

23.02.2023  
Sl. No.2  
**akd**  
[Adjourned]

**C. R. R. 3519 of 2022**  
in  
**C. R. M. (DB) 1638 of 2022**

In Re: ***Vikas Mishra @ Vikash Mishra***

... .. Petitioner

Mr. Kallol Mondal

... .. for the CBI

Mr. Kishore Dutta, Senior Advocate

Mr. M. N. Ray

Mr. R. Singh

... .. for the alleged contemnor

**In Re : C. R. R. 3519 of 2022**

1. It is common knowledge there is opacity in the prison system. But when opacity interferes with implementation of judicial orders, the Court cannot turn a blind eye.
2. Factual matrix giving rise to the contempt proceeding against the alleged contemnor viz. Superintendent, Presidency Correctional Home is as follows :-
3. One Vikas Mishra @ Vikash Mishra, an influential businessman, was re-arrested on 09.12.2021 in connection with investigation regarding illegal pilferage of coal by the coal Mafia in collusion with ECL officials in the coal mines of Asansol. Immediately after his arrest, he was admitted to a private hospital. Thereafter, he was shifted to Asansol District Hospital and therefrom to a teaching hospital viz. SSKM Hospital, Kolkata. As his prayer for statutory bail was turned down by the Special Judge, Vikas Mishra @ Vikash Mishra approached this court.
4. During hearing of the bail application, it was strenuously argued on behalf of the learned Advocate for the CBI that the undertrial had evaded interrogation on the excuse of ill-health and hospitalisation.

Balancing the competing interest of custodial interrogation on one hand and ensuring adequate medical attention, if any, of the undertrial on the other hand, this Court passed the following order :-

“Balancing the aforesaid requirements in the factual matrix of the case, we permit the Investigating Agency to interrogate the petitioner in judicial custody subject to permission by medical expert/experts as per the choice of the Investigating Agency. In the event the expert opines institutionalised treatment is not necessary, the petitioner shall be forthwith shifted to judicial custody and be interrogated in jail.

While in judicial custody, the petitioner shall be medically examined from time to time not later than every 48 hours. Medical report with regard to the petitioner shall be furnished before the jurisdictional court. In the event the medical report discloses deterioration of health including necessity for hospitalisation, necessary order shall be passed.”

5. Deconstructing the order it would appear this Court had directed as follows :-

*(a) Vikas Mishra @ Vikash Mishra would be examined by a medical expert;*

*(b) If the expert gave permission, he shall be interrogated in jail;*

*(c) He shall be medically examined periodically not later than over 48 hours and shall not be shifted to hospital save and except the opinion of the medical expert.*

6. In terms of the order, on 31.08.2022 Dr. Dipankar Samajpati, Chief Medical Officer, Central Government Health Service, Govt. of India visited Presidency Correctional Home and examined Vikas Mishra @ Vikash Mishra. Dr. Samajpati, inter alia, opined that Vikas Mishra was fit for interrogation and did not require hospitalisation at present. Thereafter, Vikas Mishra was interrogated on 01.09.2022. However, immediately after interrogation, without any medical opinion to the contrary, Vikas Mishra was shifted back to the hospital. He continued to remain in the hospital and was not physically produced

before the jurisdictional court on 03.09.2022. On 05.09.2022, Dr. Samajpati wrote to the Head of the Branch, Central Bureau of Investigation, ACB, Kolkata that the Superintendent of the Correctional Home was not cooperating with the medical examination of Vikas Mishra @ Vikash Mishra. Subsequently, on 06.09.2022, Dr. Samajpati was permitted to examine the undertrial and he opined that the undertrial was fit for further interrogation. There was no medical emergency at present. Still then, Vikas Mishra continued to enjoy the protection of the Superintendent and remained in the hospital.

7. This prompted the Court to issue a Rule of contempt upon the said Superintendent. Immediately after the issuance of the Rule of contempt, Vikas Mishra was shifted to the jail ward. He was medically examined by Dr. Samajpati on 10.09.2022 and thereafter every 48 hours till the undertrial was released on statutory bail. On none of these occasions, the medical expert opined that the undertrial required hospitalisation. Apart from recommending eye checkup by Ophthalmologist, no other medical assistance was prescribed.
8. The aforesaid narration of events show at no point of time any medical expert had opined that the undertrial required hospitalisation. Notwithstanding such fact, the Superintendent chose to keep the undertrial in hospital instead of the jail ward. This is a brazen violation of the directions given by this court in its order dated 29.08.2022.
9. Alleged contemnor has submitted an affidavit in response to the Rule. Subsequently, he sought leave to file an additional affidavit with regard to the documents and/or papers relied upon by CBI in

support of the plea that he had not wilfully violated the order of this court. The affidavits have been taken on record.

10. Mr. Kishore Dutta, learned senior Advocate for the alleged contemnor submits his client had acted in a bonafide manner. He had no wilful intention to violate the order of the court. Initially, on 14.12.2021 the prisoner had been sent to Presidency Correctional Home for treatment at SSKM hospital. He relied on Memo No. 1024/DCS-16011(12)/1/2021 dated 14.12.2021. Under such circumstances, he was kept in jail hospital. On medical advise that he was fit, the undertrial was shifted to jail ward and interrogated. There was substantial compliance of the order of this court. No hindrance was caused to investigation. Without prejudice to the aforesaid, alleged contemnor offers unqualified and unconditional apology.

11. With regard to the contention of the alleged contemnor that the undertrial could be kept in jail hospital in the light of the Memo No. 1024/DCS-16011(12)/1/2021 dated 14.12.2021, this court is of the opinion such plea is a desperate one which has been conjured to evade wilful disobedience of the court's order. The aforesaid Memo merely states that the undertrial requires medical treatment and management at SSKM hospital in Kolkata and permission for such treatment has been extended by the ADG & IG of Correctional Services, Government of West Bengal.

12. The Memo may have justified the shifting of the undertrial to the custody of the alleged contemnor but has nothing to do with the interpretation of the order dated 29.08.2022. Noticing the fact that the undertrial was in hospital for most part of his detention which according to CBI was with the ulterior motive to avoid investigation, this court by order dated 29.08.2022 directed the undertrial to be

medically examined and if found fit, to be shifted to the jail ward and interrogated. The Court clarified that the undertrial shall not be reverted to hospital unless expressly advised by a medical officer. Mere lip service was done to the order by bringing the undertrial to the interrogation room for the purpose of interrogation. Immediately after interrogation and *de hors* medical advice, he was shifted to jail hospital.

13. Mr. Dutta argues the Superintendent had acted in terms of Rules 669, 1241 and 1245A of the West Bengal Jail Code.
14. Rule 669 provides for the place where interviews of a prisoner with an outsider may be conducted.
15. Rule 1241 provides for transfer of prisoner on health grounds with the sanction of Inspector General. In fact, Memo dated 14.12.2021 was in terms of the aforesaid Rule to transfer the prisoner for medical treatment and attention at SSKM hospital.
16. Rule 1245A provides for shifting the prisoner from jail hospital to a hospital outside the correctional home precincts provided he required medical treatment or surgical operation which were not available in jail hospital.
17. None of these Rules would justify the conduct of the Superintendent to avoid the clear mandate of the Code that the undertrial be not shifted for institutional treatment in jail hospital or any other hospital without express medical advice for institutionalised treatment. This Court does not find even a shadow of justification emanating either from the aforesaid Rules or the Memo dated 14.12.2021 to permit the Superintendent to construe the order dated 29.08.2021 in a different manner.
18. There is patent violation of the order by permitting the undertrial to remain in jail hospital without medical advice. Only under the threat

of contempt did the Superintendent grudgingly shift the undertrial from jail hospital to the jail ward. This constitutes wilful violation of the order and cannot be excused as an inadvertent or technical breach.

19. The intention of the Superintendent to keep the undertrial in jail hospital is also not bonafide. He intended to violate the order of the court and persist the ruse of precarious health and hospitalisation. Thereby, he avoided the physical attendance in court and proposed the preferential treatment of video conferencing which is not ordinarily made available to other undertrials.

20. The purpose of avoiding the court order is not innocuous but prompted with the ulterior motive to give '*special treatment to an undertrial*'.

21. It has been argued that the Superintendent did not interfere with the investigation and complied with the order.

22. Conduct of the contemnor and other attending circumstances of the case do not persuade us to agree with the learned Counsel for the contemnor. It is trite law civil contempt is not merely executory but has a punitive impact too. The present case involves a public servant who is the head of a correctional home. He chose to wilfully violate a judicial order and extend the comfort of hospitalisation to an undertrial who did not require institutional medical treatment. This was done not on a genuine belief that the undertrial was ailing. None of the medical officers opined that the undertrial required hospitalisation. Even the medical officer attached to the jail hospital did not opine that institutional treatment of the undertrial was necessary.

23. What prompted the Superintendent to act contrary to the order of this court is not too far to seek. The undertrial appears to be an

influential businessman. His special treatment was, therefore, a matter which weighed more in the mind of the Superintendent than his duty to comply with the solemn order of this court.

24. A correctional home is a place where prisoners are kept with the avowed object of reformation. The Head of the correctional home is expected to be an inspiration to the inmates in due deference to discipline and upholding the Rule of law. The contemnor holds such a responsible position. The post he adorns requires a high degree of responsibility and deference to the rule of law. He chose to ignore the call of duty and ensured selective special treatment to an undertrial in the face of clear and unequivocal injunctions to the contrary. If the Court turns a blind eye to such blatant violations by a Head of a correctional home, it shall have far reaching consequences on jail discipline and create adverse impact on the inmates with regard to fair and equal treatment under the law.

25. These circumstances constrained this Court to take the contempt proceeding to its logical conclusion.

26. In the factual matrix, we are also of the opinion the belated apology given by the contemnor was a mere excuse to avoid the judicial process and was neither genuine nor prompted by any sense of contriteness. Subsequent compliance of the court order had to be procured through the threat of contempt and would not be a ground to infer his bonafide intention to implement the order in the first place.

27. For the aforesaid reasons, this Court holds the Superintendent, Presidency Correctional Home viz. Sri Debashis Chakraborty guilty of willful, deliberate and contumacious violation of the order dated 29.08.2022.

28. The contemnor is personally present in court today. The Court has heard the contemnor and his Senior Counsel on the issue of punishment.
29. This Court has taken note that a responsible public servant who heads one of the biggest correctional homes in the State had flagrantly violated the order of the court. This Court also notes that his conduct has far reaching impact on prison discipline, fair treatment of inmates and upholding the rule of law. These are the aggravating circumstances. However, after issuance of the Rule, the contemnor complied with the order. This is a mitigating circumstance which though not relevant in adjudicating his guilt, may be considered in determining the quantum of punishment.
30. Balancing the aggravating and mitigating factors, we direct the contemnor viz. Superintendent, Presidency Correctional Home viz. Sri Debashis Chakraborty to pay a fine of Rs.2,000/- (Rupees Two thousand only), in default, to suffer simple imprisonment for seven days. The contemnor shall deposit the fine with the Registrar General, High Court, Calcutta by 25.02.2023.
31. The contempt Rule is made absolute.
32. Registrar General is directed to submit compliance report on the adjourned day.
33. Let the matter appear on **09.03.2023**.
34. Let a copy of this order be communicated to the Registrar General for necessary compliance.
35. Later, Mr. Dutta prays for stay of the operation of the order. Such prayer is considered and rejected.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)