

HIGH COURT OF MADHYA PRADESH

GWALIOR BENCH

S.B.: Justice G.S. Ahluwalia

CONC No. 1868 of 2020

State of M.P.

Vs.

Dinesh Singh Rajput and another

.....
Shri M.P.S. Raghuvanshi, Additional Advocate General for the State
Shri Tapan Trivedi, Counsel for respondent no.1
Shri D.P. Singh, Counsel for respondent no.2
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Date of Hearing : 26-11-2020

Date of Judgment : 02-12-2020

Whether approved for reporting : Yes

Judgment

(Passed on 02/12/2020)

1. This Contempt proceeding has been initiated Suo Moto against the respondents, by this Court by order dated 2-11-2020. The respondent no. 1 is posted as Sub-Inspector and at the relevant time, he was the S.H.O., Police Station Bahodapur, Gwalior and respondent no. 2 is working as Constable and at the relevant time, he was posted in Police Station Bahodapur, Gwalior.

2. The facts leading to initiation of this suo-moto Contempt Petition in short are that one Arun Sharma,[in short shall be referred as Arun Sharma (Tenant)], Writ Petitioner in W.P. No. 13057 of 2020, is a tenant in a shop, and the landlady of the said shop, filed an

application before the respondent no.1 that Arun Sharma (Tenant) is neither making payment of rent, nor is vacating the shop. The said complaint was marked by the respondent no.1 to S.I. Sangita Minj, and immediately thereafter, the S.I. Sangita Minj and respondent no.2, forcibly got the shop vacated from Arun Sharma (Tenant) and brought his belongings to the Police Station Bahodapur, where Arun Sharma (Tenant) was compelled to give an undertaking that he would vacate the shop and thereafter, he was allowed to take his belongings back. Thereafter, it appears that Arun Sharma (Tenant), did not vacate the shop. On 13-8-2020, the Superintendent of Police, Gwalior, issued an order, declaring rewards against ten persons, including one Arun Sharma, son of Omprakash Sharma, resident of Sector No.2, D-97, Vinay Nagar, Police Station Bahodapur, Gwalior. Thereafter, Arun Sharma (Tenant), was taken in unlawful custody on the pretext that he is the same person, against whom the Superintendent of Police, Gwalior has declared a reward. A press note with caption that “accused with reward of Rs. 5000/- has been arrested” with photograph of uncovered face of Arun Sharma (Tenant) was also circulated by the respondent no.1, to the print media and social media by releasing press note through I.T. Cell, Office of Superintendent of Police, Gwalior. However, on the complaint made by the brother of Arun Sharma (Tenant), the Superintendent of Police, Gwalior, directed for an enquiry and it was found that the Arun Sharma (Tenant) is not the same person, against

whom reward was declared and after unlawful detention of Arun Sharma (Tenant) for 7 ½ hours in the police station Bahodapur, he was released. This Court by order dated 2-11-2020, found that although Arun Sharma (Tenant) was taken in custody, but he was not formally arrested as well as the directions given by the Supreme Court in the case of **D.K. Basu Vs. State of W.B.**, reported in **AIR 1997 SC 610** were blatantly flouted, therefore, in the light of the directions given by the Supreme Court in para 36 of the judgment, suo moto contempt proceedings have been initiated.

3. The respondent no.1 has filed his return and submitted that the respondent no.1 has absolutely no willful intention to disobey or flout the directions of the Hon'ble Supreme Court in the case of **D.K. Basu (1997)(Supra)**. He has a service career of 7 years and recently has been awarded one certificate of appreciation. It is claimed that on 13-8-2020, the Superintendent of Police, Gwalior issued an order under Para 80(1) of M.P. Police Regulations and a reward of Rs. 5000 was declared against one Arun Sharma, son of Omprakash Sharma, resident of Sector No.2, D-97, Vinay Nagar, Police Station Bahodapur, Gwalior. Therefore, instructions were issued to the Police Station Bahodapur personals to put efforts to trace whereabouts of accused Arun Sharma, son of Omprakash Sharma, resident of Sector No.2, D-97, Vinay Nagar, Police Station Bahodapur, Gwalior. The respondent no.2 informed that Arun Sharma, son of Omprakash, against whom a reward of Rs. 5000 has been declared has now

changed his address and at present he is residing in Laxman Talaiya, Near Asmani Temple, Kapate Wali Gali, Shinde Ki Chhawani, Gwalior, and he knows him personally. On the specific information given by respondent no.2, Arun Sharma (Tenant) was brought to the police station at 13:56 on 14-8-2020, for verification and investigation to be carried out by the investigator of crime no. 255/2011 registered at Police Station Gole Ka Mandir, Gwalior i.e., a different police station. It is claimed by the respondent no.1, that prior to 14-8-2020, he had never seen Arun Sharma (Tenant). Thereafter on verification done by the Police of Police Station Gole Ka Mandir, it was found that Arun Sharma (Tenant) is not the same person against whom a reward of Rs. 5000 was declared therefore at 21:37 he was allowed to go. It is submitted that Arun Sharma (Tenant), was taken in custody on the incorrect but specific information given by respondent no.2, therefore, a mistake was committed by the answering respondent. It is further submitted that the press note regarding “arrest of Arun Sharma (Tenant) an accused against whom reward of Rs. 5000 was declared” with his photograph of uncovered face was shared with media on the basis of the departmental circular dated 2-1-2014, which has been partially quashed by this Court by order dated 2-11-2020, however, the quashed part of the circular dated 2-1-2014 was in existence on 14-8-2020. It is submitted that the respondent no. 1 has committed a mistake out of enthusiasm.

4. The respondent no. 2 has filed his return and has taken a completely different stand from that of respondent no.1. It is pleaded by him that he is a poor Class-3 employee holding the post of Constable in Police Department. Arun Sharma (Tenant) was arrested by respondent no.1 on 14-8-2020. The respondent no.2 was not the member of the team which was led by respondent no.1. Further, the respondent no.2 at the relevant point of time was performing his duties over Dial 100 Eagle 62-B-24 at Bahodpur Tiraha from 10:17 till 17:52. The respondent no.2 was not the active member of the arrest team and has not violated any direction given by the Supreme Court in the case of **D.K. Basu (1997)(Supra)**. It is further submitted that when the respondent no.2 came back to the police station, he found that one Arun Sharma (Tenant) was arrested and Constable Abhishek Sharma, intimated him about the arrest of Arun Sharma (Tenant). It is submitted that the respondent no.2 had no power and authority to intervene in the matter. It is further pleaded that when he was on duty on Dial 100, one Constable Abhishek Sharma, Batch No. 1839 had made a call from his mobile no. 9340349605 and intimated that the team has arrested on Arun Sharma.

5. Thus, from the return filed by the respondent no.1, it is clear that he has claimed that in fact it was the respondent no.2, who gave a specific information, that he knows Arun Sharma (Tenant) personally, and he is the same person, against whom reward of Rs. 5000 has been

declared, whereas the respondent no.2 has stated that he was not the member of the arrest team and his duty was on Bahodapur Tiraha on Dial 100 and he doesnot know anything about the arrest of Arun Sharma (Tenant).

6. However, during the course of arguments, it was admitted by the Counsel for the respondent no.2, that he is in the photograph with uncovered face of Arun Sharma (Tenant), but could not explain as to when his duty was not in the police station, then why he was present at the time of photo session and why he actively participated in photo session.

7. Although the respondent no.1 has claimed that Arun Sharma (Tenant) was taken in custody due to mistaken identity and was released after due verification, but has not explained that why his photograph with uncovered face of Arun Sharma (Tenant) with caption “Accused with reward of Rs. 5000/- has been arrested” was released by him, even prior to verification. From the return filed by the respondent no.1, it is clear that the respondent no.1 did not conduct any verification as to whether the person who has been taken in custody is the same person against whom reward of Rs. 5000 has been declared or not?

8. During the course of arguments, Shri Amit Sanghi, Superintendent of Police, Gwalior who had joined the Court proceedings through Video Conferencing in W.P. No. 13057/2020 and was present during the hearing of this case also, submitted that in fact

he was informed by the brother of Arun Sharma (Tenant) that his brother is an innocent person, and has been wrongly taken into custody and on his directions, verification was done and accordingly it was found that Arun Sharma (Tenant) is not the person, against whom, reward of Rs. 5000 has been declared and accordingly, he was released. Thus, it is clear that the stand taken by the respondent no.1, that the verification was done by Police of Police Station Gole Ka Mandir, on its own is incorrect, and infact only after the intervention of the Superintendent of Police, Gwalior, an enquiry was conducted regarding the identify of Arun Sharma (Tenant) and after finding that Arun Sharma (Tenant) is not the same person, against whom a reward of Rs. 5000 has been declared, Arun Sharma (Tenant) was allowed to go. Further, the respondent no. 1 in para 6 of his return has stated that after the reward of Rs. 5000 was declared by the Superintendent of Police, Gwalior, instructions were issued to the Police Station Bahodapur personals to put the efforts to trace out Arun Sharma, son of Omprakash Sharma, wanted in crime no. 255/2011. The copy of the order by which rewards were declared by the Superintendent of Police, Gwalior has been filed by the respondent no.1. From the said order, it is clear that reward against one more person, namely Avinash son of Ashok Upadhyay resident of Sector 3, behind Electricity Office, Vinay Nagar, Police Station Bahodapur, Distt. Gwalior, was also declared and he was also the resident of an area falling within the territorial jurisdiction of Police

Station Bahodapur, then why instructions were issued to trace out Arun Sharma only and why not Avinash son of Ashok Upadhyay also? Thus, it is clear that Arun Sharma (Tenant) was unlawfully taken into custody with malice and in utter misuse of the official position. Further, it is not the case of the respondent no.1 that before releasing the press note, he had ever tried to verify the identity of Arun Sharma (Tenant). The contention of the respondent no.1 is that he had blindly relied upon the information given by respondent no.2. This conduct of respondent no.1 is not in accordance with law. “Good Faith” has been defined under Section 52 of Penal Code, according to which “due care and attention” is must. However, it is not the case of the respondent no.1 that he had acted with due care and attention.

9. It is further submitted by Shri M.P.S. Raghuvanshi, Additional Advocate General, that a preliminary enquiry was conducted by the Superintendent of Police, Gwalior, and it was found that the respondents no. 1 and 2 were responsible for the illegal detention of Arun Sharma (Tenant) and accordingly, a charge sheet has been issued against them and earlier they were line-attached, however, considering the seriousness of the matter, today they have been placed under suspension.

10. Thus, it is clear that not only Arun Sharma (Tenant) was unlawfully taken into custody by the respondents no. 1 and 2 but without formally arresting him, he was kept in the police station in

illegal detention for 7 ½ hours and only after the intervention of the Superintendent of Police, Gwalior, Arun Sharma (Tenant) was released from the Police Station Bahodapur, Gwalior. Not only that a press note was also released to the effect that Arun Sharma “Accused with reward of Rs. 5000/- has been arrested” and his photograph of uncovered face was also published in the news papers as well as was also uploaded on Social Media, through I.T. Cell, Superintendent of Police, Gwalior. Further, the State of M.P., and Superintendent of Police, Gwalior, in their compliance report dated 20-10-2020, filed in W.P. No. 13057/2020 have filed a copy of news published in the newspaper that the respondent no. 3 has been suspended for **arresting an innocent person**. Thus, it is the case of the State of M.P., and Superintendent of Police, Gwalior also, that Arun Sharma (Tenant) was arrested without preparing an arrest memo. None of the respondents have prayed for leading evidence in support of their defence.

11. The Supreme Court in the case of **D.K. Basu (1997)(Supra)** has held as under :

35. We, therefore, consider it appropriate to issue the following *requirements* to be followed in all cases of arrest or detention till legal provisions are made in that behalf as *preventive measures*:

(1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.

(2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of

arrest and such memo shall be attested by at least one witness, who may either be a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.

(3) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

(4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

(5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

(6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

(7) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

(8) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the State or Union Territory concerned. Director, Health Services should prepare such a panel for all tehsils and districts as well.

(9) Copies of all the documents including the memo of

arrest, referred to above, should be sent to the Illaqa Magistrate for his record.

(10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

(11) A police control room should be provided at all district and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.

36. Failure to comply with the requirements hereinabove mentioned shall apart from rendering the official concerned liable for departmental action, also render him liable to be punished for contempt of court and the proceedings for contempt of court may be instituted in any High Court of the country, having territorial jurisdiction over the matter.

12. Undisputedly, Arun Sharma (Tenant) was detained by the respondents no. 1 and 2, but he was not formally arrested and was kept in police station for 7 ½ hours and the directions no. 2 to 10 given by the Supreme Court in the case of **D.K. Basu (1997) (Supra)** were completely flouted. The verification of identity of Arun Sharma (Tenant) was got done by Superintendent of Police, Gwalior, on a complaint made by the brother of Arun Sharma (Tenant) and only after his intervention, Arun Sharma (Tenant) was released from Police Station. The most unfortunate part of the matter is that the respondent no.1,2 and S.I. Sangita Minj, posted in Police Station Bahodapur, Gwalior were involved in forcible eviction of Arun Sharma (Tenant) without there being any order of the Court and the belongings of Arun Sharma (Tenant) were brought to the Police Station Bahodapur, where Arun Sharma (Tenant) was forced to give

an undertaking and only thereafter he was allowed to go back and retain the shop as per his undertaking. Further, when Arun Sharma (Tenant) did not vacate the shop inspite of his undertaking, therefore, he was taken in illegal custody by projecting that he is an accused against whom award of Rs.5000 has been declared, but admittedly, that was incorrect.

13. It is not out of place to mention here, that today, this Court by a detailed order passed in W.P. No. 13057/2020 filed by Arun Sharma (Tenant) has held that the respondents no. 1 and 2 have grossly violated the fundamental rights of Arun Sharma (Tenant). The conduct of the respondents substantially interferes with the due course of justice.

14. Under these circumstances, it is held that the respondents no. 1 and 2 are guilty of committing Contempt of Supreme Court by flouting the directions given in the case of **D.K. Basu (1997)(Supra)** and accordingly they are held liable for committing Contempt of Court.

15. Whether apology tendered by respondents is bonafide or not?

Although, the respondents have tendered their conditional apology but the same doesnot appear to be bonafide. The respondent no.1 has taken a stand that he had acted on the specific information given by the respondent no.2, whereas it is the case of the respondent no.2, that he has nothing to do with detention of Arun Sharma

(Tenant) because at the relevant time, he was posted at different place. However, in the preliminary enquiry conducted by Add. Superintendent of Police, City (Center), Gwalior, which has been reproduced in order passed today in W.P. No. 13057/2020, it has come on record that in fact, on the information given by the respondent no.2, the respondent no.1, had taken Arun Sharma (Tenant) in custody. However, the respondent no.1, without verifying the identity of Arun Sharma (Tenant), released a press note thereby branding Arun Sharma (Tenant) as an accused with reward of Rs. 5000 and his uncovered face photograph and the news regarding his arrest was uploaded on social platform and was also published in the newspapers. Further, the contention of respondent no.1 that he had blindly relied upon the information given by respondent no.2 cannot be accepted because in view of Section 52 of Indian Penal Code, it cannot be said that the respondent no.1 had acted in Good Faith, because even according to respondent no.1, he did not take any due care or attention in the matter. Both the respondents have not shown any remorse for their actions and are now involved in mud-slinging against each other. Arun Sharma (Tenant) was kept in illegal detention in utter violation of directions given by the Supreme Court in the case of **D.K. Basu (1997) (Supra)** out of sheer malice, as Arun Sharma (Tenant) had not vacated the shop inspite of undertaking given by him to the police. In fact the conduct of the respondents is a direct attack on the Fundamental Rights of the citizens of India and is

a glaring example of atrocities committed by misusing their official position.

16. Under these circumstances, this Court is of the considered opinion, that the Apologies tendered by the respondents cannot be said to be bonafide and therefore, the same cannot be accepted. Accordingly, the apologies tendered by both the respondents are not accepted and hereby rejected.

17. Office is directed to keep a copy of order passed today in W.P. No. 13057/2020, in the file of this case.

18. Call after some time for hearing on the question of sentence.

G.S. Ahluwalia
Judge

Later on :

Heard the Counsel for the respondents as well as respondents on the question of punishment. It is submitted that the respondents are young persons, having committed a mistake, therefore, while imposing punishment, mercy may be shown by the Court.

Heard the learned Counsel for the respondents.

The Supreme Court in the case of **J. Vasudevan v. T.R.**

Dhananjaya reported in (1995) 6 SCC 249, has held as under :

14. Coming to the mercy jurisdiction, let it be first stated that while awarding sentence on a contemner the Court does so to uphold the majesty of law, and not with any idea of vindicating the prestige of the Court or to uphold its dignity. It is really to see that unflinching faith of the people in the courts remains intact. But, if the order of even the highest Court of

the land is allowed to be wilfully disobeyed and a person found guilty of contempt is let off by remitting sentence on plea of mercy, that would send wrong signals to everybody in the country. It has been a sad experience that due regard is not always shown even to the order of the highest Court of the country. Now, if such orders are disobeyed, the effect would be that people would lose faith in the system of administration of justice and would desist from approaching the Court, by spending time, money and energy to fight their legal battle. If in such a situation mercy is shown, the effect would be that people would not knock the door of the courts to seek justice, but would settle score on the streets, where muscle power and money power would win, and the weak and the meek would suffer. That would be a death-knell to the rule of law and social justice would receive a fatal blow. This Court cannot be a party to it and, harsh though it may look, it is duty-bound to award proper punishment to uphold the rule of law, how so high a person may be. It may be stated, though it is trite, that nobody is above the law. The fact that the petitioner is an IAS officer is of no consequence, so far as the sentence is concerned. We would indeed think that if a high officer indulges in an act of contempt, he deserves to be punished more rigorously, so that nobody would take to his head to violate the Court's order. May we also say that a public officer, being a part of the Government, owes higher obligation than an ordinary citizen to advance the cause of public interest, which requires maintenance of rule of law, to protect which contemners are punished.

If the facts of this case are considered, then it is clear that the respondents no. 1 and 2, have acted as an unruly horse, by misusing their official position. The respondents, being police officers, had duty to maintain the law and order, but it appears that taking advantage of their Uniform and official position, the respondents have acted in a most disagreeable manner, which may shake the confidence of the general public in Police Department. The Police is

the guardian of the citizens of India and is also an eye and ears of the Judiciary. If the police officers are allowed to misuse their office, in utter violation of directions of the Supreme Court, then this Court will be failing in discharging its Constitutional duty.

At this stage, it is once again submitted by Shri Tapan Trivedi, and Shri D.P. Singh, Counsels for the respondents no. 1 and 2 that, this Court may shower its mercy on the respondents by not awarding jail sentence, however, fine may be imposed. It is further submitted that the respondents no. 1 and 2 have realised their mistake and they may be awarded lesser punishment, so that they may improve their conduct has a human being in future.

The respondent no. 1 Dinesh Rajput, S.I., the then S.H.O., Police Station Bahodapur, Gwalior who is present through V.C. from the S.P. Office, Gwalior, also submitted that he may be awarded some lesser punishment and now he has realised the emotions of a common man. However, he further admitted that branding Arun Sharma (Tenant) as “an accused with reward of Rs. 5000 has been arrested” and his uncovered face photograph uploaded on social platform as well as to print media, was an act of his recklessness and should not have been done without verifying the identity of Arun Sharma (Tenant).

The respondent no.2 Achal Sharma, Constable, Police Station Bahodapur, Distt. Gwalior, also prayed for lesser punishment.

Considered the submissions made by the respondents no.1 and

2 and their Counsels.

The Courts must award sentence proportionate to the guilty act and in the present case, the respondents no.1 and 2 have violated the fundamental rights of Arun Sharma (Tenant) by branding him as an accused with reward of Rs. 5000, and keeping him in illegal detention in utter violation of directions issued by the Supreme Court in the case of **D.K. Basu (1997)(Supra)** and thus the act of the respondents is a direct attack on the very existence of humanity, however, this Court also cannot lose sight of the fact, that if the guilty person, has realized that he has committed a mistake, which should not have been committed, then this Court must award one opportunity to them to improve their conduct as a human being in future.

Therefore, instead of awarding jail sentence, a punishment of fine of Rs. 1000/- is awarded. The fine amount be deposited within a period of 15 days from today, failing which the respondents no. 1 and 2 shall undergo the simple imprisonment of 15 days.

Accordingly, the Contempt Petition is finally disposed of.

G.S. Ahluwalia
Judge