

**IN THE COURT OF SMT. PRATIBHA RANI,
DJ-III -CUM- I/C ASJ (WEST), DELHI**

M No. 12/09

D.N. Joshi, Advocate & Anr.

.....Petitioners

Versus

Sh. Sharad Aggarwal, I.P.S. & Ors.

.....Respondents

M No.3/2010

Smt. Meena Sen & Anr.

.....Petitioners

Versus

Smt. Damini & Anr.

.....Respondents

ORDER

An application under Sec. 12 of Contempt of Courts Act 1971 for initiating contempt proceedings against the respondents has been filed by Sh. D.N. Joshi and Daya Ram Badalia, Advocates. During the pendency of this application, another application was filed by Smt. Meena Sen and her husband Sh. Ramesh Chandra Sen with identical prayer and this application was also ordered to be put up with connected matter.

2. In the present case, the short question involved is

whether arrest of Deepak Sen (husband), Ramesh Chand Sen (father-in-law) and Smt Meena Sen (mother-in-law) on 10.8.2009 in FIR No.122/09 under Sec.406/498-A/34 IPC, PS Tilak Nagar pending hearing of application for anticipatory bail, was justified. In the instant case, though the permission to arrest the main accused i.e. the husband was obtained on 17.6.2009 but no arrest was made and permission to arrest the collateral accused was obtained from the DCP on 7.8.2009 and the main accused as well as the collateral accused have been arrested on 11.08.2009 just a day before settlement/hearing of the anticipatory bail application by this Court.

3. Perusal of record reveals that the application for anticipatory bail was filed on 30.6.2009. on 1.7.2009 Sh. R.S. Goswami, Advocate for complainant Smt. Damini Chawla appeared in Court. Counsel for the complainant took the initiative and Applicants agreed to have meeting in the office of Counsel for the complainant on 8.7.2009 and application for bail was adjourned to 10.7.2009. On 10.7.2009 the Court directed both the parties to appear before Mediation Cell, Tis Hazari Courts on 14.7.2009 and bail application was adjourned to 17.7.2009. The matter could not be settled in Mediation Cell but at the request of the parties, to make further efforts for settlement, the hearing of bail application was adjourned to 4.8.2009 and then to 12.8.2009.

4. In the meantime all three above accused were arrested on 11.8.2009.

5. In reply to application for contempt of Court, Sh.

Sharad Aggarwal - DCP, Param Aditya – ACP, Inspector Satya Dev Dahiya and ASI Joginder Singh Rathi all have shown a defiant mood that they did nothing wrong in arresting the accused persons as there was no protection from Court. They have raised all possible technical objections such as non-compliance of Order 27-A CPC, Section 140 of D.P. Act and Sec.80 CPC without realising that Order 27 CPC and Section 80 CPC applies to Civil Court and not Criminal Court. Section 140 of D.P. Act applies to acts done in discharge of duties and not acts done in violation of law.

6. On merits, I may mention that power to arrest and justification of arrest are two different things. The power must be exercised sparingly. This is more so in case of matrimonial disputes which are defiant. In such cases arrest may add to the agony of parties and spoil the chances of reconciliation. That is why order No.330/2007 dated 8.11.2007 was issued by Commissioner of Police, restructuring powers to arrest in such cases. In the case Chander Bhan Vs. State 151 (2008) DLT 691 Hon'ble High Court of Delhi laid down guidelines for arrest in such cases. But all those were put on a side in this case.

7. Though the IO took permission to arrest but copies thereof placed on record show that they are empty formalities. The sanctioning authority did not care to see and find out how the proceedings were going on, whether there was any prospect of settlement. It did not call the complainant or her counsel to find out if complainant was serious in pressing for arrest of accused when hearing was listed for 12.08.2009 for

settlement/arguments on anticipatory bail application. It granted permission in per-functory manner as if permission is to be granted in each and every case merely on being asked. The order is as short as 'As Proposed". This defeated the very purpose with which administrative instructions were issued by Commissioner of Police and Judicial guidelines were laid down by Hon'ble High Court.

8. The sanctioning authority did not bother to see that if bail has not been granted, it had not been dismissed also and efforts for settlement by both the parties was a continuous process and date was already fixed for settlement/arguments. After all there must have been some cogent reasons for adjourning the bail application. The sanctioning authority ought to have tried to find out those reasons. It did not apply its mind to the facts of the case and acted blindly in granting permission to arrest. This speaks volumes about how irresponsible the DCP must have been acting in matters which are not pending before Court.

9. The persons arrested were senior citizens one of whom was lady. They had status in society. One of them was arrested from his office in Jodhpur, Rajasthan. The lady was arrested from School, she is operating, in front of her students. The arrest caused immense damage to them.

10. What is more painful is that Sanctioning Authority has not realised even now that matter has already been settled. First motion for divorce by mutual consent was recorded on 18.1.2009 and petition for quashing FIR was filed in the Hon'ble

High Court in November, 2009.

11. Ld. Counsel for the petitioner has relied up on Arts and Commerce College, Pen, District Raigad Vs. State of Maharashtra & Ors. 1994 Cri.L.J. 172; Km. Shakuntala & Ors. Vs. The State of U.P. & Ors. 1996 Cri.L.J. 1774; Tapan Kumar Mukherjee Vs. Sri Heromoni Mondal & Anr. AIR 1991 SC 281; In re Sanjiv Datta & Ors. 1995 Cri.L.J. 2910; Ms. Sophy Kelly and Anr. Vs. Chandrakant & Ors. AIR 1999 SC 1042; Afzal & Anr. Vs. State of Haryana & Ors. 1996 Cri.L.J. 1679; Union of India & Ors. Vs. Subedar Devassy PV AIR 2006 SC 909; Tukaram etc. Vs. Santosh Mahadeorao Sayam & Ors. 1995 Cri.L.J. 57; Sudhakar Mahadeorao Kawale Vs. State of Maharashtra & Anr. 1994 Cri.L.J. 735; T.M.A. Pai Foundation & Ors. Vs. State of Karnataka & Ors. 1995 Cri.L.J. 3220; and Bank of Baroda Vs. Sadruddin Hasan Daya & Anr. (2004) 1 SCC 360 in support of his contentions that all the respondents are liable to be punished for committing the contempt by arresting the Applicants during pendency of the bail application.

12. In the the case Chander Bhan & Anr. Vs. State¹⁵¹ (2008) DLT 691, Hon'ble Mr. Justice Kailash Gambhir while expressing serious concern on the issue involved observed that what is not comprehended by young minds while invoking the provisions of the likes of Sections 498-A and 406 of IPC is that these provisions to a large extent have done incalculable harm in breaking matrimony of the couples. It has been further observed that despite the western culture influencing the young minds of our country, still it has been seen that Indian families

value their own age old traditions and culture, where, mutual respect, character and morals are still kept at a very high pedestal. I would like to refer to paras 10 and 1 of the report which is as under :-

“10. It has been noticed in diverse cases, where the brides and their family members in litigation find the doors of conciliation shut from the side of groom and his family members only on account of there having suffered the wrath of Police harassment first at the stage when matter is pending before Crime against Women Cell and thereafter at the time of seeking grant of anticipatory or regular bail and then the ordeal of long drawn trial.

11. Daily, matters come before this Court seeking bail and for quashing of FIRs registered under Section 498-A/406 of the IPC. This Court is of the view that it is essential to lay down some broad guidelines and to give directions in such matters in order to salvage and save the institution of marriage and matrimonial homes of the couples.”

13. Reverting to the facts of the present case, I am of the considered view that the directions given above by Hon'ble High Court of Delhi have been violated by the respondents. The Sanctioning Authority is trying to justify its action. This shows that it has scant regard for process of law and decision of Hon'ble High Court. I find it a fit case for informing Commissioner of Police as to how his subordinates are working. I hope that the Commissioner of Police would personally look into the matter and take strong action against defiant officers under intimation to undersigned.

It would also be appropriate to bring this matter to the notice of Hon'ble High Court about the insensitive attitude of the senior police officers while dealing with such matters in flagrant violations of the directions of Hon'ble High Court. Hence a copy hereof be sent to the Registrar General, High Court of Delhi for being placed before Hon'ble Mr. Kailash Gambhir, Judge, High Court of Delhi whose Lordship showed utmost concern about the matter and took initiative of laying down detailed guidelines for all concerned. The applications stand disposed of accordingly.

Announced in the open Court

24.4.2009

(PRATIBHA RANI)
DJ-III-cum-I/c ASJ(W)/Delhi