

Chitra Sonawane/Mayur

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO. 529 OF 2019

Binod Agarwal S/O Sitaram Agarwal ...Petitioner
Versus
State of Maharashtra, Thr. Commissioner Of ...Respondents
Police And Ors.

Mr. Binod Agarwal (In-Person), for the Petitioner.
Mr. J.P. Yagnik, Addl. G.P, for the Respondent-State.
Mr. Ketan K. Pawar, ACP (Rtd), and Mr. Sunil Rama Malgavi, API
(Santacruz Police Station), present in Court.

CORAM : SUMAN SHYAM &
ADVAIT M. SETHNA, JJ.

RESERVED ON : 08 JULY 2026.
PRONOUNCED ON : 28 JULY 2026.

JUDGMENT (Per Advait M. Sethna, J.) :-

1. The Petitioner in person has preferred the present Contempt proceedings against the Respondents for acting in deliberate defiance and wilful disobedience of the Judgment and Order passed by the Supreme Court and this Court in certain cases namely *Joginder Kumar Vs. State of U.P & Ors*¹, *Lalita Kumari Vs.*

1. (1994) SCC 4 260

Government of Uttar Pradesh & Ors², Arnesh Kumar Vs. State of Bihar & Another³, Leonard Xavier Valdaris & Ors Vs. Office-In-Charge, Wadala Railway Police Station & Ors.⁴ Accordingly, the Petitioner prays for issuing (*suo moto*) contempt action against the Respondents by issuing notice under Rule 9 read with Rule 8 of the Contempt of Courts (Bombay High Court), Rules, 1994 (*'said Rules'* for short).

2. Heard learned counsel appearing for the respective parties. By consent of the parties, the Contempt Petition is taken up for final disposal.

Factual Matrix :

3. The facts, in brief, necessary for adjudication of the present Petition are as under:

4. An FIR bearing No. 93 of 2018 was registered against the Petitioner on 11th September 2018 for the offences punishable under Section 43 read with Section 66C of the Information Technology Act, 2000 (*'IT Act'* for short) This was followed by a

2. (2014) SCC 2 1

3. 2014 SCC 8 273

4. WP/2110/2014 dated 13 August 2014

report dated 24th October 2018 submitted before the learned Additional Chief Metropolitan Magistrate, under which the Respondents sought to invoke Section 70 of the IT Act, against the Petitioner. The Respondent No.3 has stated that upon completion of the investigation, a charge-sheet came to be filed on 14th December 2018, before the Trial Court.

5. Upon investigation the Petitioner was arrested on 24th October 2018. The Petitioner remained in custody for a period of approximately 65 days. The Petitioner was thereafter enlarged on bail by an order dated 21st December 2018 passed by the learned Single Judge of this Court in Criminal Bail Application No. 3027 of 2018.

6. The Petitioner then moved Criminal Writ Petition No. 5182 of 2018 pending before this Court, seeking quashing of FIR No. 93 of 2018 dated 11th September 2018.

7. During the pendency of the said proceedings, the parties executed and filed Consent Terms on 19th June 2019 in Writ Petition No. 5182 of 2018. It was recorded therein that all disputes

between them had been amicably resolved and that the complaints lodged by each against the other would stand withdrawn.

8. The Division Bench of this Court by an order dated 20th June 2019 took the said consent terms dated 19th June 2019 on record and allowed the Petition by quashing Criminal Case No. PW/2203356/2018 arising out of FIR No. 93 of 2018, registered under the provisions of Section 43, 66(C), 70 of the IT Act read with Section 408 of the Indian Penal Code, 1860 (*'TPC'* for short).

9. The said Contempt Petition is, thereafter, filed on 4th November 2019.

Rival Contentions :

10. Mr. Binod Agarwal, appearing in person, has vehemently contended that the Respondents have acted in gross violation of the orders and directions passed by the Hon'ble Supreme Court and this Court in the aforesaid judgments (supra). It is contended that the mandate of law contained in the said judgments has been deliberately and wilfully disobeyed by the Respondents. This is inasmuch as, the arrest of the Petitioner was in complete contravention of Section 41A of the Code of Criminal Procedure,

1973 ("**CrPC**" for short), thereby rendering the arrest completely illegal. Moreover, the guidelines governing arrest as laid down by the Hon'ble Supreme Court in ***Arnesh Kumar*** (supra) have also been flouted by the Respondents in arresting the Petitioner, thereby rendering the arrest completely illegal.

11. Mr. Agarwal would rely on the decision of the Hon'ble Supreme Court in ***Arnesh Kumar*** (supra) to submit that failure to comply with the directions issued in terms of Section 41A of the CrPC shall, apart from rendering the police officers liable to departmental action, also render them liable to be proceeded against for contempt of action, to be instituted before the concerned High Court having territorial jurisdiction.

12. Mr Agarwal would submit that the Petitioner was arrested on 23rd August 2018 without being informed of the reasons of his arrest, thereby violating directions in the case of ***Joginder Kumar*** (supra). Further, the RTI reply dated 23rd January 2019 for CCTV footage of MIDC Police Station was not provided by the Respondents citing the reasons as data storage not available thereby violating this Court's order ***Leonard Xavier Valdaris*** (supra).

13. The Petitioner relying on *MCGM & Ors Vs. Muraji Patel & Ors*⁵ seeks similar issuance/initiation of *suo moto* action by issuing notice under Rule 9 read with Rule 8 of the said Rules against the Respondents.

14. Mr. Agarwal would submit that the registration of FIR No. 93 of 2018 against the Petitioner in the names of unknown persons is also contrary to the directions issued by the Hon'ble Supreme Court in *Lalita Kumari* (supra). Accordingly, the arrest was illegal inasmuch as no preliminary inquiry was conducted by the Respondents before registering the FIR for the cognizable offence, violating the directions in the said Judgment.

15. He would then urge that, despite the offence under Section 66C of the IT Act, being bailable, the Petitioner was illegally arrested and was subjected to illegal detention for a period of approximately 65 days, despite being completely innocent. He would submit that the actions of the Respondents, resulting in the illegal arrest and unlawful detention of the Petitioner, have violated the mandate of the judgment of the Telangana High Court

5. (2018 SCC OnLine Bom 8871)

in *Ramadugu Omkar Varma Vs. Sri Ashok Naik*⁶, decided on 24th January 2020. This inasmuch as the Petitioner was arrested without following the procedure prescribed under Section 41A of the CrPC.

16. It is for all the aforesaid reasons Mr Agarwal would urge that a case of wilful and deliberate disobedience and defiance of the directions contained in the judgments of the Hon'ble Supreme Court and the High Court (supra) is clearly made out against the Respondents, rendering them liable to be proceeded against for contempt.

17. *Per contra*, Mr. Yagnik, learned Additional Government Pleader appearing for the Respondent-State, has refuted all the allegations made by the Petitioner appearing in person. He has also invited our attention to the Affidavit-in-Reply dated 3rd February 2023 filed on behalf of Respondent No. 3, namely Kedari Krishna Pawar, which is on record in the present proceedings. Mr. Yagnik would urge that all procedures mandated in law were duly followed by the Respondents throughout the course of the investigation and also before arresting the Petitioner.

6. 2020 SCC OnLine TS 76

18. Mr. Yagnik has more particularly referred to Section 41(1)(a) of the CrPC, which pertains to the commission of a cognizable offence, to contend that no notice preceding arrest is required in such a situation. Mr. Yagnik submits that, pursuant to the registration of the FIR, the offence under Section 70 of the IT Act came to be incorporated with the permission of the learned Additional Metropolitan Magistrate, which pertains to the commission of a cognizable offence.

19. Mr. Yagnik would be at pains to point out that the conduct of the Petitioner disentitles him from claiming any relief in the present contempt proceedings. This is inasmuch as the Petitioner had voluntarily executed the Consent Terms dated 19th June 2019, whereby the parties voluntarily agreed to withdraw the litigations and complaints against each other with a view to arriving at an amicable settlement.

20. Mr. Yagnik has placed due reliance on the order dated 20th June 2019 passed by this Court in Criminal Writ Petition No. 5182 of 2018 to contend that the criminal case pending before the learned Additional Metropolitan Magistrate arising out of FIR No. 93 of 2018 against the Petitioner came to be quashed by consent

by the said Order dated 20th June 2019. In view thereof, it is submitted that the present proceedings are nothing but an abuse of the process of law and deserve to be dismissed.

Analysis :

21. Heard learned counsel for the parties at length and with their assistance we have perused the record.

22. At the outset, from the record coupled with the submissions advanced, it is discernible that the Petitioner is aggrieved by the alleged infraction of his rights arising from the police action, which, according to the Petitioner, was not only unwarranted, unjustified but also illegal. At this stage, it may be apposite to observe that the *sine qua non* for civil contempt is wilful disobedience of any judgment, decree, direction, order, writ or other process of a Court, as envisaged under the Contempt of Courts Act, 1971 ('***the said Act***' for short).

23. At this juncture, it is opposite to refer to the definition of 'Civil Contempt' as provided under Section 2(b) of the said Act, which reads thus:-

*“2. **Definitions.**—In this Act, unless the context otherwise requires,—*

*(b) “**civil contempt**” means wilful disobedience to any judgment, decree, direction, order, writ or other process of a Court or wilful breach of an undertaking given to a Court;”*

24. In the given factual complexion, we find that there is no determination of the allegations/complaints/grievances of the Petitioner against the alleged illegal actions of the Respondent Authorities in any judicial proceedings. Though the Petitioner is aggrieved by the alleged violation of his legal rights, as contended by him, there is no finding, much less any determination or conclusive adjudication, on this aspect in any order passed by the Court.

25. We have carefully considered the submissions of Mr. Agarwal that the directions contained in the decisions of the Hon'ble Supreme Court in *Joginder Kumar, Arnesh Kumar, Lalita Kumari* (supra) and other judgments have allegedly been violated by the Respondents. However, upon careful perusal of the said decisions, we find that the observations made therein are in the context of the facts of those cases. Though the principles laid down therein may have application, for the same to be attracted in the given facts, there must be tangible material and evidence to substantiate

the correctness of such allegations in the facts of the given case. Further, this needs to be translated into an Order passed by the Court rendering findings or such infractions allegedly committed by the Respondents.

26. We, *prima facie*, find that there is no such evidence, material and/or order placed on record to support the case sought to be made out by the Petitioner. The Petitioner has sought to project serious allegations of gross violation of the mandate of law, including non-compliance with the directions laid down by the Hon'ble Supreme Court in ***Arnesh Kumar*** (supra) with regard to the procedure preceding arrest. However, there is no order passed considering, rendering a finding and/or adjudicating upon this crucial aspect in the present proceedings. On the contrary, the Petitioner had executed Consent Terms dated 19th June 2019. This followed by an order of this Court dated 20th June 2019 whereby the criminal proceedings, including FIR No. 93 of 2018 dated 11th September, 2018, came to be quashed by this Court, with the consent of the parties, including the Petitioner. Be that as it may.

27. In such factual backdrop, we do not find any of the ingredients of the 'civil contempt', under the said Act, being

attracted in this case. In our opinion, there is no wilful, deliberate and/or intentional disobedience of the judgment/order passed by this Court, by the Respondents, so as to justify taking action against them under Section 14 of the said Act. In view thereof, the question of invoking jurisdiction under Section 12 of the said Act, which provides for punishment for contempt, in our considered view, does not arise in the given factual complexion.

28. We now refer to the definition of criminal contempt as postulated under Section 2(c) of the said Act, which reads thus:-

“2. Definitions.—In this Act, unless the context otherwise requires,—

(c) “criminal contempt” means the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which—

(i) scandalises or tends to scandalise, or lowers or tends to lower the authority of, any Court; or

(ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or

(iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner;”

Considering the above and advertent to the facts and circumstances in the given case, we do not find any act as

contemplated under such sub-clause (i) and/or (ii) of Section 2(c), so as to constitute criminal contempt against the Respondents.

29. In the present proceedings, the Petitioner has alleged interference with the administration of justice and deliberate defiance of binding judicial precedents which according to the Petitioner would fall within the the ambit of the expression “Criminal Contempt” under the said Act.

30. In our considered view, though the Petitioner would contend that contempt jurisdiction is independent of the fate of the FIR, we have serious doubts as to whether the ingredients of criminal contempt are satisfied, in any manner whatsoever. Accordingly, we do not find this to be a fit case to initiate contempt proceedings against the Respondents in the given factual complexion as sought to be urged by the Petitioner in the absence of the requisites thereof being met/satisfied. For such reasons, the prayer of the Petitioner to initiate any *suo motu* contempt action under Rule 9 read with Rule 8 of the said Rules does not appeal to our conscience nor does it merit acceptance, in the given facts and circumstances.

31. As observed by us above, no satisfaction has been recorded by the Court so as to meet '*quint essential*' requirements of Section 14 and/or Section 15 of the said Act. There is no indication in any Order passed by this Court in any judicial proceeding with regard to the alleged illegal actions of the Respondents/Authorities which would lead to wilful disobedience of any specific direction or Order of this Court, and/or any act which may lead to interference in the administration of justice.

32. It appears that the case of the Petitioner is to seek appropriate directions from this Court to directly apply the findings in the Supreme Court decision of *Joginder Kumar, Arnesh Kumar, Lalita Kumari* (supra) including the decision of this Court in *Leonard Xavier Valdaris*. There is no quarrel with the proposition that the directions contained in the Supreme Court Judgements ought to be scrupulously followed. At the same time, there is no prescription in law to apply such guidelines without a finding or satisfaction recorded by the Court in regard to the correctness or otherwise of the allegations made by the Petitioner including the alleged illegality of the Respondents'/State action. In view thereof, Court would ordinarily confine itself to the compliance of the

operative directions contained in a specific order rendered in a given facts and circumstances. This is so as to arrive at a conclusion whether there is a wilful/deliberate defiance of such order so as to constitute 'contempt', under the said Act, in the given facts and circumstances. This being the jurisprudence behind contempt action as envisaged under the statute, the litmus test prescribed in law, which the Petitioner in the given factual complexion, has unable to meet/satisfy.

33. In recording our observations above, we have duly taken note of the written submissions and the pleadings on record including rejoinders filed by the Petitioner and sur-rejoinders of Respondents thereto. For the sake of brevity and to avoid prolixity, we have not not separately dealt with the allegations and averments raised in each of the said pleadings. However, our reasoning in the judgment has factored in all such averments and allegations set out in, in the pleadings on record.

34. Before parting with the record, we may observe that civil and criminal contempt are two distinctly different categories of action contemplated under the aegis of the said Act. The attempt of the Petitioner to use these interchangeably and/or synonymously

is not in conformity with the statutory scheme of the said legislation. Therefore, this is an approach which we cannot countenance. Moreover, mere allegations questioning the arrest of the Petitioner by the Respondents would not make out a case of civil and/or criminal contempt of Court, unless the yardstick to initiate such action is established to the Court's satisfaction. This would constitute the essence of contempt action, which we find is missing in the given factual matrix.

Conclusion :

35. For all the aforesaid reasons, no case of contempt of Court is made out. We clarify that we have not delved into the merits of the correctness of the actions and/or allegations made by the Petitioner against the Respondents, which may be agitated in appropriate proceedings, in accordance with law.

36. With the above observations, the Contempt Petition is Disposed of.

(ADVAIT M. SETHNA, J.)

(SUMAN SHYAM, J.)