

(2023) 06 JH CK 0006

In the Jharkhand High Court

Case No : Writ Petition (Criminal) No. 230 Of 2018

Shailendra Prasad Barnwal

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 13-06-2023

Acts Referred:

Contempt Of Court Act, 1971 — Section 15(2)

Citation : (2023) 06 JH CK 0006

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Indrajit Sinha, Rishav Kumar, Sachin Kumar

Final Decision : Allowed/Disposed Of

Judgement

Sanjay Kumar Dwivedi, J

1. Heard Mr. Indrajit Sinha, the learned counsel for the petitioner and Mr. Sachin Kumar, the learned A.A.G.-II appearing for the respondent State.

2. This petition has been filed for quashing of the part of the order dated 15.5.2018 contained in Annexure-11 whereby the petitioner has been directed to submit the show cause as to why contempt proceeding should not be initiated, the above order has been passed by the learned court of Additional Sessions Judge-I, Pakur, in connection with Pakur Nagar P.S. Case No.60 of 2018 (POCSO Special Case No.24 of 2018) registered on 09.4.2018, pending before learned Additional Sessions Judge-I, Pakur.

3. Mr. Sinha, the learned counsel for the petitioner submits that by order dated 15.5.2018 the learned court has been pleased to issue show cause notice upon the petitioner to the effect as to why the contempt proceeding should not be initiated against him. He further submits that the wife of the accused Nafisa Banu submitted a representation on 18.4.2018 to the Inspector General of Police, Rail, Ranchi for investigation of the case in which she has also requested the investigating officer and SDPO to go through the CCTV footage but no heed was

paid to the same. She has given information to the Superintendent of Police and gave copy of the CD and CCTV footage. He submits that Inspector General of Police, Rail, has directed the petitioner to supervise the case registered against the accused Daniel Emanuel on the basis of the application submitted by the wife of the accused. He submits that in course of enquiry it is found that nothing has come against the accused namely Daniel Emanuel and the petitioner has directed to file final form and has also requested to take steps through the Additional P.P. for release of the accused. He submits that only on that basis the learned court has passed such order which is against the mandate of law. He further submits that in view of sub section 2 of section 15 of Contempt of Court Act, 1971 only the High Court and Supreme Court can take cognizance to contempt. He further submits that if contempt was made the learned court was required to refer the matter to the High Court for contempt and on satisfaction only the High Court is competent to take cognizance under the said Act. He further submits that in view of admitted position, the said direction of the learned court was unwarranted. On instruction he submits that now the case has already been concluded.

4. Mr. Sachin Kumar, the learned counsel for the respondent State submits that so far sub section 2 of section 15 of the Contempt of Court Act is concerned, it is very clear and law is well settled and in view of that only the High Court and the Supreme Court are competent to take cognizance under the said Act. He further submits that it appears that the petitioner has only discharged his official duty. He has directed to submit the report and request was made for release of the accused through the Additional P.P. He submits that it was open to the learned court either to accept the said report or to proceed further and no case of contempt so far the petitioner is concerned is made out.

5. In view of the above submission of the learned counsel for the parties, the Court has gone through the order dated 15.5.2018 and finds that the learned court has quoted the entire contents of letter dated 14.5.2018 in the said order. The Court finds that in the letter it has been informed that the case is found to be untrue and request was made to take steps by the Additional P.P. for release of the accused. After filing of any petition it was within the domain of the learned court either to accept the same or to reject the same. Further it appears that nothing incriminating has been disclosed against the court in that letter and it is on routine to submit such letter in an investigation on the direction of the higher authorities. Sub section 2 of section 15 of the Contempt of Courts Act for ready reference is quoted below:

"In the case of any criminal contempt of a subordinate court, the High Court may take action on a reference made to it by the subordinate court or on a motion made by the Advocate-General or, in relation to a Union territory, by such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf."

6. Looking into the said section, it is crystal clear that the learned court is competent to make reference to the High Court for any contemptuous act,

however, the learned court has not followed that procedure prescribed in sub section 2 of section 15 of the said Act. The Hon'ble Supreme Court in the case of Dr. Prodip Kumar Biswas v. Subrata Das and Ors, (2004) 4 SCC 573, while dealing with the issue of criminal contempt has observed that proceedings for criminal contempt can be initiated only when the act prejudices or interferes or tends to interfere with the court of judicial proceeding or administration of justice. Contempt of Court is a special jurisdiction which ought to be exercised sparingly and with great caution. Contempt proceedings should not be initiated lightly. The subordinate court can only make reference to the High Court for initiating contempt proceeding and therefore that part of the order so far as the petitioner is concerned is clearly in excess of jurisdiction vested to the learned court.

7. In view of the above, that part of the order dated 15.5. 2018 passed by the learned concerned court, so far the petitioner is concerned, is set aside.

8. This petition is allowed in the above terms and disposed of.