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Suo Motu Cont.P(MD)No.3006 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 12.12.2024

PRONOUNCED ON : 23.01.2025

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Suo Motu Cont.P(MD)No.3006 of 2024

The Registrar (Judicial),
Madurai Bench of Madras High Court,
Madurai.

... Petitioner

Vs

S.Sugeeban,
The Immigration Officer,
The Bureau of Immigration,
D.54, SP Arcade,
9th Cross A Cross,
Thillai Nagar,
Tiruchirappalli,
Tamil Nadu – 620 018.

... Respondent

PRAYER: *Suo Motu* Contempt Petition is initiated against the contemnor under Section 12 of the Contempt of Courts Act, 1971 r/w Article 215 of the Constitution of India on the basis of the direction issued by this Court in W.P(MD)No.26700 of 2024, dated 03.12.2024.

For Petitioner : The Registrar (Judicial)

For Respondent : Mr.AR.L.Sundareshan
Assistant Solicitor General of India
Assisted by
Mr.K.Govindharajan
Deputy Solicitor General of India



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ORDER

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This *suo motu* Contempt Petition has been initiated by this Court against the contemnor for wilful disobedience of the order passed by this Court in W.P(MD)No.26700 of 2024 dated 22.11.2024, thereby permitting the writ petitioner to travel abroad on the ground that the Look Out Circular issued against the writ petitioner become infructuous and it cannot be executed since the criminal cases which were pending against the writ petitioner were over.

2.The petitioner/Sheik Allavudeen in W.P(MD)No.26700 of 2024 is hereinafter referred to as the 'writ petitioner'; the Immigration Officer in W.P(MD)No.26700 of 2024 is hereinafter referred to as the 'first respondent', the Superintendent of Police, Pudukottai and the Inspector of Police, Pudukottai District in W.P(MD)No.26700 of 2024 are hereinafter referred to as the 'respondents 2 and 3' and S.Sugeeban, The Immigration Officer in *Suo Motu Contempt Petition No.3006 of 2024* is hereinafter referred to as 'the contemnor'.



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3.The writ petitioner filed a Writ Petition in W.P(MD)No.26700 of 2024 for a direction directing the contemnor to permit him to travel abroad for his employment vide Passport No.T3925672 dated 01.04.2019 on the ground that no criminal case is pending against him.

4.On the submissions made by the learned Government Advocate (Criminal Side) appearing for the respondents 2 and 3 in W.P(MD)No.26700 of 2024 that no criminal case is pending as against the writ petitioner and the Look Out Circular which was issued pursuant to the registration of F.I.R was already executed as against the writ petitioner and the same is not in force; thereafter, the criminal cases are also over and therefore, the Look Out Circular become infructuous and it cannot be executed further, this Court by order dated 22.11.2024, directed the contemnor to permit the writ petitioner to travel abroad for his employment on his passport.

5.As directed by this Court in W.P(MD)No.26700 of 2024, dated 22.11.2024 the writ petitioner purchased a ticket to visit Riyadh and went to the Tiruchirappalli Airport. When the writ petitioner approached the departure immigration counter seeking



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departure clearance to Columbo by Sri Lankan Airlines Flight No.UL-132, the contemnor detained him on the ground that the writ petitioner's name figured in the Look Out Circular originated by the Superintendent of Police, Pudukkottai District, though the writ petitioner produced the order passed by this Court in W.P(MD)No. 26700 of 2024, dated 22.11.2024. The writ petitioner was retained for more than 10 hours on 01.12.2024 in the immigration clearance section of the Tiruchirappalli Airport. Thereafter, he was handed over at about 19 hours to the Airport Police Station, Tiruchirappalli along with his travel documents. After 30 minutes, the writ petitioner was handed over to the third respondent and he was released by the third respondent on verification of records. In fact, while the writ petitioner was under detention with the first respondent, the writ petitioner informed his counsel Mr.M.S.Senthil Kumar through telephone about his detention by the first respondent though he produced the order passed by this Court in W.P(MD)No.26700 of 2024, dated 22.11.2024. Immediately, the counsel contacted the counsel, who appeared on behalf of the first respondent before this Court, namely Mr.G.Raja Raman, but of no avail. Therefore, the counsel for the writ petitioner had sent an e-mail to the first respondent at about 12.24 hours on 01.12.2024. The extract of the mail is as follows:



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'Sir, I would like to bring to your notice that Hon'ble High Court of Madurai Bench has directed you to permit Mr.S.Sheik Allavudeen to travel abroad for employment vide passport No.T3925672 dated 01.04.2019 in UL 132 departing at about 10.15 A.M today from Trichy. It is made clear in the order that LOC issued by the Superintendent of Police, Pudukottai has become infructuous. Refusing to permit the petitioner ie., Sheik Allavudeen as per the order of the High Court of Madurai Bench is non compliance of the order passed by the Hon'ble High Court of Madurai Bench in W.P.No. 26700 of 2024 is clear negligence on your part and leads to take contempt of Court for wilful disobedience. Consider this mail to be the contempt notice and take immediate action for the same, failing which contempt proceedings will be initiated before the Hon'ble High Court of Madurai Bench.'

6.Even after receipt of the mail from the counsel for the writ petitioner, the contemnor failed to comply with the order passed by this Court and did not permit the writ petitioner to clear the immigration. It was mentioned before this Court on the very next day namely on 02.12.2024 and this Court directed the Registry to list the Writ Petition in W.P(MD)No.26700 of 2024 on 03.12.2024 under the caption 'for being mentioned'. After hearing the learned counsel for the writ petitioner, this Court initiated *suo motu*



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contempt proceedings as against the contemnor and directed the contemnor to appear before this Court on 05.12.2024.

7.On 05.12.2024, the contemnor appeared before this Court and Mr.AR.L.Sundareshan, learned Assistant Solicitor General of India appeared through Video Conferencing and requested time till 12.12.2024 to file an affidavit and to explain what had happened on 01.12.2024. This Court adjourned the *suo motu* contempt proceedings on 12.12.2024.

8.On perusal of the affidavit of the contemnor and Mr.AR.L.Sundareshan, learned Assistant Solicitor General of India submitted that the contemnor sought for unconditional apology for the incident that took place on 01.12.2024. Once the Look Out Circulars are entered by the Immigration Department pursuant to the request made by the originating authorities, as per the office Memorandum dated 27.10.2010 issued by the Ministry of Home Affairs and as per the revised procedure dated 22.02.2021, the immigration officer has to act as per the following guidelines:



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'6(H) Recourse to LOC is to be taken in cognizable offences under IPC or other penal laws. The details in column IV in the enclosed Proforma regarding reason for opening LOC must invariably be provided without which the subject of an LOC will not be arrested/detained.

(J) The LOC opened shall remain in force until and unless a deletion request is received by BOI from the Originator itself. No LOC shall be deleted automatically. Originating Agency must keep reviewing the LOCs opened at its behest on quarterly and annual basis and submit the proposals to delete the LOC, if any, immediately after such a review. The BOI should contact the LOC Originators through normal channels as well as through the online portal. In all cases where the person against whom LOC has been opened is no longer wanted by the Originating Agency or by Competent Court, the LOC deletion request must be conveyed to BOI immediately so that liberty of the individual is not jeopardized.'

9. When the writ petitioner approached the immigration clearance counter on verification of his travel documents, it was noticed that the Look Out Circular originated from the second respondent pursuant to the registration of Crime No.560 of 2011, dated 18.12.2011 has not been deleted. Therefore, the writ



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petitioner was referred to the contemnor, who was in charge Immigration Officer on 01.12.2024 at the Tiruchirappalli Airport.

10.The copy of the order passed by this Court was not served to the contemnor and as such, there was no deletion of the Look Out Circular issued against the writ petitioner. Further, in order to verify the genuineness of the order produced by the writ petitioner, the contemnor contacted the originator of the Look Out Circular, the second respondent. The contemnor was informed to hand over the writ petitioner to the Airport Police Station. Subsequently, he was produced before the third respondent and he was let off, but by then the flight in which the writ petitioner had to travel already departed from the Tiruchirappalli Airport. Therefore, the contemnor had not wilfully disobeyed or violated the order passed by this Court. If the copy of the order had already been communicated to the contemnor, the authority would have verified the order and taken steps to delete the Look Out Circular issued against the writ petitioner. The respondents 2 and 3 also did not communicate the order passed by this Court to the contemnor and did not take any steps to delete the Look Out Circular issued as against the writ petitioner.



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11.The learned Assistant Solicitor General further submitted that this Court granted two weeks time to permit the writ petitioner to travel abroad for his employment. But the writ petitioner planned to travel abroad on 01.12.2024 itself, that too without communicating the order passed by this Court before his travel. In support of his contention, he relied upon the judgment of the Hon'ble Supreme Court of India in **Contempt Petition (Civil) No.688 of 2021 in Civil Appeal No.3310 of 1997** in the case of **Chaduranga Kanthraj URS and another Vs. P.Ravi Kumar and others**, in which the Hon'ble Supreme Court of India held as follows:

'1.10 In order to punish a contemnor, it has to be established that disobedience of the order is 'wilful'. It means knowingly-intentional, conscious, calculated and deliberate with full knowledge of consequences flowing therefrom. It would exclude casual, accidental, bonafide or unintentional acts or genuine inability and would also not include involuntary or negligent actions. The deliberate conduct of a person means that he knows what he is doing and intends to do the same. It is too well settled that if two interpretations are possible, and if the action is not contumacious, a contempt proceeding would not be maintainable.



1.11 The weapon of contempt will not be used for execution of the decree or implementation of an order for which alternative remedy in law is provided for. The paramount consideration is given to maintain court's dignity and majesty of law. In Sudhir Vasudeva Vs. George Ravishekeran¹ this Court has observed that a Court exercising jurisdiction under the Contempt of Courts Act, 1971 must not travel beyond the four corners of the orders in relation to which contempt has been alleged. That the Court hearing a contempt petition ought to restrict the scope of its enquiry to such directions which are explicit in the judgment or orders of which contempt has been alleged.

1.12 The civil contempt would mean a wilful disobedience of a decision of this Court. What would be relevant is the "wilful disobedience". Hence, knowledge of having acted in disregard to an order is sine qua non for being proceeded with if there is a deliberate, conscience and intentional act then the jurisdiction can be clutched.

1.13 Having adumbrated position of law enumerated by this Court we proceed to deal with the alleged acts of contempt said to have been committed by the contemnors in the instant petitions.'

The learned Assistant Solicitor General also submitted that the disobedience of the order passed by this Court is not wilful and



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prayed for accepting the unconditional apology and set the contemnor free from the contempt proceedings.

12.The contemnor is present before this Court on 12.12.2024 and tendered unconditional apology for the events that had happened on 01.12.2024. Admittedly, the writ petitioner arrived at the Airport at about 08.45 hours to board the Srilankan Airlines to travel to Colombo UL-132 on 01.12.2024. At about 09.15 hours, the writ petitioner approached the immigration clearance counter seeking departure clearance. Though the writ petitioner produced the copy of the order in W.P(MD)No.26700 of 2024, dated 22.11.2024 the contemnor detained him till 19 hours on 01.12.2024. At about 19 hours, the writ petitioner was handed over to the Airport Police Station, Tiruchirappalli. By the time, the flight in which the writ petitioner had to travel, departed to Colombu. This Court specifically ordered that the Look Out Circular against the writ petitioner become infructuous and it cannot be executed, the contemnor is directed to permit the writ petitioner to travel abroad for his employment on his passport. Though this Court fixed time for two weeks, it does not mean that the contemnor has time for two weeks to permit the writ petitioner to visit abroad. Once the Look



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Out Circular becomes infructuous and the writ petitioner is permitted to travel abroad and the contemnor has no say and no jurisdiction to detain the writ petitioner in the immigration office itself. Therefore, it is nothing but illegal detention of the writ petitioner by the contemnor that too more than 10 hours. Even assuming that the contemnor had suspicion over the order produced by the writ petitioner, the contemnor can very well reject the immigration clearance and send the writ petitioner out of the Airport or if the Look Out Circular is in force, the contemnor can immediately hand over the writ petitioner to the Airport Police Station, Tiruchirappalli. There is absolutely no reason to detain the writ petitioner for more than 10 hours. That apart, the writ petitioner was insulted in front of all the general public in the Tiruchirappalli Airport by detaining him without any reason and no fault on the part of the writ petitioner. He lost his reputation and image in front of the general public. He also lost his ticket cost and cancelled his programme schedule.

13.The counsel, who appeared on behalf of the first respondent, was very much available in the Court proceedings while passing the order in W.P(MD)No.26700 of 2024 dated 22.11.2024



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and as such, the counsel had knowledge about the order passed by this Court. Hence the counsel ought to have communicated the order or informed about the order passed by this Court permitting the writ petitioner to visit abroad. Therefore, the failure on the part of the learned counsel appearing for the first respondent cannot be put against the writ petitioner. Further, the respondents 2 and 3 also failed to inform about the order passed by this Court before the first respondent. Further, when the order passed by this Court was produced by the writ petitioner before the contemnor and also the counsel, who appeared on behalf of the writ petitioner, had spoken to the contemnor, immediately, mail was sent to the contemnor, even then, there was no response. The mail was sent at about 12.24 hours on 01.12.2024. It was categorically mentioned that refusing permission for the writ petitioner's visit to abroad would amount to contempt of Court, if not permitting the writ petitioner to visit abroad the contempt proceedings will be initiated against the contemnor. Even then, the contemnor did not bother about e-mail sent by the counsel and detained the writ petitioner till 19 hours on 01.12.2024. On the first instance, at the time of production of the order passed by this Court in W.P(MD)No.26700 of 2024, dated 22.11.2024 the contemnor may think about the genuineness of the order produced by the writ petitioner. But even after receipt of mail,



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the contemnor failed to obey the order passed by this Court.

Therefore, it is nothing but wilful disobedience of the order passed by this Court.

14.It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India reported in **2023 SCC Online SC 1139 in Civil Appeal No.4955 of 2022** in the case of **Balwantbhal Somabhal Bhandari Vs. Hiralal Somabhal Contractor (deceased) represented by legal representatives and others**, wherein it is held that the object of the discipline enforced by the Court in the case of contempt of Court is not to vindicate the dignity of the Court or the person of the Judge, but to prevent undue interference with the administration of justice. If a party, who is fully in the know of the judgment/order of the Court, is conscious and aware of the consequences and implications of the order of the Court, acts in violation thereof, it must be held that disobedience is wilful. To establish contempt of Court, it is sufficient to prove that the conduct was wilful, and that the contemnor knew of all the facts which made it a disobedience of the Court order.



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15.The purpose of contempt jurisdiction is to uphold the majesty and dignity of the Courts of law since the image of such a majesty in the minds of the people cannot be led to be distorted. The respect and authority commanded by Courts of law are the greatest guarantee to an ordinary citizen and the entire democratic fabric of the society will crumble down if the respect for the judiciary is undermined. It is true that the judiciary will be judged by the people for what the judiciary does, but in the event of any indulgence which can even remotely be termed to affect the majesty of law, the society is bound to lose confidence and faith in the judiciary and the law Courts thus would forfeit the trust and confidence of the people in general.

16.In the case on hand, as stated supra, even after suspecting the order produced by the writ petitioner, the counsel for the writ petitioner had sent e-mail to the contemnor about the order passed by this Court and categorically stated that if any violation of the order passed by this Court, it would amount to contempt of Court. Even then, the contemnor failed to obey the order passed by this Court. Therefore it is clearly established that disobedience of the order passed by this Court is wilful. Thus, the contemnor



disobeyed the order passed by this Court wilfully and is liable to be punished under the Contempt of Courts Act, 1971.

17. Section 12 (1) to (3) of the Contempt of Courts Act, 1971 reads as follows:

"12. Punishment for contempt of Court. — (1) Save as otherwise expressly provided in this Act or in any other law, a contempt of court may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both:

Provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the Court.

(2) Notwithstanding anything contained in any law for the time being in force, no court shall impose a sentence in excess of that specified in sub-section (1) for any contempt either in respect of itself or of a court subordinate to it.

(3) Notwithstanding anything contained in this Section, where a person is found guilty of a civil contempt, the court, if it considers that a fine will not meet the ends of justice and that a sentence of imprisonment is necessary shall, instead of sentencing him to simple imprisonment, direct that he be detained



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*in a civil prison for such period not exceeding six months
as it may think fit.”*

18.An analysis of the above provision shows that sub-Section (1) of Section 12 provides that in a case of established contempt, the contemnor may be punished:

- (a) with simple imprisonment by detention in a civil prison; or
- (b) with fine or
- (c) with both.

19.A careful reading of sub-section (2) of Section 12 reveals that the Act places an embargo on the court not to impose a sentence in excess of the sentence prescribed under sub-section (1). A close scrutiny of sub-section (3) of Section 12 demonstrates that the legislature intended that in the case of civil contempt a sentence of fine alone should be imposed except where the Court considers that the ends of justice make it necessary to pass a sentence of imprisonment also.



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20.A close and careful interpretation of the extracted Section leaves no room for doubt that the legislature intended that a sentence of fine alone should be imposed in normal circumstances. The statute, however, confers special power on the Court to pass a sentence of imprisonment if it thinks that ends of justice so required. Thus before a Court passes the extreme sentence of imprisonment, it must give special reasons after a proper application of its mind that a sentence of imprisonment alone is called for in a particular situation. Thus, the sentence of imprisonment is an exception while the sentence of fine is the rule.

21.In the case on hand, because of wilful disobedience of the order passed by this Court by the contemnor, the writ petitioner lost his reputation and his entire programme stands cancelled and also lost his ticket expenses. He further incurred expenditure to reach his destination. When the wrong cannot be undone, the sentence of prison may not completely serve the ends of justice, but instead, payment of compensation would serve the ends of justice and condone the imprisonment. Further also considering the position of the contemnor and the unconditional apology sought for by the contemnor, in lieu of civil prison, ends of



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justice will be served if the contemnor is ordered to compensate the writ petitioner by paying a sum of Rs.50,000/- (Rupees Fifty Thousand Only) directly to the petitioner either by way of transfer by RTGS or cash or Demand Draft. Since by violation of the order passed by this Court, the injury to the judicial system is also caused by the contemnor and it is required to be compensated by the contemnor. Therefore in addition to a sum of Rs.50,000/- to the writ petitioner, the contemnor shall pay the cost of Rs.25,000/- (Rupees Twenty Five Thousand) to the Tamil Nadu State Legal Services Authority, Chennai. The contemnor shall pay the abovesaid amounts, within a period of two weeks from the date of receipt of the copy of this order. Accordingly, this Contempt Petition stands ordered.

23.01.2025

NCC : Yes
Index : Yes
Internet : Yes
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To

S.Sugeeban,
The Immigration Officer,
The Bureau of Immigration,
D.54, SP Arcade,
9th Cross A Cross,
Thillai Nagar,
Tiruchirappalli,
Tamil Nadu – 620 018.



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G.K.ILANTHIRAIYAN, J.

ps

Pre-Delivery Order made in
Suo Motu Cont.P(MD)No.3006 of 2024

23.01.2025