

Srirupa Roy Vs. Lalit Kumar

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Court : Karnataka

Decided On : Nov-24-2023

Judge : Chief Justice and Krishna S Dixit

Appeal No. : CCC 259/2023

Appellant : Srirupa Roy

Respondent : Lalit Kumar

Judgement :

- 1 - NC:

2023. KHC:42437-DB CCC No.259 of 2023 IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE24H DAY OF NOVEMBER, 2023 PRESENT THE HON'BLE MR. PRASANNA B. VARALE, CHIEF JUSTICE AND THE HON'BLE MR. JUSTICE KRISHNA S DIXIT CIVIL CONTEMPT PETITION No.259 OF 2023 BETWEEN: SRIRUPA ROY W/O HIMADRI SARKAR AGED46YEARS C/O S.D. RO FLAT NO401 BLOCK A, 4TH FLOOR, BALDOTA SIGNATURE, RACHENAHALLI THANISANDRA, BENGALURU - 560077 COMPLAINANT (BY SMT. SRIRUPA ROY, COMPLAINANT-IN-PERSON) AND:

1. LALIT KUMAR COMMANDER CDR (PS) - DISC AND VIG INTEGRATED HEADQUARTERS, MINISTRY OF DEFENCE (NAVY) DIRECTORATE OF PERSONNEL SERVICES NEW DELHI - 110 011 2. SURINDER HORA COLONEL, GROUP COMMANDER NCC GROUP HEADQUARTERS PLOT

NO115 2ND FLOOR OPP BHEL ENCLAVE, AKBAR ROAD SECUNDERABD - 500009 3. P MAHESHWAR DEPUTY DIRECTOR GENERAL NCC DIRECTORATE (AP AND T) - 2 - NC:

2023. KHC:42437-DB CCC No.259 of 2023 GENERAL CHOUDHARY ROAD SECUNDERABD - 500003 4. SRI.R.HARI KUMAR S ROY THE FLAG OFFICER COMMANDING-IN-CHIEF INTEGRATED HEADQUARTERS, MINISTRY OF DEFENCE (NAVY) DIRECTORATE OF PERSONEL SRVICES, NEW DELHI - 110011 5. SRI.R.HARI KUMAR SROY CHIEF OF NAVAL STAFF INTEGRATED HEADQUARTERS MINISTRY OF DEFENCE (NAVY) SOUTH BLOCK, NEW DELHI - 110011 6. MR. ARAMANE GIRIDHA SROY UNION OF INDIA, BY ITS SECRETARY MINISTRY OF DEFENCE SOUTH BLOCK, NEW DELHI - 110011 7. CAPTAIN HIMADRI SARKAR C/O P MAHESWAR DDG NCC DIRECTORATE (AP AND T) GENERAL CHOUDHARY ROAD SECUNDERABAD - 500003 ACCUSED (BY SRI. RAJASHEKAR S, ADVOCATE FOR ACCUSED1TO6 SRI. RADHAKRISHNAMURTHY, ADVOCATE FOR SRI. RAGHAVENDRA C, ADVOCATE FOR R-7) THIS CCC IS FILED UNDER ARTICLE215OF THE CONSTITUTION OF INDIA READ WITH SECTION11AND12THE CONTEMPT OF COURTS ACT, 1971 PRAYING TO PUNISH THE ACCUSED FOR CONTEMPT OF THE

ORDER

DATED1810.2022 PASSED BY THIS HON'BLE COURT IN W.P.NO.19085/2022 VIDE ANNEXURE-A AND GRANT SUCH FURTHER RELIEF AS MAY BE NECESSARY IN THE INTEREST OF JUSTICE. THIS CCC, COMING ON FOR

ORDER

S, THIS DAY, CHIEF JUSTICE MADE THE FOLLOWING: - 3 - NC:

2023. KHC:42437-DB CCC No.259 of 2023

ORDER

This complaint of contempt has a checkered saga. The complainant happens to be the legally wedded wife of the seventh respondent herein namely, Captain Himadri Sarkar. Complainant vide representation dated 22.07.2022 had requested the

fourth respondent-Flag Officer Commanding-in-Chief for granting monthly maintenance from the salary of her husband. The same was pending consideration and therefore, she had filed W.P.No.19085/2022 wherein a learned Single Judge of this Court vide judgement dated 18.10.2022 directed consideration of the said application in accordance with law after giving an opportunity of hearing to the Husband. A period of three months was prescribed for compliance. This judgement refers to certain abortive proceedings taken up by the complainant. Be that as it may.

2. It is the case of complainant that she and her minor son have been without any source of livelihood and that the life was proving hard to them and therefore, the - 4 - NC:

2023. KHC:42437-DB CCC No.259 of 2023 Naval Authorities are not justified in not duly complying with the writ issued by the learned Single Judge.

3. A Co-ordinate Bench of this Court vide order dated 29.08.2023 had observed as under:- Heard the complainant - party-in-person and the learned counsel Sri S Rajashekar who has filed into Court a memo enclosing therewith the proceedings ordering maintenance in favour of the complainant and has also enclosed the salary slip pertaining to the husband of the complainant and would point out that what is now ordered to be paid amounts to 1/3rd of the gross salary drawn by the officer i.e., husband of the complainant.

2. We have perused the salary slip. The basic pay is recorded as Rs.2,15,900 and the gross pay is recorded as Rs.3,42,905/- and the debit is shown as Rs.1,80,563/-. Out of the debits it is seen that Rs.1,07,584/- is deducted for paying towards arrears of family maintenance and in that view of the matter, the actual deduction ought to be Rs. 1,80,563/- less Rs.1,07,584/-. In that view, the actual deduction would be around Rs.72,979/- only and the 1/3rd is required to be calculated on the remaining salary. Even if the basic salary is taken as the premise to calculate the maintenance amount the same would amount to Rs.2,15,900/- divided by 3 i.e., Rs.71,966/- rounded off to Rs.72,000/-. Hence the maintenance amount worked out by the 4th respondent herein prima facie appears to be erroneous. Hence we direct that the same may - 5 - NC:

2023. KHC:42437-DB CCC No.259 of 2023 be re-looked by the 4th respondent. That apart if the maintenance amount is re-worked and fixed at Rs.72,000/- it would also automatically result in increased arrears of maintenance amount. In that view, the 4th respondent shall look into these aspects and re-work the same and place it before this Court by the next date of hearing.

3. In the meanwhile it is submitted that the husband of the complainant - party-in-person is said to be demobilized by 31.08.2023 and that he has informed her that he would be leaving the country and hence she prays that the future payment of maintenance amount be secured.

4. The learned counsel Sri S Rajashekar submits that the 4th respondent would appropriately direct the pension authorities to ensure the regular payment of maintenance amount to the complainant- party-in-person post the de-mobilization of her husband. That apart the Lt. Commander Sri Dayananda Mestha who is present before the Court would submit that if an appropriate application is made by the complainant - party-in- person to the Director of Personnel Services (DPS), the canteen card would also be issued to the petitioner and her son enabling them to avail the canteen facilities, etc., In that view, we direct that the respondent shall ensure that the retiral benefits shall not be released to the husband of the complainant - party-in-person till the next date of hearing.

5. Carbon copy of this order be furnished to the learned counsel Sri S Rajashekar.-. 6 - NC:

2023. KHC:42437-DB CCC No.259 of 2023 6. The Registry shall also forward this order to the respondent on the following e-mail - mestha.dayanand@gmail.com

7. The 4th respondent shall also expedite the release of arrears of maintenance amount as expeditiously as possible.

8. We have observed that the husband Captain Himadri Sarkar is not a party to the instant petition, though certain orders have been passed. Hence, we direct Captain Himadri Sarkar be arrayed as proforma respondent No.7.

9. The party-in-person to amend the cause title. List on 20.09.2023.

4. When the matter was posted before us on 20.09.2023, we had made certain observations which read as under: The Complainant - party in person is personally present before the Court. A detailed order was passed by this Court on 29.08.2023. The Memo dated 29.08.2023 is filed on behalf of the 4th Respondent i.e, Lieutenant Commander Judge Advocate for Flag Officer Commanding wherein an order dated 10.04.2021, salary statements for May & June, 2023 of the added Respondent No.7 as well as his Bank Statement are also annexed. The Complainant vehemently submits that though the Respondent No.7- her spouse was directed to pay the maintenance amount regularly in terms of the above order, the same - 7 - NC:

2023. KHC:42437-DB CCC No.259 of 2023 is not paid after July, 2023; that her son was required to undergo emergency surgery and as she is entitled for the medical benefit facility for her son being the ward of a naval officer as such that was also not extended. Learned counsel appearing on behalf of Respondents on instructions submits that the order dated 10.04.2023 is challenged by the Complainant in W.P.No.18235/2023 (S-RES) and the learned Single Judge passed an interim order on 21.08.2023. Our attention is drawn to the same... In respect of the grievance of nonpayment of the maintenance amount as well as denial of medical facilities for the surgery of the son of complainant, the Respondent - Lieutenant Commander Judge Advocate for Flag Officer Commanding is directed to file an appropriate affidavit within two weeks. Pursuant to our order dated 29.08.2023 the Complainant has impleaded Captain Himadri Sarkar, C/o P Maheshwar, DDG, NCC Directorate (AP & T), General Choudahary Road, Secunderabad - 560 003, as Accused/Respondent No.7 to the array of parties. As such, issue notice to Respondent No.7 returnable by 25.10.2023 Call this matter on 27.10.2023.

5. The matter was again posted on 31.10.2023 and the following order was passed: 1. Vide our order dated 20.9.2023, a reference was made to the order of this court dated 29.8.2023 and evenly dated Memo filed on behalf of 4th Respondent. It seems that the complainant raised a grievance that her son is in need of medical assistance and is required to - 8 - NC:

2023. KHC:42437-DB CCC No.259 of 2023 undergo emergency surgery and she is entitled for medical benefit facility for her son being the ward of a Navy Officer. These facilities are not extended to her vide order dated 20.9.2023.

2. respondent No.7 has filed his Affidavit on 25.10.2023. The statements are made in para 6 as under: Since I was retiring in the month of August, 2023, they have deducted arrears of maintenance till August, 2023. I have paid maintenance even in the month of September and October, 2023.

3. In the affidavit under caption COMPLIANCE AFFIDAVIT FILED ON BEHALF OF CONTEMNOR No.1, 4, 5 AND 6 at page 12, Annexure-R3, a tabular statement is placed on record showing that the amount towards the maintenance is deducted from the salary accounts of Accused No.7 for the month of May, June, July and August 2023, and that the same is deposited in the account of the Complainant by way of NEFT on 31.5.2023, 30.6.2023, 31.7.2023 & 31.8.2023. There is also a detailed bank statement filed on behalf of the respondents to show that certain amounts are in the meanwhile transferred in the account of the complainant from 21.1.2023 to 9.8.2023. The complainant submits that copy of the replies are not received by her and she reiterates her stand that the amount of maintenance directed to be paid under the orders of court is not paid to her by the respondent No.7-accused. At this stage, yet there is no serious dispute about the payment of the amount and the only undisputed fact is after August 2023, i.e. the date from which respondent No.7-accused is no more in the - 9 - NC:

2023. KHC:42437-DB CCC No.259 of 2023 service of Navy. The medical benefits/facility card which needs to be extended to her son is also not referred to in the affidavit in reply filed on behalf of official Respondents.

4. xxx 5. we instruct learned counsel appearing for the official Respondents to handover a copy of communication dated 25.2.2023 to the complainant today itself. The complainant to provide all those necessary documents & information to the authorities within one week from today. If such compliance is made by the complainant, the respondent-authorities shall issue the Facility card/ identity card/dependent card in the name of the complainant/ward as per the Rules applicable, immediately.

6. The representing officer of Respondent Nos.1, 4, 5 & 6 present in this court submits that there is a procedure for issuance of the medical card, canteen card & ID card; the Canteen Card may be issued subject to respondent No.7 surrendering his earlier Canteen Card. This will be issued for a specific period of operation and with limits for its utilization. The Representing Officer further submits that for issuance of the Canteen Card, the respondent No.7 is required to pay certain amount i.e. Rs.60,000/- depending upon the grade of his pay. On these submissions, respondent No.7 is directed to surrender his medical card & the Canteen Card to the concerned authorities within one week. The officials Respondents are directed to deduct the sum payable in this regard from the terminal benefits Respondent No.7, as an exceptional case and issue the cards in question to the - 10 - NC:

2023. KHC:42437-DB CCC No.259 of 2023 complainant or ward, as the case may be, within two weeks. The procedural formalities in this connection shall be complied with by the complainant if so instructed by the official Respondents. List on 23.11.2023.

6. Yesterday also, this matter was anxiously heard for sometime since the issue of very livelihood of an estranged spouse & a minor child, is involved. Learned standing counsel appearing for the official respondents in all fairness agreed to look into the grievance of the complainant and accordingly, the matter is posted this day. The first grievance of the complainant as to non- issuance of Medical Card, Canteen Card & Identity Card is concerned, the official respondents standing fair & tall submit that all steps would be taken for the issuance of these cards inasmuch as the complainant has complied with the formalities and requirements except submitting the thumb impression of the minor son. The complainant has agreed to abide by this compliance at the earliest, since all that is in her own interest and in the interest of the ward. She submits that the form containing the thumb - 11 - NC:

2023. KHC:42437-DB CCC No.259 of 2023 impression of the ward would be sent to the fourth respondent herein by speed post, before long.

7. The respondent Nos.1 to 6 who happen to be the high ranking officials of the Navy through their standing counsel assure and undertake to this Court that the Dependent Card & I.D. Card would be issued to the complainant within an outer limit of four weeks and that the Canteen Card would be issued within an outer limit of four months. They also explain the procedure & intricacies involved in generating these cards at the hands of a Third Party Agency at Noida and we appreciate that. We note that the amount by way of fees/charges payable towards the issuance of these cards has already been deducted from the terminal benefits of the seventh respondent who has demitted his office on 31.08.2023, having put in pensionable service. The official respondents have filed a compliance affidavit along with copies of documents broadly vouching their stand, in addition to making oral submission through their standing counsel.-. 12 - NC:

2023. KHC:42437-DB CCC No.259 of 2023 8. It is not in dispute that in terms of the judgement of the learned Single Judge, a decision is taken to pay to the complainant a monthly maintenance of Rs.59,170.92/- as is admissible under the provisions of Section 31 of the Navy Act, 1957, vide order dated 10.04.2023 issued by the Commander, CDR (P & A). The same reads as under:-
MAINTENANCE ALLOWANCE TO MRS. SRIRUPA ROY W/O. CAPTAIN HIMADRI SARKAR (03510-A) 1. The Chief of the Naval staff has approved an amount as Maintenance Allowance to Mrs.Srirupa Roy W/o. Captain Himadri Sarkar (03510-A) in accordance with Section 31 of Navy Act, 1957@ Rs.59,170.92/- pm w.e.f. Jul 22.

2. The arrears of Maintenance Allowance for the period from Jul 22 to Mar 23 of Rs.4,07,574.30 (excluding amount already paid) is to be recovered from the officer.

3. However, view statutory limit imposed law Section 32 of Navy Act, 1957 wrt limit of deductions that shall not exceed in any one month one half of the individuals pay and allowances for that month which works out to Rs.1,07,584/-. Further, the officer is marked for demob wef 31 Aug 23. Accordingly, the maximum recoverable Maintenance Allowance (alongwith arrears) to be recovered from the officer is as follows:- - 13 - NC:

2023. KHC:42437-DB CCC No.259 of 2023 (a) Maintenance Allowance @ Rs.59,170.92/- p.m. (b) Arrears of Maintenance Allowance to be recovered @ Rs.48,413.08/- per pm. (c) Total amount of Rs.5,37,920/- would be recovered from the officer as Maintenance Allowance (including arrears) till 31 Aug 23. (d) Balance of unrecovered arrears of Maintenance Allowance from the officer as on 31 Aug 23 would be Rs.1,65,472.88/-.

4. It is requested that necessary action be taken to pay the maintenance allowance (including arrears) wef Apr 23 @ 1,07,584/- pm and receipt of this letter be acknowledged.

9. A Co-ordinate Bench of this Court vide interim order dated 29.08.2023 had directed: we direct that the respondent shall ensure that the retiral benefits shall not be released to the husband of the complainant- party-in-person till the next date of hearing. The complainant submits that this direction was issued inasmuch as her husband i.e., the seventh respondent herein was planning to demit the office/post on 31.08.2023 by way of resignation and leaving the country post-haste with all the terminal benefits, leaving her and - 14 - NC:

2023. KHC:42437-DB CCC No.259 of 2023 the ward high & dry. We need not consider this aspect of the matter much since already the said respondent has demitted office and he has not left the country. In fact, he was present before the court personally/online. He is also represented by his counsel. The counter affidavit filed on 25.10.2023 at paragraphs 2 & 3, he has specifically admitted as under: Myself and the complainant got married on 02.02.2010. The complainant got a son Gautam Sarkar through her first marriage and I got adopted the complainants son through a registered deed the complainant kept me away from biological needs for the reasons best known to her But the fact remains that the complainant got married to me only for financial help, not for family life I have been paying maintenance to the complainant since September, 2016 It is noteworthy that nowhere in the counter affidavit nor before the official respondents nor before us, a stand is taken by the respondent No.7 and we appreciate the same that he will not pay any maintenance. His learned counsel raises a grievance that the entire terminal benefits have been withheld at the instance of the complainant and

that there is no justification whatsoever for this unfair - 15 - NC:

2023. KHC:42437-DB CCC No.259 of 2023 treatment. We fully agree with this inasmuch as the terminal benefits of a person, more particularly who served in the defence of the country belong to him, although he is liable to maintain the spouse & child. When we had put this to the complainant, she too in a way concurred with this view. After all, hers is a case of right to maintenance, and not the right to interdict the payment of terminal benefits to the spouse, who has served the country. There is a broad consensus to the effect that the terminal benefits be released to him.

10. The seventh respondent in the counter affidavit has also mentioned about certain matrimonial cases namely, M.C.No.375/2021 that is (on transfer re-numbered as M.C.No.703/2022) filed by the complainant in II Additional Family Court at Hyderabad, seeking maintenance and that the same has been withdrawn by her on 15.07.2022. The deponent also mentions about complainants W.P.No.19085/2022, the judgement dated 18.10.2022, the Commanders order - 16 - NC:

2023. KHC:42437-DB CCC No.259 of 2023 dated 10.04.2023 sanctioning a monthly maintenance of Rs.59,170.92/- with retrospective effect from July, 2022. He has specifically stated that the arrears of maintenance has been quantified at Rs.4,07,574.30/- and that the same has been paid to the complainant. Para 6 of the affidavit reads: since I was retiring in the month of August, 2023, they have deducted arrears of maintenance till August,2023. I have paid maintenance even in the month of September and October, 2023. The affidavit refers to complainants Police Complaint dated 28.06.2023 for offence punishable under Section 498A of IPC. Complainant has filed another case in M.C.No.273/2023 in the II Additional Family Court, Hyderabad which she has undertaken to withdraw, before us today.

11. Having heard the learned advocates appearing for the parties and having perused the complaint papers, we make the following observations and orders:- a) We understand the limitations of contempt jurisdiction especially when - 17 - NC:

2023. KHC:42437-DB CCC No.259 of 2023 complainants W.P.No.18235/2023 is still pending and that the respondents would be taking up as of their right the objections for resisting the same. At the same time, we are also duty bound to ensure that the complainant lady holds her body & soul together and so does the minor child of the couple. In these hard days, when bread is costlier than blood, a court of justice cannot be a mute spectator to the vagrancy of the hapless. It is duty bound to protect the lives of these individuals when marriage & adoption are specifically admitted and the seventh respondent asserts in his counter affidavit that he has been paying the maintenance even after his retirement. We therefore presume that the lady & the ward do not have means of livelihood; otherwise, the question of he making monthly payment even after retirement, would not have arisen. Added, the minor child has health issues arguably needing urgent medical intervention. Therefore, we have traveled in the landscape of law an extra mile keeping in view the following words of Justice Oliver Wendell Holmes, uttered a century ago in Davis vs. Mills, 194 U.S.451 (1904): - 18 - NC:

2023. KHC:42437-DB CCC No.259 of 2023 constitutions are intended to preserve practical and substantial rights, not to maintain theories. The Apex Court decision in Kangaroo Industries vs. Jainender Jain, 2022 Live Law SC437 relied upon by the learned counsel appearing for the seventh respondent in the given fact matrix of the case, does not much come to his rescue. b) The above being said, we need to balance the competing interests of the complainant-wife & the minor child on the one hand and the seventh respondent-husband on the other, so that justice is done to the estranged couple. In our considered view, that happens by directing the release of entire terminal benefits of service to the seventh respondent immediately so that he can make use of the same post retirement and at the same time, mandating the payment of monthly maintenance of Rs.59,170.92/- in terms of Navy Commanders order dated 10.04.2023 from the pension. We note that what is put in challenge in complainants pending writ petition cannot be construed as her waiving the entitlement to maintenance under the said order. A contra contention, if countenanced, would amount to a - 19 - NC:

2023. KHC:42437-DB CCC No.259 of 2023 mockery of justice, to say the least. We also do not foreclose the defense of the respondents in the said writ petition.

c) As already observed above, the complainant pursuant to the order dated 10.04.2023 has been awarded a monthly maintenance of Rs.59,170.92/- and that the arrears of the same having been deducted from the salary/terminal benefits of the seventh respondent, are remitted to her bank account. The Flag Officer personally present in the court, hastens to add that only Rs.1,47,057/- now remains due to the complainant and the same shall be remitted to her account immediately. d) The learned Single Judge in complainants W.P.No.18235/2023 has restrained the official respondents from disbursing a sum of Rs.7.50 lakh to the seventh respondent vide ad interim order dated 21.08.2023. It is true that a Co-ordinate Bench vide order dated 29.08.2023 had restrained disbursement of all his terminal benefits till next date of hearing. What is payable by way of monthly maintenance is only Rs.59,170.92/- and therefore, we are of the considered view - 20 - NC:

2023. KHC:42437-DB CCC No.259 of 2023 that the said restraint orders, if continued, would put the seventh respondent who has already retired from service, to enormous hardship and there is no justification for this being done. In the above circumstances, we dispose off these proceedings with the following directions: [i]. The official respondents shall forthwith release all the terminal benefits of service and the periodically accruing pension to the seventh respondent, however, retaining that part of the money payable as maintenance to the complainant under the Commanders Order dated 10.04.2023. [ii]. The official respondents are directed to deduct from the pension payable to the seventh respondent such part of the amount as is required to pay the monthly maintenance to the complainant and remit the same to her bank account periodically, if & when the complainant withdraws her M.C.No.273/2023 in the II Additional Family Court, Hyderabad which she has undertaken to withdraw, before - 21 - NC:

2023. KHC:42437-DB CCC No.259 of 2023 us today and submits a certified copy of the withdrawal order. [iii]. We direct the Department of Defence Accounts, New Delhi which functions under the aegis of the sixth respondent herein, to accord necessary approval/permission for giving effect to our above directions for the payment of terminal benefits & pension to the seventh respondent, and deduction from pension & periodical remittance of maintenance amount to the complainant

and also to the issuance of the Cards namely Medical Card, Canteen Card & ID Card to the complainant, without raising any objection whatsoever. [iv]. The complainant shall not object to the compliance of the direction issued in the mediately preceding paragraph above which mandates release of terminal benefits and periodic payment of pension to the seventh respondent. Should she raise any such objection, the official respondents may withhold the payment of maintenance amount till after appropriate orders are obtained by her in the pending W.P.No.18235/2023.-. 22 - NC:

2023. KHC:42437-DB CCC No.259 of 2023 Nothing hereinabove observed shall be construed as prejudicing the contention of the seventh respondent in the complainants pending W.P.No.18235/2023, inasmuch as all such observations are made only for the purpose of disposal of this case. Before parting, we need to and accordingly place on record our deep appreciation for the fair stand taken by the official respondents in general and the fourth respondent-Flag Officer, Commanding in Chief, in particular. Costs made easy. Sd/- CHIEF JUSTICE Sd/- JUDGE Bsv List No.:

1. SI No.: 1

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