

(2013) 11 DEL CK 0255

In the Delhi High Court

Case No : Cont. Cas. (Criminal) 2 of 2013

Court on its Own Motion

APPELLANT

Vs

Adarsh Kant Kapoor

RESPONDENT

Date of Decision : 28-11-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2013) 11 DEL CK 0255

Hon'ble Judges : Kailash Gambhir, J; Indermeet Kaur, J

Bench : Division Bench

Advocate : Vikas Pahwa, Amicus Curiae, Mr. Sunil Sharma, APP for the State and DCP-S.B. S. Tyagi, Distt. New Delhi Inspector Dinesh Kumar, Sub-Inspector Sandeep Kumar, Police Station Tilak Marg, New Delhi, for the Appellant;

Judgement

Crl. M.A. No. 17931/2013 (Exemption from personal appearance and directions)

1. This application was filed by the appellant/alleged contemnor u/s 482 of Cr.P.C. to seek exemption from his personal appearance with the Registry of this court on 28th October 2013 with the request to the Registry not to list his application before 28th November 2013. Alongwith the present application, the alleged contemnor also annexed a copy of the letter dated 21st October 2013, and email copy of his Air ticket. In this application, the alleged contemnor has stated certain facts, which are contrary to the proceedings which had taken place in the court on 21st October 2013 and we will take a view of such averments made by the applicant in the present application at the time of consideration of the alleged contempt committed by him in the presence of the court on 21st October 2013. So far as the request of alleged contemnor for exempting him from his personal appearance in this court today is concerned, we find from the averments made in his application that the alleged contemnor had applied for the certified copy of the order dated 21st October 2013 on 23rd October 2013 at 2 PM but his application was not entertained by the Registry because there was some breakdown of the server of the computer system of the High Court. The

alleged contemnor thereafter had submitted the application to obtain the certified copy of order dated 21st October 2013 and as per the alleged contemnor copy of the order was still not uploaded on the website of this court and therefore he had carried out the urgent inspection of the file at 12.45 PM on 24th October 2013 in order to find out as to what order was passed on 21st October 2013.

2. Going by the aforesaid averments made in the present exemption application, it is quite evident that the alleged contemnor was well versed with the contents of the order dated 21st October 2013, wherein specific direction was given for his presence in court on 28th November 2013 but yet he left the jurisdiction of this court after taking a flight to Des Moines, IA, US (DSM) on 29th October 2013 at 4.20 am, as per photocopy of the air ticket placed on record by him. This applicant/alleged contemnor was already facing another contempt as directed by this court vide order dated 15th March 2013 and on 21st October 2013, this court also directed to initiate contempt proceedings against him but showing scant regard to the order passed by this court he took his scheduled flight to USA as was threatened by him even in the open court on 21st October 2013.

3. Looking into such audacious and defiant conduct of this applicant/alleged contemnor, we are not inclined to grant any exemption in his favour. He has also not engaged services of any lawyer to represent him in the present application, which further demonstrates his recalcitrant conduct. In the light of the above position, we direct non-bailable warrants against the respondent/applicant with the further direction to the police to initiate all other coercive measures for securing his presence in court on the next date of hearing.

4. List again on 16th December 2013.

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5. Status report has been filed by the State through Deputy Commissioner of Police. Vide order dated 21st October 2013, this court while issuing show cause notice against the alleged contemnor for initiating contempt proceedings against him, directed the concerned Deputy Commissioner of Police to ensure presence of the said contemnor on 28th November 2013. In the status report, it has been stated that the said order passed by this court on 21st October 2013 was received at Police Station Tilak Marg on 30th October 2013 and on receipt of the same Sub-Inspector Sandeep Kumar had visited the residence of the said contemnor at VB-155, Street No. 7, Virender Nagar, New Delhi and met the owner of the said property Shri S.S. Puri, who informed that Mr. Adarsh Kant Kapoor had already left the said premises. Mr. S.S. Puri had given mobile number of Adarsh Kant Kapoor to Sub-Inspector and Sub-Inspector then had contacted Mr. Adarsh Kant Kapoor on his telephone and Mr. Adarsh Kant Kapoor informed him that he is in USA and informed him that he has left the India in the intervening night of 28th/29th October 2013. He told Sub-Inspector that he has already inspected the file on 24th October 2013 and he knew about the show

cause notice being issued by the Hon"ble High court under which he has been directed to submit his reply before the next date of hearing. It is also stated that Sub-Inspector Sandeep Kumar had received a call from Adarsh Kant Kapoor (contemnor) from Mobile No. 005152774348 and in his communication, he told the Sub-Inspector that he had already filed an exemption application to seek his exemption from personal appearance on the next date of hearing and thereafter, he had disconnected the phone. It has also been stated that Sub-Inspector Sandeep Kumar had visited the property No. A-182, Asha Park, IIIrd floor, Fateh Nagar Jail Road, New Delhi where he met Ms. Jaspreet Kaur wife of Shri Jagmohan Singh owner of A-182, Asha Park, 4th Floor, Fateh Nagar Jail Road, New Delhi and on inquiry she informed the Sub-Inspector that Mr. Adarsh Kant Kapoor had taken 4th floor of the said property on rent in the first week of September 2013 and vacated the same on 26th October 2013. The request was also sent by police to FRRO to seek details of movement of Adarsh Kant Kapoor and FRRO vide its report informed the police that Adarsh Kant Kapoor had already boarded his flight to USA by Flight No. EY-211 on 29th October 2013. It is further stated that a request application for intimating Shri Adarsh Kant Kapoor about the above show cause notice has been sent to USA Embassy through proper channel.

6. We are quite distressed and appalled to notice such a cavalier and reckless conduct of the police. This order dated 21st October 2013 was directed to be given Dasti to the State counsel and as per Mr. Sunil Sharma, learned Additional Public Prosecutor for the State he had delivered the said letter to office of Standing Counsel on 23rd October 2013.

7. Mr. S.B.S. Tyagi, Deputy Commissioner of Police (District New Delhi) is present in court and submits that his office had received the order on the evening of 28th October 2013. In the status report filed by the police, it has been stated that the said order was received at Police Station Tilak Marg on 30th October 2013. This is quite amazing that the alleged contemnor could gain access to order on 24th October 2013 and had even filed an application on 28th October 2013 after serving the copy of the same on the State, but the State utterly failed to take any steps to ensure the presence of the alleged contemnor before the court on this date.

8. Let a fresh status report be filed by the State through the Deputy Commissioner of Police explaining the delay from 22nd October 2013 when the copy of the order was delivered by the learned Additional Public Prosecutor for the State to the office of Standing Counsel till 28th October 2013 when the same was received by the office of the Deputy Commissioner of Police. The same be filed within a period of one week.

9. Renotify on 16th December 2013 for directions. A copy of this order be given dasti under the signature of the Court Master to the State.