

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1003 OF 2021
(ARISING OUT OF SPECIAL LEAVE PETITION (CRL.) NO. 10427/2019)

M.A KHALIQ & ORS.

Appellant(s)

VERSUS

ASHOK KUMAR & ANR.

Respondent(s)

O R D E R

Leave granted.

This appeal challenges the judgment and order dated 18-07-2019 passed by the Division Bench of the High Court of Andhra Pradesh at Amravati in Contempt Appeal No. 45/2018 by which the order passed by the Single Judge in Contempt Case No.1907/2016 was set aside and the appeal preferred by respondent No.1 was allowed.

Taking cognizance of the assertions and allegations made in Contempt Case No.1907 of 2016, the Single Judge of the High Court vide order dated 09.12.2016 had passed following directions:

“The issue raised in this Contempt Case is whether in spite of an order dt. 19.08.2016 passed by this Court in W.P. No. 27778 of 2016, the 1st petitioner was forcibly taken away by the 2nd respondent herein at 10.30 pm on 29.08.2016. While the petitioners allege that it is the 2nd respondent who was responsible for violating the order passed by this Court, in the counter-affidavit filed by the 2nd respondent, this allegation is denied.

Therefore, the Metropolitan Sessions Judge, City Criminal Court, Nampally, Hyderabad shall inquire into the matter after recording the evidence adduced on behalf of petitioners as well as 2nd respondent within a period of eight (08) weeks from today and submit a report to this Court as to the allegations leveled by petitioners.

Post after eight (08) weeks.”

Pursuant to the aforesaid directions, Metropolitan Sessions Judge, Hyderabad, inquired into the matter and in his report dated 18.04.2017 it was stated as under:

“Thus, the Inspector of Police, Bhimavaram Rural PS in his enquiry report submitted to the Superintendent of Police, West Godavari District dt. 5.1.2017 admitted the petitioner no. 1 being the Akiveedu PS on 30.08.2016 and on 31.08.2016 and the petitioner no. 1 and his wife entered into a settlement deed and the petitioner no. 1 agreed to pay Rs. 9 lakhs to his wife. But, the respondent no. 2 denied the same and stated that there was no necessity for him to bring PW1 to the PS, when the case was withdrawn by Razia Sultana on 24.08.2016 itself. If the case was withdrawn by Razia Sultana on 24.08.2016 itself as contended by the respondent no. 2 there was no necessity for both the parties to settle the matter in the PS by executing Ex. P1. The documents exhibited by the petitioners would support the contention of the petitioners the PW1 was forcibly brought to Akiveedu PS and got signed on Ex. P1 against his will. The copy of the release deed given to PW1 would also prove that he was taken by the Akiveedu Police and released on 31.08.2016. The said document would disclose that he was called for counseling to the police station in relation to the complaint given by the wife of PW1. No notice was issued to the petitioner no. 1 under Section 41-A Cr.P.C asking him to attend the counseling by respondent no. 2. Without issuing any notice to the petitioner no. 1 taking him to Akiveedu Police Station in the name of counseling, detaining him on

30.08.2016 and on 31.08.2016 till 11.00 p.m. would prove the contention of the petitioners that the petitioner no. 1 was forcibly taken away by the second respondent in violation of the orders of the Hon'ble High Court in writ petition no. 27778/2016 dt. 19.08.2016.

The respondent no. 2 submitted that he was not available in the Police station and he was on bandobust duty from 12.08.2016 to 28.08.2016. The alleged dates of confinement of PW1 in the PS are on 30.08.2016 and 31.08.2016. The respondent no. 2 had not stated anything about his absence in the PS on the said dates. Hence, the oral and documentary evidence adduced by the petitioners would amply prove the contention of the petitioners that PW1 was forcibly taken away by the second respondent to Akiveedu Police on 29.08.2016 at 10.30 p.m. from Hyderabad and was illegally detained in the PS on 30.08.2016 and on 31.08.2016 till 11.00 p.m.”

The matter was thereafter taken up by the Single Judge of the High Court. After considering the rival submissions, by his decision dated 29.11.2019, the Single Judge found respondent No.1, who at the relevant time, was Station House Officer, Akividu Police Station, West Godavari District to be guilty of contempt. The concluding part of the decision of the Single Judge was to the following effect:

“32. Accordingly, the Contempt Case is allowed. The 2nd respondent is sentenced to suffer three (03) months imprisonment with a fine of Rs. 2,000/- under Section 12 of the Contempt of Courts Act, 1971 for willful disobedience of the order dt. 19.08.2016 passed in WPMP No. 34412 of 2016 in WP No. 27778 of 2016; the sentence of imprisonment is suspended for a period of six (06) weeks; the petitioners shall deposit subsistence allowance at the rate of Rs. 300/- per day within six (06) weeks.

Disciplinary action shall also be initiated by the State of Andhra Pradesh rep. By its Principal Secretary, Home Department, Secretariat, Velagapudi against the 2nd respondent in regard to the wrongful detention of 1st petitioner on 30.08.2016 and 31.08.2016 in violation of the above order passed by this Court.”

Respondent No.1 being aggrieved, filed Contempt Appeal No.45 of 2018. The Division Bench of the High Court took the view that since no crime was registered, the directions issued by this Court in *Arnesh Kumar v. State of Bihar & Another*¹ would not come into play. The Contempt Appeal was, therefore, allowed by the Division Bench. The observations in that behalf were:

“Admittedly, in the instant case, no crime is registered till date. The learned Counsel for the writ petitioners is not in a position to tell us as to whether any crime was registered in the police station, while the learned Government Pleader would submit that pursuant to the report lodged by the wife of the 1st petitioner, the appellant called the petitioners to the police station over phone for counseling and thereafter, the matter was settled.

Be that as it may, now the issue is whether the appellant willfully disobeyed the orders of this Court dated 19.8.2016 in WPMP No. 34412 of 2016 in W.P. No. 27778 of 2016 and the judgment of the Apex Court in *Arnesh Kumar Vs. State of Bihar and another*. The learned Counsel for the writ petitioner would contend that the appellant has forcibly taken away the 1st petitioner and detained him illegally in the police station. The said contention was denied by the appellant. As stated by us earlier, the above judgment of the Apex Court would come into operation only when the crime was registered. But in the instant case, no crime was registered till date. When there is no crime, the question of arresting the writ petitioners would not arise.”

Being aggrieved by the decision of the Division Bench, the original Contempt Petitioner is in appeal.

Heard learned counsel for the parties.

The report of the Metropolitan Sessions Judge, after due inquiry into the matter sets out the factual details of the matter. The report indicates that the

contempt petitioner was not only summoned to Akividu Police Station in the name of counseling but was also detained.

In the circumstances, there was clear violation of the directions issued by this Court not only in *Arnesh Kumar*¹ but also in the case in *D.K. Basu v. State of West Bengal*² .

The mere fact that no crime was registered, could not be a defence, nor would it be an escape from the rigour of the decisions rendered by this Court. As a matter of fact, summoning the person without there being any crime registered against him and detaining him would itself be violative of basic principles.

In the circumstances, the Division Bench was not right and justified in setting aside the view taken by the Single Judge of the High Court. We, therefore, allow this appeal. While setting aside the decision of the Division Bench of the High Court, we restore the decision of the Single Judge.

However, considering the facts and circumstances on record, the substantive sentence of three months as recorded in paragraph 32 of the decision of the Single Judge is modified to 15 days leaving rest of the incidents of sentence completely intact.

The contemnor shall surrender himself before the Registrar of the High

Court within two weeks from today.

With these observations, the appeal stands allowed.

.....J.
[UDAY UMESH LALIT]

.....J.
[S. RAVINDRA BHAT]

.....J.
[BELA M. TRIVEDI]

New Delhi;
September 15, 2021.

ITEM NO.3 Court 2 (Video Conferencing) SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (CrI.) No(s). 10427/2019

(Arising out of impugned final judgment and order dated 18-07-2019 in CA No. 45/2018 passed by the High Court Of Andhra Pradesh At Amravati)

M.A KHALIQ & ORS. Petitioner(s)

VERSUS

ASHOK KUMAR & ANR. Respondent(s)

(IA No. 170682/2019 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT

IA No. 170684/2019 - EXEMPTION FROM FILING O.T.)

Date : 15-09-2021 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE UDAY UMESH LALIT
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE BELA M. TRIVEDI

For Petitioner(s) Mr. Pranab Kumar Mullick, AOR
Mrs. Soma Mullick, Adv.

For Respondent(s) Mr. Sidharth Luthra, Sr. Adv.
Ms. Prerna Singh, Adv.
Mr. Guntur Pramod Kumar, AOR
Mr. Ayush Kaushik, Adv.
Mr. Angaj Gautam, Adv.

Ms. Jesal Wahi, AOR

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

Leave granted.

The appeal is allowed in terms of the signed order.

Pending applications, if any, shall stand disposed of.

(INDU MARWAH)
COURT MASTER (SH)

(VIRENDER SINGH)
BRANCH OFFICER

(SIGNED ORDER IS PLACED ON THE FILE)