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IOIN-COCP-2587-2017 IN COCP-2587-2017  
KULWANT KAUR @ KANTO VS JATINDER WALIA

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**Present:-** None.

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This contempt petition was filed in the year 2016 for violation of the order dated 20.05.2016 passed in CRM-M No.17395 of 2016, which reads as under:-

*“Counsel for the petitioner submits that petitioner is the mother of Sukhwinder Singh who was murdered by Bhajan Singh and Sarbjit Singh, respondent Nos.4 and 5, along with other accused. An FIR had been registered against the deceased and Raj Kapur under Section 376 IPC and other offences at the instance of Rajwinder Kaur. Respondent Nos.4 & 5, were declined concession of pre-arrest bail in the murder case vide order Annexure P6, passed by the Additional Sessions Judge, Kapurthala on 19.11.2014 but after acquittal of the co-accused on the basis of statement of Raj Kapur who had been won over by the opposite party, the same Additional Sessions Judge, who had dismissed the application for pre-arrest bail of respondent Nos.4 & 5, by entertaining the second application granted concession of pre-arrest bail to respondent Nos.4 and 5 vide order dated 11.5.2015, without making reference to first application.*

*Counsel for the petitioner submits that Sukhwinder Singh son of the petitioner had died after giving the statement to police. The petitioner had been repeatedly informing the investigating agency that before his death he had made a statement to her regarding the persons who had attacked and injured him. Raj Kapur, who was accompanying Sukhwinder Singh was won over by the accused persons in offence under Section 302 IPC, helped*

*them and also got acquittal order in case under Section 376 IPC. The petitioner has also sought a direction for further investigation under provisions of Section 173 (8) Cr.P.C. by getting her statement recorded by the Investigating Officer.*

*Notice to the respondents for 1.8.2016.*

*The trial Court shall not pass final order in the case, meanwhile.”*

A specific direction was issued to the trial Court not to pass the final order.

Thus, two fold points were noticed. Firstly, that the accused persons whose anticipatory bail applications were declined in a murder case on 19.11.2014, were never arrested till 11.05.2015 when the second application was entertained by the same Additional Sessions Judge, without making a reference to first bail application and the anticipatory bail was granted. Secondly, that the complainant/petitioner, who is mother of the deceased, has also sought direction for further investigation under Section 173(8) of the Code of Criminal Procedure (in short ‘Cr.P.C.’), as her own statement was never recorded by the police.

A perusal of the subsequent orders show that on 21.11.2016, a direction was issued to the police authorities to record the supplementary statement of the petitioner and thereafter, time was granted for placing on record the supplementary statement and to file status report regarding the action taken on the basis of the said statement.

In the meantime, on 30.08.2017, it was brought to the notice of the Bench that the accused have been acquitted despite stay order which continued and was in knowledge of the Trial Judge.

This contempt petition was filed for initiating action against Ms. Jitender Walia, the then Additional Sessions Judge, Kapurthala, that despite the order of stay and monitoring being conducted by this Court regarding further investigation in terms of Section 173(8) Cr.P.C., the Trial Judge, in the meantime, acquitted the accused persons.

After issuance of notice of motion and completion of pleading/reply, on 04.10.2019, the following order was passed:-

*“Instant contempt petition has been filed by the petitioner Kulwant Kaur @ Kanto alleging that despite interim order dated 20.05.2016 passed in CRM-M-17395-2006 by this court, the Sessions Court proceeded with the trial pursuant to cross-version in FIR No.7 dated 18.01.2014 registered with Police Station Fattu Dhinga, District Kapurthala under Sections 302/325/323/324/148/149/34 IPC.*

*As per the factual narration, one Sukhwinder Singh @ Sabi was admitted in the hospital on 18.01.2014. He is stated to have suffered injuries at the hands of accused Jaspal Singh, Manga Singh, Gurpreet Singh, Bhajan Singh and Sarabjit Singh @ Sabi as they suspected that he had relations with Rajwinder Kaur. Sukhwinder Singh @ Sabi was beaten up when he had gone to drop Rajwinder Kaur in her village at Talwandi Pai. It appears that police reached the spot and took Sukhwinder Singh to the hospital. In the hospital, his statement was recorded by ASI Ashok Kumar. At the same time, police also registered a case against Sukhwinder Singh and his friend Raj Kapoor*

*vide FIR No.7 dated 18.01.2014 under Sections 366/376/34 IPC. Sukhwinder Singh, however, succumbed to injuries. His statement was, thus, treated as cross-version. The accused preferred a petition for anticipatory bail before J.S. Kang, Additional Sessions Judge, Kapurthala, which was rejected vide order dated 19.11.2014. Thereafter, accused were declared a proclaimed offender. However, they preferred a second petition for anticipatory bail before the same presiding officer, namely, J.S. Kang. The said officer allowed second petition despite the fact that the accused had been declared proclaimed offender(s). As a result, mother of the deceased Sukhwinder Singh preferred a petition bearing No. CRM-M-17395-2016 before this court seeking cancellation of anticipatory bail. It came up for hearing before co-ordinate Bench (MMS Bedi, J.) on 20.05.2016 and following order was passed:-*

*“Counsel for the petitioner submits that petitioner is the mother of Sukhwinder Singh who was murdered by Bhajan Singh and Sarbjit Singh, respondent Nos.4 and 5, along with other accused. An FIR had been registered against the deceased and Raj Kapur under Section 376 IPC and other offences at the instance of Rajwinder Kaur. Respondent Nos.4 & 5, were declined concession of pre-arrest bail in the murder case vide order Annexure P6, passed by the Additional Sessions Judge, Kapurthala on 19.11.2014 but after acquittal of the co-accused on the basis of statement of Raj Kapur who had been won over by the opposite party, the same Additional Sessions Judge, who had dismissed the application for prearrest bail of respondent Nos.4 & 5, by entertaining the second application granted concession of pre-arrest bail to respondent Nos.4 and 5 vide order dated 11.5.2015, without making reference to first application.*

*Counsel for the petitioner submits that Sukhwinder Singh son of the petitioner had died after giving the statement to police. The petitioner had been repeatedly informing the investigating agency that before his death he had made a statement to her*

*regarding the persons who had attacked and injured him. Raj Kapur, who was accompanying Sukhwinder Singh was won over by the accused persons in offence under Section 302 IPC, helped them and also got acquittal order in case under Section 376 IPC. The petitioner has also sought a direction for further investigation under provisions of Section 173 (8) Cr.P.C. by getting her statement recorded by the Investigating Officer.*

*Notice to the respondents for 1.8.2016.*

*The trial Court shall not pass final order in the case.”*

*Grievance of the petitioner is that despite the fact that this court restrained the trial court from passing the final order, it proceeded with the trial and acquitted the accused persons vide order dated 07.07.2017 in utter disregard of the directions.*

*Mr. Thakur, learned counsel for the petitioner has pointed out that the case remained pending wherein the interim order continued. It was also directed in between that the supplementary statement of the petitioner, namely, Kulwant Kaur be recorded which was, in fact, recorded by the police. Thereafter, a status report was filed before this court on 13.02.2017. As such, order dated 29.03.2017 was passed directing the State to place on record status report as well as a supplementary statement of Kulwant Kaur and action taken thereon. The said statement was taken on record on 22.05.2017 and matter was adjourned to 30.08.2017 to enable the State to apprise the court of the action taken on the basis of supplementary statement. However, on 07.07.2017 itself, the accused were acquitted by the court below.*

*During the pendency of the contempt petition, affidavit of DSP Waryam Singh Sultanpur Lodhi, was filed. **He clearly stated in the affidavit that the order dated 20.05.2016, whereby passing of final order was stayed, was in the knowledge of the presiding officer.** A reply was*

*also filed by the presiding officer namely Jatinder Walia, who stated that she was not aware of the fact that this court had restrained the court from passing the final order. She also submitted in the affidavit that she came to know of the factum that order dated 20.05.2016 had been passed by the High Court, staying the passing of final order much later. She sought to clarify that the said order had not been brought to her knowledge either by any court official, prosecuting agency, public prosecutor or by the counsel for the complainant. All the pleas taken by her are stated in her affidavit dated 26.10.2017. Mr. Doabia, however, stands by the affidavit dated 26.10.2017 filed by DSP Waryam Singh. He referred to Para 5 thereof in which sequence of events is given.*

*“5. That this Hon’ble Court directed the trial court not to pass final order in the case meanwhile vide order dated 20.05.2016 aforesaid. When the matter crop up in the wake of present petition, the answering deponent got the matter enquired into. The facts came into light are as under:-*

*i). That on inquiry from the court of District and Sessions Judge, who intimated to the answering deponent that the order dated 20.05.2016 passed by the Hon’ble High Court in the subject cited, was received in his office on 24.05.2016 through e-mail and the same was sent to the court of Sh. J.S. Kang, the then Additional Sessions Judge, Kapurthala on 27.09.2016 against proper receipt. A copy of memo No.6606 dated 21.10.2017 is annexed as Annexure R-4.*

*ii). That the statement of Opkar Singh Ahlmad was recorded. A copy of which is annexed as Annexure R-5. He has stated that the order dated 20.05.2016 passed by the Hon’ble High Court was produced before the court of Sh. J.S. Kang, Additional Sessions Judge, Kapurthala who passed the order. Thereafter he attached the same with the judicial file.*

*iii). That the statement of Smt. Kulwant Kaur @ Kanto was recorded. A copy of which is annexed as Annexure R-6. She has stated that the copy of order dated 20.05.2016 was produced before the court of Sh. J.S. Kang, Additional Sessions Judge, Kapurthala through his counsel*

*Sh. Sukhwinder Jaswal, Advocate who also confirmed vide his statement. A copy of the same is annexed as Annexure R-7. She has further stated that she also informed Smt. Jatinder Walia, Additional Sessions Judge, Kapurthala regarding the order dated 20.05.2016 before the final argument.*

*iv). That 16 prosecution witnesses were on the list of witnesses. The first witness was examined by the Ld. Trial Court on 07.09.2016 and the last witness was examined on 03.07.2017 and the prosecution evidence was closed on that day. The statement of accused U/s 313 Cr.P.C. was recorded on 04.07.2017 and the accused were acquitted on 07.07.2017. The Ld. Trial court recorded the prosecution evidence and decided the case after passing the impugned order dated 20.05.2016 of this Hon'ble Court.*

*From the circumstances explained above, it is clear that the order dated 20.05.2016 was well in the knowledge of Smt. Jatinder Walia, Additional Sessions Judge, Kapurthala”.*

*According to Mr. Doabia, DSP Waryam Singh has clearly stated that the order dated 20.05.2016 was well in the knowledge of Jatinder Walia, Additional District and Sessions Judge, Kapurthala.*

*It appears that the stand of the Presiding Officer is at variance with the stand taken by the petitioner and prosecution before this court. Besides, there are number of affidavits/documents which need to be considered.*

***Under the circumstances, this court feels that a fact finding enquiry is necessary before it arrives at a final conclusion. Registrar (Vigilance) is directed to conduct a fact finding enquiry and submit a report within one month to ascertain whether there was a willful disobedience of order dated 20.05.2016 passed by this court.***

*To come up on 08.11.2019.”*

Pending enquiry, this contempt petition was disposed of on 25.07.2022, observing that since an appeal against the acquittal is filed which is pending and the respondent/Presiding Judge has taken

voluntary retirement, the petitioner can raise all the pleas before the Appellate Court where the appeal against acquittal is pending.

On completion of the enquiry by the Registrar Vigilance of this Court, the report is submitted in a sealed cover. The operative part of report, reads as under:-

*“In view of the aforementioned facts and circumstances, the version of Ms. Jitender Walia, the then Additional Sessions Judge, Kapurthala that she was not aware of order dated 20.05.2016 having been passed by the Hon’ble High Court is difficult to accept. It has to be borned in mind that the Presiding Officer was dealing with a case under Section 302 IPC. She would, therefore, be deemed to be having knowledge about the entire file and it cannot be simply stated by the Presiding Officer that the order passed by the Hon’ble High Court was not brought to her notice. Besides, this stand of the Presiding Officer is belied by the statement of the complainant-EW5 Kulwant Kaur @ Kanto (mother of the deceased) who appeared before the undersigned and stated that she had told the Presiding Officer about the said order passed by the Hon’ble High Court.”*

On the face of it, it is apparent as under:-

- (a) In the main CRM-M No.17395 of 2016, two fold prayers were made. First for cancellation of anticipatory bail to the accused persons granted by the Additional Sessions Judge, Kapurthala, on the ground that at the first instance, the same was declined on 19.11.2014.**
- (b) The same Additional Sessions Judge, Kapurthala, without making a reference to the first application of dismissal of the anticipatory bail granted pre-arrest bail to the accused vide order dated 11.05.2015, which reflects that in the intervening period of about 06 months, the accused were never arrested by the police.**
- (c) A specific prayer made by the complainant/mother of the deceased, in which notice was also issued for further**

*investigation under Section 173(8) Cr.P.C., while issuing notice of motion on 20.05.2016, the trial Court was directed not to pass the final order.*

- (d) A perusal of the subsequent order passed in aforesaid CRM-M No.17395 of 2016, reflects that this Court was monitoring the investigation by directing the Investigating Officer to record the statement of the mother of the deceased, which was not recorded prior to submitting the report under Section 173(2) Cr.P.C. and interim stay continued in the meantime.*
- (e) After her supplementary statement was recorded by police a status report was sought about the action taken on the same i.e. if any, supplementary challan is proposed to be filed.*
- (f) In the meantime, despite the stay order for not passing of the final order, the accused were acquitted on 07.07.2017 without adhering to the supplementary statement of the victim or the affidavits filed by the Investigating Officer.*
- (g) When this contempt petition was filed, a reply was filed by the Deputy Superintendent of Police, Sub-Division Sultanpur Lodhi, District Kapurthala, admitting the facts and the comments were sought from the respondent i.e. the then Additional Sessions Judge and thereafter, this Court vide detailed order dated 04.10.2019, directed the Registrar Vigilance of this Court to conduct a fact finding enquiry and submit a report.*

*Before the report could come, noticing the fact that the accused stand acquitted and appeal against acquittal is filed and that the respondent has sought voluntary retirement, the contempt was disposed of granting liberty to the petitioner to take up all the pleas/defences in the appeal, however, the angle of contempt committed by the respondent was not properly looked into.*

- (h) After the disposal of the contempt petition, a detailed report of the Registrar Vigilance is received, in which after recording the statement of the concerned persons and perusing the record, a finding is recorded that the respondent/officer was well aware about the stay order passed by this Court not to decide the trial and despite that, the accused were acquitted.*

In view of the above, prima facie, the respondent – Ms. Jitender Walia, the then Additional Sessions Judge, Kapurthala, has

prima facie committed contempt of Court by violating the order dated 20.05.2016 passed in CRM-M No.17395 of 2016.

Accordingly, this contempt petition is revived.

Let notice be issued to all the concerned parties for 07.08.2023.

The report of the Registrar Vigilance be kept in a sealed cover.

IOIN stands disposed of.

**(ARVIND SINGH SANGWAN)**  
**JUDGE**

**13.07.2023**  
*yakub*