

Court No. - 48

Case :- CONTEMPT APPLICATION (CRIMINAL) No. - 5 of 2022

Applicant :- In Re

Opposite Party :- Shri Chandan Kumar, Investigating Officer

Counsel for Applicant :- Sudhir Mehrotra

Counsel for Opposite Party :- R.V. Pandey, Abhishek Mishra, Ashutosh Kumar Pandey, R.V. Pandey

Hon'ble Suneet Kumar, J.

Hon'ble Syed Waiz Mian, J.

Heard learned counsel for the parties.

Pursuant to order dated 04.08.2022, contemnor is present in the Court.

Contemnor vide order dated 04.08.2022, was held guilty for committing contempt for breach of the mandate pronounced by the Supreme Court in *Arnesh Kumar Vs. State of Bihar* reported in 2014 (6) SCJ 219.

In the affidavit, the contemnor pleads for taking a sympathetic view on the quantum of punishment, for the reason, that he is a young officer and his wife is expecting. Further, it is pleaded that he is the sole bread earner of his family, including, four brothers and one sister; he further pleads that punishment would adversely affect his career. The contemnor, therefore, tenders an unconditional apology.

We have considered the averments made in the affidavit and submissions of the learned counsel for the contemnor.

This Court would not lose sight of the fact that the contemnor, being a member of disciplined Force, in exercise of his powers of arrest, has willfully and deliberately bypassed the mandate of the Supreme Court in *Arnesh Kumar* (supra), which is binding on all the authorities, including, the Magistrate, in view of Article 141 of the Constitution of India.

'Apology' means regretful acknowledgement or an excuse for failure. It is an explanation offered to a person affected by one's action that no offence was intended. Further, held 'apology' should be unquestionable in sincerity and tempered with sense of genuine remorse and repentance, and not a calculated strategy to avoid punishment. The apology tendered by the contemnor is a matter of last resort, therefore, it cannot be accepted.

It has been noted by the Court in the order dated 04.08.2022, that the contemnor, though, has served a notice under Section 41-A Cr.P.C. on the accused, but, to bypass the mandate of the Supreme Court, he willfully and deliberately recorded in the GD that accused declined to accept the terms and condition of the notice. Further, communal colour was attempted to be given by the contemnor taking advantage that the accused belongs to a muslim community, by stating that there was an apprehension of communal riots. It is noted in the order that no such apprehension did exist as admittedly, the FIR was not lodged at the police station until intervention by the higher authorities. There is no entry in the GD that there was any such apprehension of communal flare up in the event of the accused not being arrested. The misleading entry in the GD was made

willfully and deliberately with sole purpose to bypass the mandate in **Arnesh Kumar** (supra), in order to arrest the accused. The contemnor, in the circumstances, has circumvent the mandate which was binding upon him.

In the event of the Court taking a sympathetic view, it would not sub-serve public interest and the administration of justice. In order to secure public respect and confidence in the judicial process, the Court is constrained in awarding punishment to the contemnor, Investigating Officer, Shri Chandan Kumar, Incharge of Police Station, Kanth, District Shahjahanpur, for committing contempt.

In the circumstances, Shri Chandan Kumar, Incharge of Police Station, Kanth, District Shahjahanpur, is sentenced to undergo simple imprisonment for 14 days and fine is imposed at Rs. 1000/-. On default, the contemnor shall undergo one week further simple imprisonment.

The sentence shall be kept in abeyance for 60 days from today as the learned counsel for the contemnor pleads that the contemnor would like to prefer an appeal under Section 19 of Contempt of Court Act, 1971.

In view thereof, the contempt petition and pending application, if any, stands disposed of.

Order Date :- 18.8.2022

Mukesh Kr.

(Syed Waiz Mian,J.)

(Suneet Kumar,J.)