door of the room, Rs. 4800/- in cash, a Philips two-in-one, a Walkman and a Timex watch was found missing from the room of the opposite parties. However, it is stated that there are no specific allegations against the petitioner.
4. The said FIR of the opposite parties was listed for hearing on earlier dates and on 21.09.2023, the petitioner appeared through VC and he was directed to remain present physically on the next date of hearing, i.e. 03.10.2023.
5. On 03.10.2023, the petitioner could not appear before the learned CMM as the petitioner had Crl MA Nos. 50819/2023, 50820/2023 and 50821/2023 in Cont. Cas(C) No. 745 of 2023 listed before this Court.
6. The petitioner submits that an application dated 28.09.2023 seeking



adjournment was duly filed in the court of the respondent and despite giving the afore-said reasons and seeking an adjournment, the respondent issued NBWs against the petitioner.

7. According to the petitioner, the issuance of NBWs is in violation of the law laid down by the Hon'ble Supreme Court in ***Inder Mohan Goswami v. State of Uttaranchal***, (2007) 12 SCC 1, the operative portion of the same reads as under:-

“53. Non-bailable warrant should be issued to bring a person to court when summons or bailable warrants would be unlikely to have the desired result. This could be when:

- it is reasonable to believe that the person will not voluntarily appear in court; or*
- the police authorities are unable to find the person to serve him with a summon; or*
- it is considered that the person could harm someone if not placed into custody immediately.*

54. As far as possible, if the court is of the opinion that a summon will suffice in getting the appearance of the accused in the court, the summon or the bailable warrants should be preferred. The warrants either bailable or non-bailable should never be issued without proper scrutiny of facts and complete application of mind, due to the extremely serious consequences and ramifications which ensue on issuance of warrants. The court must very carefully examine whether the criminal complaint or FIR has not been filed with an oblique motive.

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56. The power being discretionary must be exercised judiciously with extreme care and caution. The court should properly balance both personal liberty and societal interest before issuing warrants. There cannot be any straitjacket



formula for issuance of warrants but as a general rule, unless an accused is charged with the commission of an offence of a heinous crime and it is feared that he is likely to tamper or destroy the evidence or is likely to evade the process of law, issuance of non-bailable warrants should be avoided.”

8. The petitioner also relies on the judgment of this court in CrI. MC No. 1157/2008 dated 11.04.2008 titled ‘**Mrs. Mani Shandly and Anr. v the State and Anr**’, the operative portion of which reads as under:-

“18. It has been necessary to pen down a more detailed judgement in this case because of a number of such cases coming to the notice of this Court of indiscriminate issuance of NBWs. The accused must remain present for purposes of early conclusion of trial. An accused who seeks to defeat the course of justice by repeatedly absenting himself must be dealt with firmly. I, however, consider that non-presence should not result in issuance of NBWs straightaway when issuance of bailable warrants could secure the presence of the petitioners. The petitioners were appearing on earlier dates and it is not as if the issuance of bailable warrants could not have ensured their presence on the subsequent dates. The trial court must take into consideration the important aspects such as the past conduct of the accused, the nature of offence or the failure to appear in pursuance to the order of summoning. The present case is one of bailable offences and the petitioners appeared in pursuance to the summons issued and continued to appear but were absent on one date. Not only that they even moved an application for recall of the non-bailable warrants, which has been dismissed by the impugned order. The trial court at the stage of issuance of NBWs at the initial stage did not record any reasons for taking this extreme step and thus the order was in violation of the direction (ii) contained in the judgement of this Court in Court on its own motion Vs. CBI



(supra). The caution given in the Rule 3 aforesaid has also been thrown to the winds by the trial court. It is clearly provided that when issuance of summons or bailable warrants would suffice, there is no necessity to issue NBWs as it involves interference with personal liberties of persons.

9. The petitioner submits that the NBWs were issued in a routine and mechanical manner, without assigning any reason for the same. The petitioner had duly filed the application for adjournment and had submitted the same through the official mail of the learned trial court. The petitioner also relies on the order of learned Ms. Himanshi Tyagi, MM, Karkardooma Court wherein on the basis of the said application an adjournment was granted to the petitioner on 03.10.2023.
10. It is also submitted by the petitioner that there were no reasons for the learned MM to issue NBWs against the petitioner since: a) the petitioner had duly appeared on the last date of hearing, i.e. 21.09.2023; b) the petitioner is a law-abiding citizen residing in his own house in Delhi and c) the petitioner is pursuing his own matters before the Hon'ble Supreme Court, this court and the learned trial court, and therefore there was no possibility of his absconding.
11. I have heard the arguments lead by the petitioner-in-person and on behalf of the respondent.
12. At the outset, I agree with the submissions of the petitioner-in-person that the order dated 03.10.2023 passed by learned CMM, Karkardooma Courts is contrary to law.
13. The learned CMM should have refrained from issuing NBWs against the petitioner as i) the petitioner appeared on the last date of hearing



before the learned CMM on 21.09.2023; ii) the petitioner had duly moved an application dated 28.09.2023 seeking an adjournment, prior to the date of hearing, on the ground that the petitioner was appearing before the High Court on the next date, i.e. 03.10.2023; iii) the application dated 28.09.2023 was neither adjudicated upon nor rejected by the learned CMM; and (iii) the order issuing NBWs is contrary to the judgment of the Hon'ble Supreme Court in *Inder Mohan Goswami (supra)* as well as this Court in *Ms. Mani Shandily (Supra)*.

14. Hence, to my mind, the order dated 03.10.2023 was uncalled for and should not have been passed.
15. In addition, the order dated 03.10.2023 has been passed in a mechanical manner without any reasons having been assigned as to why issuance of NBWs were required to secure the presence of the petitioner.
16. Having observed that the order is bad in law, the next issue for my consideration is whether passing of a wrong order mandates initiation of contempt proceedings against the learned CMM. The answer is "No".
17. My reasons are that the learned CMM was acting in discharge of her official duty and passed an erroneous order. The orders are passed by courts of law keeping in view the facts of the case, submissions by the parties, the law and binding precedents. There may be errors by judicial officers/judges in appreciating the facts and the judicial precedents but the same would not result in initiation of contempt proceedings. The remedy available to the petitioner is to challenge the order in accordance with law and/or move an application seeking recall of the NBW's.



18. The Hon'ble Supreme Court in ***Krishna Prasad Verma v. State of Bihar***, (2019) 10 SCC 640, observed that action should not be taken against judicial officers only on the ground that allegedly wrong orders are passed, since ensuring independence and fearlessness of the district judiciary is paramount. The operative portion reads as under:-

“In a country, which follows the Rule of Law, independence of the judiciary is sacrosanct. There can be no Rule of Law, there can be no democracy unless there is a strong, fearless and independent judiciary. This independence and fearlessness is not only expected at the level of the Superior Courts but also from the District Judiciary.

2. Most litigants only come in contact with the District Judiciary. They cannot afford to come to the High Court or the Supreme Court. For them the last word is the word of the Magistrate or at best the Sessions Judge. Therefore, it is equally important, if not more important, that the judiciary at the District level and at the Taluka level is absolutely honest, fearless and free from any pressure and is able to decide cases only on the basis of the facts on file, uninfluenced by any pressure from any quarters whatsoever.

3. Article 235 of the Constitution of India vests control of the subordinate courts upon the High Courts. The High Courts exercise disciplinary powers over the subordinate courts. In a series of judgments, this Court has held that the High Courts are also the protectors and guardians of the Judges falling within their administrative control. Time and time again, this Court has laid down the criteria on which actions should be taken against judicial officers. Repeatedly, this Court has cautioned the High Courts that action should not be taken against judicial officers only because wrong orders are passed. To err is human and not one of us, who has held judicial office, can claim that we have never passed a wrong



order.

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16. We would, however, like to make it clear that we are in no manner indicating that if a judicial officer passes a wrong order, then no action is to be taken. In case a judicial officer passes orders which are against settled legal norms but there is no allegation of any extraneous influences leading to the passing of such orders then the appropriate action which the High Court should take is to record such material on the administrative side and place it on the service record of the judicial officer concerned. These matters can be taken into consideration while considering career progression of the judicial officer concerned. Once note of the wrong order is taken and they form part of the service record these can be taken into consideration to deny selection grade, promotion, etc., and in case there is a continuous flow of wrong or illegal orders then the proper action would be to compulsorily retire the judicial officer, in accordance with the Rules. We again reiterate that unless there are clear-cut allegations of misconduct, extraneous influences, gratification of any kind, etc., disciplinary proceedings should not be initiated merely on the basis that a wrong order has been passed by the judicial officer or merely on the ground that the judicial order is incorrect.”

19. In addition, I would like to rely upon ***Prithawi Nath Ram v. State of Jharkhand***, (2004) 7 SCC 261, the operative portion reads as under:-

“8. If any party concerned is aggrieved by the order which in its opinion is wrong or against rules or its implementation is neither practicable nor feasible, it should always either approach the court that passed the order or invoke jurisdiction of the appellate court. Rightness or wrongness of the order cannot be urged in contempt proceedings. Right or wrong, the



order has to be obeyed. Flouting an order of the court would render the party liable for contempt. While dealing with an application for contempt the court cannot traverse beyond the order, non-compliance with which is alleged. In other words, it cannot say what should not have been done or what should have been done. It cannot traverse beyond the order. It cannot test correctness or otherwise of the order or give additional direction or delete any direction. That would be exercising review jurisdiction while dealing with an application for initiation of contempt proceedings. The same would be impermissible and indefensible. In that view of the matter, the order of the High Court is set aside and the matter is remitted for fresh consideration. It shall deal with the application in its proper perspective in accordance with law afresh. We make it clear that we have not expressed any opinion regarding acceptability or otherwise of the application for initiation of contempt proceedings.”

20. In view of the aforesaid two judgments, I am of the opinion that it would be wrong and inappropriate to initiate contempt proceedings against a judicial officer for passing an erroneous order. In the entire petition, there are no allegations of extraneous considerations or illegal gratification against the learned CMM. Even though the order passed maybe erroneous, the contempt of court proceedings are only to be used sparingly and in rarest of rare cases. The error of judgment and non-appreciation of law by the learned CMM does not fall within the said category of such cases so as to persuade me to initiate contempt proceedings against a judicial officer.
21. The next question for the consideration is whether this court in contempt proceedings can quash the NBWs issued *vide* the order dated



03.10.2023.

22. The petitioner has an alternative remedy seeking quashing of the NBWs issued vide order dated 03.10.2023, he can challenge the order dated 03.10.2023 in accordance with law or move an application seeking recall of the NBWs.
23. Onceequally efficacious remedies are available to the petitioner, I am of the view that it would be inappropriate for this Court to quash the NBWs issued on 03.10.2023 in these contempt proceedings. This court would be enlarging the scope of contempt proceedings in case such orders are passed.
24. Having noted the above, this Court under Article 215 of the Constitution of India acts as a Court of record and has inherent powers.
25. Since after 03.10.2023, the next date fixed in the matter before the learned CMM was 05.12.2023 but the order is not available on the website of District Court, this court in exercise of the inherent powers under Article 215 of the Constitution of India and in view of the afore-stated factual position directs that in case NBWs against the accused have not been cancelled, the NBWs issued against the petitioner and notice u/s 446 Cr.PC issued to his surety shall remain stayed for a period of 8 weeks to enable the petitioner to challenge the issuance of NBWs and/or to move an application seeking recall of the NBWs.
26. With these observations, the contempt petition is disposed of in the above terms.

JASMEET SINGH, J

JANUARY 5th, 2024