

**Ashwini Kumar Vs. State and ors.**

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**Court :** Delhi

**Decided On :** Jan-31-1995

**Reported in :** 58(1995)DLT319; 1995(32)DRJ708

**Judge :** Cyriac Joseph, J.

**Acts :** Contempt of Court Act, 1972 - Sections 2

**Appeal No. :** Contempt Civil Petition No. 442 of 1994

**Appellant :** Ashwini Kumar

**Respondent :** State and ors.

**Advocate for Pet/Ap. :** Hitender Kapoor, Adv

**Judgement :**

**Cyriac Joseph, J.**

(1) This is a civil contempt petition filed by the petitioner impleading (1) The State, (2) Shri Amarjit Singh Choudhary, Station House Officer, Police Station Darya Ganj, New Delhi and (3) Shri Sanjay Garg, Metropolitan Magistrate, Tis Hazari Courts, Delhi as respondents/contemnors.

(2) According to the petitioner, Smt. Nisha; wife of the petitioner had filed a criminal complaint against the petitioner under section 498-A/406 of the Indian

Penal Code with the Crime Against Women Cell pursuant to which a Fir was lodged with the police station Darya Ganj, New Delhi bearing No.29/92. The petitioner filed CrI.M(M) No.1389/94 before this Court for quashing Fir No.29/92 lodged in Darya Ganj police station. Smt Nisha, wife of the petitioner, was respondent No.2 in CrI.M(M) 1389/94. She appeared before the Court and submitted that she was not interested in prosecuting the complaint any longer and accordingly this Court on 24th August, 1994 disposed of CrI.M(M) 1389/94 quashing Fir No.29/92 of Darya Ganj police station and the proceedings pending before the concerned Metropolitan Magistrate, Delhi. However, on 20th October, 1994 the learned Metropolitan Magistrate Shri Sanjay Garg (third respondent herein) finding that the accused was not present in Court issued non-bailable warrant against the accused (petitioner herein) and also issued notice to the surety for 6th December, 1994. Pursuant to the said order of the learned Metropolitan Magistrate, the petitioner was arrested by the second respondent SHO Darya Ganj police station on 7th November, 1994 at about 7.00 p.m. and was kept in lock up. He was also humiliated and insulted by hand-cuffing before the public in his area. The counsel for the petitioner appeared before the third respondent Metropolitan Magistrate on 8th November, 1994 at about 10.15 a.m. and apprised him about what had happened. Thereupon, the Metropolitan Magistrate called the second respondent and directed to produce the petitioner before him. The petitioner was produced before the Metropolitan Magistrate by the second respondent at 11 a.m. on 8th November, 1994 and immediately he was released by the third respondent. It is on these allegations that the petitioner has filed the civil contempt petition against the respondents.

(3) According to the learned counsel for the petitioner both the second and the third respondents were aware of the order dated 24th August, 1994 of the High Court, in CrI.M(M) petition No.1389/94 but they deliberately and negligently disobeyed the order of this Court. The submission is that in view of the orders of the High Court quashing the Fir and the proceedings pending before the concerned Metropolitan Magistrate, the accused (petitioner herein) was not bound to appear before the Metropolitan Magistrate on 20th October, 1994 and that on 20th October, 1994 the Metropolitan Magistrate was aware of the order of the High Court since the same had been communicated to him by the Registrar of the High

Court in the month of August 1994 itself. It is also submitted' that when the second respondent went to the petitioner's house to arrest him on 7th November, 1994, the petitioner had told the second respondent about the order of the High Court but the second respondent having admitted to be aware of the order proceeded to arrest the petitioner stating that in view of the non-bailable warrant issued by the Metropolitan Magistrate, he was bound to arrest the petitioner and to produce him before the third respondent. Thus, according to the learned counsel for the petitioner both the respondents willfully disobeyed the order of the High Court in Crl.M(M) No.1389/94 and thereby committed civil contempt of Court.

(4) The second respondent is Shri Amarjit Singh Choudhary, Sho, police station Darya Ganj. He was not a respondent in the Crl.M(M) No.1389/94. The petitioner has no case that the order of Crl.M(M) 1389/94 had been communicated to the second respondent. The second respondent was only orally told by the petitioner about the order of the High Court in Crl.M(M) 1389/94. It is not even alleged that a copy of the order was shown to the second respondent. At the same time the second respondent was bound to execute the non-bailable warrant issued by the Metropolitan Magistrate. The second respondent was only giving effect to an order of the Court which he was bound- to give effect to. In so far as the second respondent was not a party to Crl.M(M) No.1389/94, in the absence of any material, except the allegation of the petitioner, to show that he was aware of the order passed by the High Court quashing the Fir and the proceedings before the Metropolitan Magistrate, the second respondent cannot be held to have willfully disobeyed the order of the High Court, making him liable to be punished under the Contempt of Courts Act. the petitioner has not succeeded in showing that there Was willful disobedience of the order of the High-Court by the second respondent.

(5) The third respondent is a judicial officer. The allegation pertains to his passing an order while discharging judicial function. It is true that by order dated 24th August, 1994 the High Court had quashed the proceedings pending before him. It may also be true that a copy of the order of the High Court was communicated to the Court of the Metropolitan Magistrate by the Registrar of the High Court. It is also probable that a copy of the order of the High Court was received in the Court of the Metropolitan Magistrate before 20th October, 1994. The petitioner has no

case that when the case was taken up on 20th October, 1994 he or his counsel had brought the Order of the High Court to the notice of the third respondent. The accused and his counsel were admittedly absent when the case was taken up. But the relevant question is whether the learned Metropolitan Magistrate was aware of the order of the High Court while issuing the non-bailable warrant against the petitioner.

(6) A report in the matter was called for from the learned Metropolitan Magistrate. He Was also directed to forward the records of the case. Learned Metropolitan Magistrate has submitted the report and the relevant records have also been sent to this Court.

(7) I have gone through the report and also perused the records in the case. Learned Metropolitan Magistrate has categorically stated in his report that he was not aware of the order passed by the High Court in Crl.M.(M) 1389/94 when he issued non-bailable warrant against the petitioner on 20th October, 1994. It is also stated that he came to know about the said order of the High Court only on 8th November, 1994 when Shri Hitender Kapoor, advocate, for the accused put his appearance and apprised him about the said order. It is further stated that on being informed of the order of the High Court he immediately acted and cancelled non- bailable warrant and released the petitioner from custody on 8th November, 1994 itself. It is also seen from the report of the learned Metropolitan Magistrate that the order dated 24th August, 1994 of the High Court was received by Shri J.K. Goel, Ahlmed on 27th August, 1994 but he failed to place the said order before the learned Metropolitan Magistrate on or before 20th October, 1994. A show cause notice was issued to Shri J.K. Goel, Ahlmed by the learned Metropolitan Magistrate on 10th November, 1994 (before the filing of this civil contempt petition in this Court). Shri J.K. Goel submitted his report on 15th November, 1994 and after considering the reply, by order dated 21st November, 1994 Shri J.K. Goel was warned to be careful in future. In his reply to show cause notice Shri J.K. Goel, Ahlemd stated that the order of the High Court was received by him on 27th August, 1994 and that immediately it was shown to the learned Metropolitan Magistrate who directed him to put up the order on the file. He also stated that the order was accordingly put up on the file on 27th August, 1994 itself and that when

the file was produced before the learned Metropolitan Magistrate for hearing on 20th October, 1994 the order was in the file just after the last proceeding sheet. However, in his order dated 20th November, 1994 the learned Metropolitan Magistrate has reiterated his stand that he saw the order of the High Court only when the file was placed before him on 8th November, 1994. He has pointed out that as a routine practice that when any order of the High Court or any other Court is placed before him he puts his initial on it and writes the word, 'seen' on it. However, neither his initials nor the word 'seen' was there on the order when he saw it on 8th November, 1994. Learned Metropolitan Magistrate has concluded that the Ahlmed failed to promptly place the order of the High Court in the file due to his carelessness and negligence and that non-bailable warrant happened to be issued as a result of the said negligence on the part of the Ahlmed. It is also seen from the report of the learned Metropolitan Magistrate that the conduct of the Ahlmed was brought to the notice of the learned District Judge, Delhi and that the learned District Judge has ordered an inquiry by the learned Chief Metropolitan Magistrate. The said inquiry is still pending and the Ahlmed is already under orders of transfer from the Court of the learned Metropolitan Magistrate. In these circumstances the question is whether this Court should believe the version given by the learned Metropolitan Magistrate or the version of the Ahlmed. Since an inquiry is pending in the matter I do not propose to enter any finding on that question in this civil contempt petition. In this case I need only consider whether the learned Metropolitan Magistrate willfully disobeyed the order of the High Court. In the circumstances stated earlier it is not safe to proceed against the learned Metropolitan Magistrate on the basis that he was aware of the order of the High Court when he issued non-bailable warrant against the petitioner. Apart from the statement of the Ahlmed in his Explanation to the show cause notice, there is no material to show that the learned Metropolitan Magistrate was aware of the order of the High Court on the date when he issued non-bailable warrant against the petitioner. I do not consider it safe or proper to rely on the statement given by the Ahlmed in his defense to the show cause notice issued by the learned Metropolitan Magistrate. It is also seen that the show cause notice was issued to the Ahlmed by the learned Metropolitan Magistrate before filing of this civil contempt petition. The conduct of the learned Metropolitan Magistrate as soon as

he was told about the High Court's order on-8th November, 1994 also has to be considered. In these circumstances I am not satisfied that the learned Metropolitan Magistrate willfully disobeyed the order of the High Court.

(8) thereforee, the civil contempt petition is devoid of merit and it is accordingly dismissed. The lower court records will be sent back immediately.

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