
(2000) 07 DEL CK 0002
In the Delhi High Court
Case No : Criminal Cont. Ref. No. 6/99

Courts of its own motion

APPELLANT

Vs

Inspector Akhilesh Kumar

RESPONDENT

Date of Decision : 31-07-2000

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 301, 302

Citation : (2001) CriLJ 68

Hon'ble Judges : Usha Mehra, J;J.B. Goel, J

Bench : Division Bench

Advocate : Mr. Shyam Moorjani Adv, for the Appellant;

Judgement

Usha Mehra, J.—On reference being made by the learned Additional Sessions Judge to initiate contempt of Court proceedings, notice was issued to Inspector Akhilesh Kumar vide order of this Court dated 10th December, 1999.

2. Briefly stated the facts which gave rise to the initiation of contempt proceedings are that in case FIR No.517/96, Police Station Lajpat Nagar titled "State Vs. Farooq Ahmad & Ors." u/s 120-B/301/302 IPC contemner Inspector Akhilesh Kumar of Rajasthan Police filed an application praying therein that the accuseds, namely, Abdul Mirza Hussain, Farooq Ahmad Khan, Mohd. Ali Bhat and Latif Ahmad Vaza be permitted to be produced before the Court at Bandikui, District Dosa, Rajasthan on 9th July,1999. That they may be permitted to be taken from Tihar Jail, Delhi to Rajasthan. Inspector Akhilesh Kumar undertook to the Court by way of an affidavit that he would produce accused Javed in the Court at Delhi on the date fixed i.e. 16th July, 1999. On the basis of this undertaking which was accepted by the learned Additional Sessions Judge, order was passed that Javed lodged in Tihar Jail be taken by Inspector Akhilesh Kumar to Rajasthan and produce the accused in Delhi on 16th July,1999. However, when the case came up on 16th July,1999 neither the accused Javed was produced nor Inspector Akhilesh Kumar appeared. It was in these circumstances that learned Additional Sessions Judge sent a notice to Inspector Akhilesh Kumar asking him

the reason for violation of his undertaking and further directed to produce the accused Javed on 29th July,1999. This show cause notice was ordered to be served on Inspector Akhilesh Kumar through SSP, District Dosa, Rajasthan. Inspire of this show cause notice, Inspector Akhilesh Kumar did not put in appearance before the Court nor produced the accused on 29th July,1999. It was in this background that the learned Additional Sessions Judge referred the case for initiating contempt proceedings against Inspector Akhilesh Kumar.

3. As already pointed out above, contempt notice was issued to Inspector Akhilesh Kumar by this Court and the same was ordered to be served through SSP, District Dosa, Rajasthan. That notice was not served on Inspector Akhilesh Kumar. That vide order dated 7th March,2000 again he was ordered to be served through SSP, District Dosa, Rajasthan for 17th April,2000. On 17th April,2000 Inspector Akhilesh Kumar did not put in appearance. We were informed by the learned Additional Sessions Judge that till 14th March,2000 accused had not been produced nor Inspector Akhilesh Kumar appeared. This Court, Therefore, observed that Inspector Akhilesh Kumar had acted irresponsibly, hence issued non-avilable warrants against him to be executed through SSP, District Dosa, Rajasthan for 4th May, 2000. This Court also imposed a fine of Rs.5,000/- to be deducted from the salary of the contemner because of non-compliance of the order of this Court. Letter was also written to Inspector General of Police, Rajasthan with the direction to take action against Inspector Akhilesh Kumar. Letter was also sent to Additional Superintendent of Police CID (CB), P.H.Q., Jaipur (Rajasthan) because it was he who vide his letter dated 29th June,1999 had also undertaken that accused would be produced in Court on 16th July,1999.

4. After the order was passed on 17th April,2000 Inspector Akhilesh Kumar filed his counter affidavit wherein he had tendered unconditional apology and has also explained the reasons why he could not produce the accused on the date fixed. Accused Javed was lodged in judicial custody at Jaipur jail. These accused were produced before the Court at Bandikui, Rajasthan on 9th July,1999. They were ordered to be sent to judicial custody. On 12th July,1999 Inspector was sent to investigate the case of Stadium Bomb Blast at Jaipur. Before leaving he had informed his higher authorities that the accused had to be produced at Delhi on 16th July,1999. He sought permission from his higher authorities to produce Javed and others in Delhi on 16th July,1999. The permission was granted. He accordingly reached Bandikui, Rajasthan and filed an application before that Court seeking permission to produce the accused Javed at Delhi on 16th July,1999. But unfortunately permission was declined by Bandikui Court holding that it was not possible to grant the permission. Since the accused was in judicial custody hence without the permission of Bandikui Court he could not have produced him at Delhi on 16th July,1999. He wrote a letter to the Additional Sessions Judge at Delhi seeking permission to produce the accused on a subsequent date. He was under the impression that the letter would be treated as his application. Since he was par vying the case at District Dosa, Rajasthan from 19th July,1999 to 16th August,1999 he was not in control of the case. His

successor was to produce the accused. Thereafter he was posted to Lok Sabha Election Duty at Bharatpur where he worked till 15th September,1999. In this background, he could not ensure that the accused be produced at Delhi Court. Thereafter he fell sick and was on long medical leave from 27th September,1999 to 27th November,1999 and on re-joining was again posted to investigate the Stadium Bomb Blast case at Jaipur. According to him when an Officer is assigned another duty the person who succeeds the post is supposed to follow the Court order but the successor it appears did not bother to comply the order of Delhi Court. He remained on one or the other duty hence could not comply his undertaking. On 16th February,2000 he was posted to Jaipur to investigate the communal riots case and Stadium Bomb Blast case. Thereafter he was posted on duty at Vidhan Sabha Control Room where he remained till 9th March,2000. On 25th March, 2000 he was delivered illegible papers in relation to the present case. He could not make out anything out of it. In the meanwhile, he was on Assembly Control Room duty. He was ordered to attend this Court on 17th April, 2000. His officer assured him that some arrangement would be made to depute someone else to appear before this Court. But no one was sent to appear on his behalf in this case on 17th April, 2000. On being relieved from Assembly Control Room duty he learnt that the matter was posted to 4th May, 2000. He immediately contacted his Lawyer and filed the application.

5. Inspector Akhilesh Kumar has also filed an application bearing Crl.M.No. 1095/2000 in which he has tendered unconditional apology for the delay in producing the accused and complying the undertaking given to the Court of Shri B.S. Mathur, Additional Sessions Judge, Delhi. He has explained the circumstances which according to him were beyond his control. He being a subordinate officer could not have flouted the order of higher authorities. Moreover, without the permission of the Court at Bandikui, Rajasthan the accused could not be produced.

6. It is in this background that he has sought recalling of the order dated 17th April,2000.

7. We have heard Mr.Shyam Moorjani, counsel for the contemner and Mr.K.C.Mittal, Standing Counsel for the State and have also perused the record. From the perusal of the counter affidavit it is clear that Inspector Akhilesh Kumar took steps to produce the accused in Delhi Court on 16th July,1999. He moved an application before the Court at Bandikui, Rajasthan Since the accused were in judicial custody at Bandikui, Rajasthan, hence without the permission of the Court he could not have taken the accused out from the jail. The said request had been declined. It is apparent from Annexure "R-3" colly. Perusal of Annexure "R-3" shows that the Additional Sessions Judge, Bandikui, Rajasthan declined the request. Therefore, on 16th July,1999 the contemner could not have produced the accused. Subsequent notice issued by the Additional Sessions Judge had not been served on him by his higher authorities as he was posted elsewhere. Even the notice sent by this Court had not been served on him. It is only when final

notice was served that he has put in appearance. Moreover, he has tendered unconditional apology for the delay in producing the accused persons in the Court at Delhi. Now since the order has been complied with, we consider that in these circumstances no further action is required to be taken against the contemner. Hence the order of 17th April,2000 is recalled.

8. But before parting we warn Inspector Akhilesh Kumar to be more careful in future. When his application was declined by the Court at Bandikui, Rajasthan, he ought to have deputed someone to Delhi to inform this fact to the Court at Delhi or alternatively he should have got the production warrants issued from Delhi Court, but he did nothing of this sort. He ultimately got the production warrants issued for 5th May, 2000. Why he could not do it earlier, no Explanation has been given. Therefore, this warning to him to be careful in future.

9. With these observations, the notice stands discharged. Petition stands disposed.