

2023 LiveLaw (SC) 475

**IN THE SUPREME COURT OF INDIA
INHERENT JURISDICTION**

SANJAY KISHAN KAUL; J., ABHAY S. OKA; J.

May 16, 2023.

CONTEMPT PETITION (C) NOS. 340-342 OF 2022 IN CRIMINAL APPEAL NO. 1341-1343 OF 2019

Meenal Bhargava versus Naveen Sharma & Ors.

Contempt of Courts Act, 1971 - The Supreme Court has sentenced a non-resident Indian to six months imprisonment and imposed a fine of Rs 25 lakhs for contempt of court, for failing to bring back his minor son to India in terms of the orders passed by the top court from time to time and the undertaking given by him before the court to this effect. The acts and omissions of the contemnor, amounted to both civil and criminal contempt, calling for a strict action against him. The power of the court to punish a person for contempt is unrestricted by the Act.

For Petitioner(s) Ms. Meenakshi Arora, Sr. Adv. Mr. Amit Pawan, AOR Mr. Anand Nandan, Adv. Mr. Hassan Zubair Waris, Adv. Mr. Aakarsh, Adv. Mr. Suchit Singh Rawat, Adv. Ms. Shivangi, Adv.

For Respondent(s): Mr. Ranjan Mukherjee, AOR Mr. Saurabh Sharma, Adv. Mrs. Vanshja Shukla, Adv. Mr. Sharath Nambiar, Adv. Mr. Nakul Changappa K.K., Adv. Mr. Vatsal Joshi, Adv. Ms. Indra Bhakar, Adv. Mr. Raj Bahadur Yadav, AOR Mr. Shlok Chandra, Adv. Mr. Vinayak Sharma, Adv. Mr. Anuj Srinivas Udupa, Adv. Mr. Chitransh Sharma, Adv. Mr. Pratyush Srivastav, Adv. Ms. Vanshaja Shukla, Adv. Ms. Swati Ghildiyal, Adv. Mr. Sharath Narayan Nambiar, Adv. Mr. Akshay Nain, Adv. Ms. Bani Dikshit, Adv. Mr. Arvind Kumar Sharma, AOR

J U D G M E N T

ABHAY S. OKA, J.

1. By judgment and order dated 16th January 2023, we held the respondent no.1 (contemnor) guilty of contempt. We have recorded detailed findings in the said judgment and order. Before we passed the said Order, the learned counsel for the contemnor was fully heard and in fact, the contemnor was also present through video conferencing. We postponed the sentencing part only with the object of giving last opportunity to the contemnor to make amends. However, we find that the contemnor has not shown any signs of remorse. On the contrary, the submissions made on his behalf clearly show that the contemnor has scant respect for the Orders of this Court.

2. We are not reproducing all the findings recorded in the earlier order. In terms of the undertaking given by the contemnor and the orders of this Court passed from time to time, he was under an obligation to bring back the child to India on 1st July 2022. We also noted the conduct of the contemnor in paragraph 12, which shows that he never had any intention of bringing the child back to India.

3. The learned counsel for the contemnor invited our attention to the proceedings of the Circuit Court of Cook County, Illinois (for short “the Circuit Court”) of 24th January 2023. He pointed out that the said proceedings record that one Mr Wasko has been appointed as the *Guardian Ad Litem* by the said Court in the USA. He submitted that as the child was subjected to sexual abuse while he was staying with the petitioner in India, a forensic investigation is in progress in the United States of America (USA), and therefore, the child cannot be brought back to India unless the investigation is over. Learned counsel pointed out the submissions made by Mr. Wasko before the said Court. He submitted that the contemnor has acted in the best interests of the minor child and that he has acted in a *bonafide* manner to protect the interests of the minor child. He submitted that now that

Guardian Ad Litem has been appointed, the contemnor cannot bring back the child to India so long as the appointment continues to exist.

4. Learned senior counsel appearing for the petitioner has invited our attention to the various aspects of the conduct of the contemnor and pointed out that, in fact, he is guilty of even criminal contempt.

5. Following factual aspects indicate the extent of the contumacious conduct of the contemnor:-

(i) A finding has been recorded in our earlier order that the contemnor never intended to bring back the child to India;

(ii) The child holds a USA passport. The contemnor has not even applied for renewal of the passport though the passport expired long back. In one of the earlier hearings, he pleaded that since an investigation is pending in USA about the sexual abuse of the child, he could not apply for renewal of his passport. However, he has not placed on record any constraint put on him either under any law of USA or an order of the competent Court which prevented him from applying for renewal or extension of the passport of the minor;

(iii) The contemnor never applied to this Court for a grant of extension of time to bring back the child. For the first time, by filing a counter affidavit to the contempt petition, he tried to seek an extension of time without giving any justification;

(iv) The contemnor always acted contrary to the statement made by him on more than one occasion that he has subjected himself to the jurisdiction of this Court. He pleaded in the Courts in USA that he has not subjected himself to the jurisdiction of this Court; and

(v) Even after the expiry of three months from the date of the order holding him guilty of contempt, he has not shown any remorse in any manner.

6. Now we deal with the claim of the contemnor that he acted in the best interests of the minor. The proceedings of the Circuit Court dated 24th January 2023 are relevant for the purpose. The Court noted that the minor son was talking about his ancestral house being sold. The Court observed that it was a gross error on the part of the contemnor to talk to the child about pending litigations either in India or Canada. The Judge of the Circuit Court directed the contemnor that he was “truly and utterly” prohibited from discussing the litigations in India, USA and Canada with his minor son. We have also noted that the child talked about the sale of the property of his grandmother when in one of the video conference hearings, the child appeared with the contemnor. It is obvious that it is the contemnor who must have apprised the child about the litigation.

7. The property of the contemnor’s mother was required to be sold due to the gross default committed by the contemnor. The contemnor is least bothered about the fact that his mother lost her property due to his default. However, apart from committing impropriety by informing the child about the details of the pending litigations, he tried to prejudice the minor’s mind by telling him that his ancestral property is being sold at the instance of the mother.

8. The contemnor has shown scant respect to the judicial proceedings pending in this Court. He has defied assurance given to this Court that he has submitted himself to the jurisdiction of this Court. As noted in paragraph 15 of the earlier order, the contemnor went to the extent of opposing the request for mirroring the order of this Court, which resulted in the denial of the said request by the concerned Foreign Court. In fact, due to the misrepresentation made by the contemnor, the Foreign Court has not honoured the principle of comity of Courts. The act of denying the fact that he voluntarily submitted to the jurisdiction of this Court and his conduct of opposing the request for the grant of

mirroring order amounts to interference with the administration of justice and obstructing the administration of justice.

9. Another disturbing feature of the conduct of the contemnor has been noted on page 41 of the proceedings dated 24th January 2023 of the Circuit Court. The contemnor submitted before the Circuit Court that the said Court should make sure that there is an order passed that the questions and answers in the proceedings should not be used in any proceedings in India. In fact, he tried to warn Mr. Wasko, who was appointed as Guardian *ad litem*, that based on the proceedings, he can be summoned by Indian Courts. The contemnor reiterated that he wants to be careful as the proceedings have been used in Indian Courts. The contemnor knows that his conduct of defying the orders of this Court and showing disrespect to the orders of this Court can be established from the proceedings in the Circuit Court. His attempt before the Circuit Court was to ensure that his contumacious conduct, as reflected in the Circuit Court's proceedings, should not be made available to this Court. In short, his attempt was to suppress the proceedings.

10. The acts and omissions of the contemnor, as reflected in what we have discussed above, amount to both civil and criminal contempt. This calls for a strict action against him.

11. This Court in the case of *In Re : Perry Kansagra*¹, while relying upon decisions of this Court in the case of *Pallav Sheth v. Custodian*² and *Re : Vijay Kurle and Others*³ held that in view of Article 129 of the Constitution of India, the power of this Court to punish a person for contempt is not constrained by the provisions of the Contempt of Courts Act, 1971. In fact, this Court has observed that the power of this Court to punish a person for contempt is unrestricted by the Contempt of Courts Act, 1971.

12. Considering his contumacious conduct, we propose to direct the contemnor to pay a fine of Rs. 25 lakhs and to undergo simple imprisonment for a period of six months for committing civil and criminal contempt. In default of payment of the fine, he will have to undergo a further sentence of simple imprisonment for two months.

13. Accordingly, we issue the following directions:

i) The contemnor is sentenced to undergo simple imprisonment for six months. He shall pay a fine of Rs. 25 lakhs within a period of six months from today. The fine amount shall be deposited with the Registry of this Court. On the failure of the contemnor to pay the fine within the stipulated time, he shall undergo a further sentence of simple imprisonment for two months.

ii) After the fine amount is deposited in this Court, the same shall be released to the petitioner, who will be under an obligation to use the said amount only for the welfare and benefit of the minor son.

iii) We direct the Government of India as well as the Central Bureau of Investigation to take all possible and permissible steps to secure the presence of the contemnor in India with a view to ensure that he undergoes the sentence and pays the fine.

14. For reporting compliance, the case shall be listed in the first week of August, 2023.

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*Disclaimer: Always check with the original copy of judgment from the Court website. Access it [here](#)

¹ 2022 SCC OnLine SC 1516

² (2001) 7 SCC 549

³ 2020 SCC OnLine SC 407