

2023 SCC OnLine Guj 2655

In the High Court of Gujarat at Ahmedabad
(BEFORE A.S. SUPEHIA AND M.R. MENGDEY, JJ.)

Rahul Ajaykumar Singhal

Versus

AY Baloch Inspector of Police

R/Misc. Civil Application No. 54 of 2023 With R/Misc. Civil
Application No. 1202 of 2023

Decided on August 22, 2023

Advocates who appeared in this case :

Mr. Manish Gupta, Mr. Neelmani Guha, Ms. Harshal Gupta, Advocates
for Mr. Tirth N Bhatt(8487) & Mr. A.H. Patel, Advocates for the
Applicants

Mr. Mitesh Amin, Public Prosecutor With Mr. Jay Mehta, AGP for the
Opponent(s) No. 1

The Judgment of the Court was delivered by

A.S. SUPEHIA, J.:— There are two contempt proceedings, one is filed
by the Rahul Ajaykumar Singhal being Misc. Application No. 54 of 2023
and another is filed by Ashwini Kumar Singhal being Misc. Civil
Application No. 1202 of 2023. Both the contempt proceedings are filed
under "Section 10" of the Contempt of Courts Act, 1971, (for short,
"the Act") alleging a willful disobedience of the directions issued by the
Supreme Court in the case *Arnesh Kumar v. State of Bihar*, [(2014) 8
SCC 273] and in the case of *Satender Kumar Antil v. CBI*, [2022 SCC
OnLine SC 825].

BRIEF FACTS:—

2. A complaint was lodged as C.A. No. 243 of 2022 at the instance of
one viz., Mr. Anil Kumar at Economic Cell, Crime Branch, Surat.
Pursuant to the aforesaid complaint, a "samaj yadi" notice was issued to
the applicants to appear before the D.C.B. Police Station, Economic
Cell, Crime Branch, Surat City within a period of two days.

3. The applicants have filed the instant contempt proceedings in
view of issuance of notice dated 10.12.2022 by the respondent No. 1
asking them to remain present before him. It is the case of the
applicants that the aforesaid notice dated 10.12.2022 does not refer to
any provision of the Criminal Procedure Code, 1973 (for short, "the Cr.
P.C."), which is a gross violation of the guidelines/directions issued by
the Supreme Court in the aforementioned cases. It is the case of the
applicants that on receipt of such notice, they had appeared before the

Investigating Officer, D.C.B. Police Station, Economic Cell on 13.12.2022 and on 21.12.2022 and replied to the quires raised by the respondent.

SUBMISSIONS ON BEHALF OF THE APPLICANTS:—

4. Learned advocate Mr. Manish Gupta, appearing with Mr. Neelmani Guha, Ms. Harshal Gupta, learned advocates for learned advocate Mr. Tirth N. Bhatt & learned advocate Mr. A.H. Patel, for the applicants has submitted that the applicant of Misc. Civil Application No. 54 of 2023 is living peacefully at New Delhi for the last five years and he has no association/business relationship with the complainant and hence, it is difficult to comprehend that as to why and on what ground the respondent No. 1 has issued the notice dated 10.12.2022 to appear before him. Similar notice dated 10.12.2022 is also issued to the applicant of Misc. Civil Application No. 1202 of 2023. It is submitted that when the notice was issued, there was no FIR registered against the applicants and hence, issuance of such notice was not required.

5. Learned advocate Mr. Manish Gupta, has further submitted that as per the guidelines issued by the Apex Court in the case of *Arnesh Kumar* (supra) before any arrest is made, the police Officer is required to issue notice as per the provisions of Section 41-A of the Cr. P.C. and since the said notice is not issued in the prescribed format, it is a gross violation of the directions issued by the Apex Court in the aforementioned cases. It is submitted that the applicants are unnecessarily harassed in view of the complaint filed against them.

6. Learned advocate Mr. Manish Gupta, has further submitted that in fact, issuance of notice is prescribed in the standing order, which is passed by the Director General and Inspector General of Police, Gandhinagar on 08/10-02-2023. It is submitted that thus, the contempt proceedings are required to be initiated against the respondent No. 1 under the provisions of "Section 10" of the Act.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS:—

7. Per contra, learned Public Prosecutor Mr. Mitesh Amin, appearing for the respondents has submitted that the present applications are ill-conceived since the applicants were called upon to remain present in view of the complaint dated 03.09.2022 within a period of two days in order to submit their reply.

8. Learned Public Prosecutor, while referring to the provisions of Chapter 5 of the Cr. P.C. has submitted that in fact, the said "*samajyadi*" is only issued for taking response or reply of the applicants and the same cannot be in any manner termed as a notice issued under Section 41A of the Cr. P.C.

9. Learned Public Prosecutor has further submitted that the applicants did not remain present within a period of two days, however

almost after one month of the issuance of the said notice, the applicant - Rahul Singhal had remained present on 20.01.2023 for recording his statement and at the relevant time, the preliminary inquiry was almost completed.

10. Learned Public Prosecutor has further submitted that as per the allegations in the complaint, the applicant(s) and his family had conspired and created bogus agreement and have misappropriated money to the tune of Rs. 46,90,00,000/- and accordingly, the investigation was undertaken. He has further submitted that the respondent, who was the inquiry officer, submitted his inquiry report to the Police Commissioner, Surat opining the disclosure of cognizable offences punishable under Sections 406, 409, 120-B and 34 of the IPC.

11. It is submitted that after recording various statements, ultimately an FIR was registered on 19.02.2023 before the DCB Police Station, Surat being CR No. 11210015230051 of 2023 under the provisions of Sections 406, 409, 120-B and 34 of the Penal Code, 1860 (for short, "the IPC").

12. Learned Public Prosecutor has further submitted that the provisions of Section 41 of the Cr. P.C. would not get attracted in the present case and the same would apply to the offences, which are punishable for 7 years or below and in the present case, since the FIR is registered for the offence under Sections 406 and 409 of the IPC, which prescribes for maximum punishment for 10 years, the alleged offence would not fall part of under Section 41(1)(b) and hence, the police has power to arrest without warrant. It is further submitted that ultimately the applicant - Rahul Ajaykumar Singhal has obtained anticipatory bail vide order dated 08.02.2023 passed in Criminal Misc. Application No. 400 of 2023 and he is not arrested, and all other accused are granted the anticipatory bail. It is submitted that as on today, the matter is still under investigation and hence, in view of aforesaid fact, it is submitted that looking to the facts, there is no willful and deliberate violation of the directions issued by the Apex Court in the aforementioned cases.

13. We have heard the learned advocates appearing for the respective parties.

CONCLUSION :-

14. It is interesting to note that the present applications are filed under Section 10 of the Contempt of Courts Act, 1971. Section 10 of the Act, reads as under:—

"10. Power of High Court to punish contempts of subordinate courts.-Every High Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempts of courts subordinate to it as it has and exercises in respect of contempts of

itself : - Every High Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempts of courts subordinate to it as it has and exercises in respect of contempts of itself:”

Provided that no High Court shall take cognizance of a contempt alleged to have been committed in respect of a court subordinate to it where such contempt is an offence punishable under the Penal Code, 1860 (45 of 1860).”

15. A simple reading of the aforesaid provisions of Section 10 of the Act reveals that the same pertains to the exercise of jurisdiction by High Court by taking cognizance of contempt committed in respect of the courts subordinate to it. Thus, the invocation of the provisions of Section 10 of the Act by the applicants by way of present applications is ill-conceived, as the applicants are seeking initiation of the Contempt of Courts Proceedings for the alleged violations of the directions issued by the Supreme Court in the case of *Arnesh Kumar* (supra) as well as in the case of *Satender Kumar Antil* (supra). On this ground alone the applications are required to be rejected.

16. The genesis of filing the present applications is “samajyadi” issued by the respondent No. 1 to the applicants. The said “samajyadi” was issued to the applicants on 10.12.2022 by the respondent-authority asking them to remain present within a period of two days in view of the complaint lodged as C.A. No. 243 of 2022 dated 03.09.2022. Indubitably, the applicants did not remain present within a period of two days, however from the contents of the affidavit filed by the respondent No. 1, the applicants remained present on 20.01.2023. Thus, the said notice or “samajyadi” is only issued or communicated to the applicants to tender their explanation with regard to the complaint.

17. At this stage, it would be apposite to refer that the complaint dated 03.09.2022 has been filed by one Anil Kumar against 8 persons including to the present applicants alleging that the applicants along with others have conspired and made bogus agreement and has cheated him and his family members to the tune of Rs. 46,90,00,000/-. The Investigation Officer thereafter had recorded the statement of various persons including the Managers of Syndicate Bank, Athwalines Branch, Surat as well as other persons and he has also collected necessary details from the income tax department. The details and particulars are referred in the affidavit filed by the respondent No. 1 dated 24.06.2023.

18. We are not inclined to delve into such details as they would not be relevant for deciding the present applications. Ultimately, after aforesaid investigation was undertaken, the Investigating Officer

prepared an inquiry report and submitted to the Police Commissioner, Surat on 20.01.2023 opining disclosure of cognizable offence punishable under Sections 406, 409, 120-B and 34 of the IPC. Thereafter, an FIR was registered on 19.02.2023 before the DCB Police Station, Surat against the applicants along with 5 others for the aforesaid offences. The applicants have been granted anticipatory bails and are not arrested in connection with the F.I.R. It is the case of the applicants that the provisions of Section 41A of the Cr. P.C. have not been complied with since the respondent No. 1 has not issued any notice as required in such provision. In the case of *Arnesh Kumar* (supra) as well as in the case of *Satender Kumar Antil* (supra), which refer to the provisions of Section 41A of the Cr. P.C., of which, the applicants are alleging having been violated. It is not in dispute that the same refers to the offences, which are punishable upto imprisonment of seven years.

19. In the present case, the applicants are facing prosecution under the provisions of Sections 406 and 409 of the IPC. The offence under section 409 of IPC prescribes for maximum imprisonment of 10 years. Thus, the provisions of Section 41(1)(b) of the Cr. P.C. would not get attracted and the police authority has the power to arrest without warrant and the requirement of issuance of notice under the provisions of Section 41A of the Cr. P.C. will not get attracted. However, the eventuality of effecting arrest of the applicants has not arisen since they are granted anticipatory bails. The investigation is still in progress.

20. It is not in dispute that the office of the Director General and Inspector General of Police by the Standing order dated 08/10-02-2023 bearing Standing Order No. 1 of 2023 in view of the directions rendered in *Arnesh Kumar* (supra) as well as in the case of *Satender Kumar Antil* (supra), has prepared a model format of the notice under Section 41A of the Cr. P.C. Thus, the State authority i.e. the Director General and Inspector General of Police has formulated the format of the notice under Section 41A of the Cr. P.C., which is required to be issued by the Investigating Agency in view of the registration of FIR or complaint. Thus, in the considered opinion of this Court, there is no willful and deliberate violations on behalf of the respondent No. 1 in issuing "*samajyadi*" dated 10.12.2022 in view of the complaint registered against the applicants and others for misappropriating the amount of Rs. 46,90,00,000/-. As noted hereinabove, an F.I.R. is also registered against the applicants for the offences punishable under Sections 406, 409, 120-B and Section 34 of the IPC. The offence under Section 409 of IPC prescribes imprisonment or with maximum imprisonment of 10 years.

21. In view of the overall facts and circumstances of the case, the present contempt applications fail and are rejected.

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