

ITEM NO.4

COURT NO.1

SECTION XVI

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition for Special Leave to Appeal (C) No. 24978/2018

(Arising out of impugned final judgment and order dated 23-08-2018 in CWJC No. 12845/2018 passed by the High Court Of Judicature At Patna)

NIVEDITA JHA

Petitioner

VERSUS

STATE OF BIHAR & ORS.

Respondent

Date : 12-02-2019 This matter was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE  
HON'BLE MR. JUSTICE L. NAGESWARA RAO  
HON'BLE MR. JUSTICE SANJIV KHANNA

Ms. Aparna Bhat, Adv./A.C.  
Ms. Joshita Pai, Adv.

For Petitioner

Ms. Fauzia Shakil, Adv. (AOR)

For Respondents  
for C.B.I.

Mr. K.K. Venugopal, AG  
Mr. Tushar Mehta, SG  
Mr. K. Raghavacharyulu, Adv./SPP  
Mr. Ankur Talwar, Adv.  
Mr. Saurabh Mishra, Adv.  
Mr. S. Udaya Kumar Sagar, Adv.  
Ms. Aishwarya Bhati, Adv.  
Mr. A.K. Sharma, Adv. (AOR)  
Mr. Kailash Pandey, Adv.  
Mr. Ranjeet Singh, Adv.  
Ms. Arunima Pal, Adv.  
Ms. Nupur Sharma, Adv.

for State of Bihar

Mr. Gopal Singh, AOR  
Mr. Manish Kumar, Adv.

for Brijesh Thakur

Mr. S. Mehdi Imam, Adv.  
Mr. Atif Suhrawardy, Adv.  
Ms. Shamama Anis, Adv.  
Mr. Tabrez Ahmed, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

Notice of contempt of this Court was issued vide order dated 7.2.2019 to Mr. M. Nageshwar Rao, Additional Director, Central Bureau of Investigation (C.B.I.) and Mr. Bhasuran S., Additional Legal Advisor and In-Charge Director of Prosecution, C.B.I. The charge against the alleged contemnors is that notwithstanding the orders of this Court, dated 31.10.2018 and 28.11.2018, restraining any change in the team investigating the Muzaffarpur shelter home case and despite explicit directions of this Court that Mr. A.K. Sharma, Joint Director, C.B.I. (In-Charge of investigation) will continue to remain the head of the investigating team, the aforesaid person - Mr. A.K. Sharma had been transferred out of the C.B.I. and posted as the Additional Director General, Central Reserve Police Force (C.R.P.F.). In addition to the aforesaid two orders of this Court, there is an earlier order dated 18.9.2018, to the same effect, when this Court was considering the order dated 29.8.2018 passed by the High Court of Patna, requiring a fresh team of investigators to be constituted by the then Special Director of C.B.I.

By our order dated 7.2.2019, we had required the Director, C.B.I. to give us details leading to the order relieving Mr. A.K. Sharma from the C.B.I. and the order posting him in the C.R.P.F. and also to inform the Court the names of all the persons who were involved in the said decision making process and in the implementation thereof. By the said order, we had also required Mr. M. Nageshwar Rao, the then In-Charge Director, C.B.I. (now Additional Director, C.B.I.) and Mr. Bhasuran S., Additional Legal Advisor and In-Charge

Director of Prosecution, C.B.I. to be personally present and offer their explanations.

In response, the present Director, C.B.I., Mr. M. Nageshwar Rao, and Mr. Bhasuran S. have submitted their reports/affidavits, which have been duly perused.

While Mr. M. Nageshwar Rao and Mr. Bhasuran S., in their respective affidavits, have apologized and admitted the commission of a mistake, in the same breath, they have denied willful disobedience of the orders of this Court. Notwithstanding the apology tendered as some kind of defence has been put up, this Court has no option but to consider the merits of the defence put up, namely, that there has been no willful disobedience of the directions of this Court.

This will require us to consider the information furnished to the Court by the Director, C.B.I. pursuant to the order dated 7.2.2019. Alongwith the written explanation/note of the Director, C.B.I., relevant file notes have been enclosed, which would go to show that on 18.1.2019, O.S./Pers.I, Department of Personnel and Training (DoPT) had conveyed that the Appointments Committee of the Cabinet had approved the curtailment of tenure of Mr. A.K. Sharma, Joint Director, C.B.I. with immediate effect, and that the Ministry of Home Affairs had conveyed its approval for appointment of Mr. A.K. Sharma to the post of Additional Director General, C.R.P.F. Accordingly, a draft relieving order of Mr. A.K. Sharma, Joint Director, C.B.I. with effect from the afternoon of 18.1.2019 was submitted for approval of the Director, C.B.I. Mr. M. Nageshwar Rao, the then In-Charge Director, C.B.I. (now Additional Director, C.B.I.) considered the aforesaid note and observed as follows:-

"Please examine and opine, regarding transfer on promotion of Shri A.K. Sharma, JD, CBI as ADG, CRPF, with reference to the order of Hon'ble SC in the cases where he was ordered to supervise/head the investigation."

The aforesaid note signed by Mr. M. Nageshwar Rao, dated 18.1.2019, would fully show that he was aware of the orders of this Court with regard to the continuance of Mr. A.K. Sharma, Joint Director, C.B.I. as the head of the investigating team.

On the basis of the aforesaid note of Mr. M. Nageshwar Rao, Mr. Bhasuran S., Additional Legal Advisor and In-Charge Director of Prosecution, C.B.I. gave his opinion in the file, which is as follows:-

"A perusal of the order dated 17.1.2019 of MHA it is seen that Sh. Arun Kumar Sharma IPS has been appointed as ADGP in CRPF in the level 15 of the Pay Matrix which it appears that one level higher than the present post. The Hon'ble Supreme Court in the Shelter Home Case has ordered Sh. Arun Kumar Sharma IPS shall supervise the case. In view of the fact that the above order is a beneficial order to Sh. A.K. Sharma IPS, there may not be any legal impediment to relieve the officer. We may bring this fact to the notice of the Hon'ble Supreme Court by way of an affidavit in the concerned cases, the facts and circumstances under which the officer was relieved and get an approval from the Hon'ble Supreme Court."

(emphasis supplied)

Mr. Bhasuran S., Additional Legal Advisor and In-Charge Director of Prosecution, C.B.I. in the underlined portion had expressed an opinion that as the posting of Mr. A.K. Sharma was to a higher post and, therefore, a promotion, there may not be any legal impediment to relieve the officer. We do not agree, as the orders of this Court regarding the continuance of

Mr. A.K. Sharma were clear and categorical. That apart, Mr. Bhasuran S., in his note (underlined portion) had suggested that the process of relieving the officer i.e. Mr. A.K. Sharma, Joint Director, C.B.I. may be brought to the notice of the Supreme Court by way of an affidavit indicating the facts and circumstances under which the officer 'was' relieved and seek an approval from the Supreme Court. We do not understand how when the file was pending at the stage of approval of the relieving order by Mr. M. Nageshwar Rao, the then In-Charge Director, C.B.I. (now Additional Director, C.B.I.), Mr. Bhasuran S. could have bona fide given the opinion that the officer 'was' relieved, namely, how Mr. Bhasuran S. could have used the past-tense to a pending action under consideration.

Be that as it may, on the said note of Mr. Bhasuran S., Mr. M. Nageshwar Rao, the then In-Charge Director, C.B.I. (now Additional Director, C.B.I.) expressed his approval and asked the concerned branches to submit an affidavit to the Supreme Court after consulting the counsels suitably. This was again on 18.1.2019. It appears that the file went back to the DoPT and once again a draft order for relieving Mr. A.K. Sharma, Joint Director, C.B.I. and giving charge of the said office to one Mr. G.K. Goswami, JD/HoZ, C.B.I., ACHQ-I, New Delhi was put up for approval of Mr. M. Nageshwar Rao, the then In-Charge Director, C.B.I. (now Additional Director, C.B.I.). Mr. M. Nageshwar Rao approved the said proposal on 18.1.2019 itself. We do not understand nor can we appreciate and comprehend how Mr. M. Nageshwar Rao being aware of this Court's orders, as the first note signed by him would indicate, and when he had sought an affidavit to be filed before this Court by his second note dated

18.1.2019, could, without satisfying himself that this Court had been taken into confidence, approve of the draft order relieving Mr. A.K. Sharma from the C.B.I. and giving additional charge to Mr. G.K. Goswami, JD/HoZ, C.B.I., ACHQ-I, New Delhi.

The argument advanced by Mr. K.K. Venugopal, learned Attorney General for India, apart from calling upon the Court to administer justice by tempering the same with mercy, centers around the legal advice of Mr. Bhasuran S., Additional Legal Advisor and In-Charge Director of Prosecution, C.B.I., which the learned Attorney General terms to be an error of judgment. It is the contention of learned Attorney General that as the action of Mr. M. Nageshwar Rao, the then In-Charge Director, C.B.I. (now Additional Director, C.B.I.) was on the basis of a legal opinion, there has not been any willful disobedience of the orders of this Court.

For the reasons elucidated earlier in detail, we cannot agree with what the learned Attorney General has suggested. In our considered view, the present is a case where contempt has been committed, both by Mr. M. Nageshwar Rao, the then In-Charge Director, C.B.I. (now Additional Director, C.B.I.) and Mr. Bhasuran S., Additional Legal Advisor and In-Charge Director of Prosecution, C.B.I. The apology tendered, though stated to be unconditional, is not so. There is a submission/contention that the actions were not willful, with which contention, we are in total disagreement.

We have heard the learned Attorney General on the question of sentence. We have also heard Mr. M. Nageshwar Rao, the then In-Charge Director, C.B.I. (now Additional Director, C.B.I.) and Mr. Bhasuran S., Additional Legal Advisor and In-Charge Director of

Prosecution, C.B.I. In exercise of power under Article 129 of the Constitution, for commission of contempt of Court, we sentence them till the rising of the Court and impose a fine of Rs.1,00,000/- (Rupees one lakh) each on Mr. M. Nageshwar Rao, the then In-Charge Director, C.B.I. (now Additional Director, C.B.I.) and Mr. Bhasuran S., Additional Legal Advisor and In-Charge Director of Prosecution, C.B.I. to be deposited within a week.

Notice of contempt stands disposed of.

(Deepak Guglani)  
Court Master

(Anand Prakash)  
Court Master