

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P.

WEDNESDAY, THE 27TH DAY OF JULY 2022 / 5TH SRAVANA, 1944

CON.CASE(C) NO. 808 OF 2022

CRIME NO.254/2022 OF Vadakkanchery Police Station, Thrissur

PETITIONER/S:

MUHAMMED RAFI, AGED 51 YEARS
S/O BAVA, KURUPPAM HOUSE,
THIRIVANIKKAVU DESOM, OLLUKKARA VILLAGE,
OLLUKKARA P.O., THRISSUR DISTRICT, PIN - 680655

BY ADVS.
ANAND KALYANAKRISHNAN
C.DHEERAJ RAJAN

RESPONDENT/S:

SATHEESH KUMAR M.V.
AGE NOT KNOWN, FATHER'S NAME NOT KNOWN,
INSPECTOR OF POLICE, WADAKKANANCHERRY POLICE
STATION, THRISSUR DISTRICT, PIN - 680652

BY SR. GOVERNMENT PLEADER SRI. UNNIKRISHNA KAIMAL

This CONTEMPT OF COURT CASE (CIVIL) having come up for orders on 20.07.2022, the court on 27-07-2022 passed the following:

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**A.K.JAYASANKARAN NAMBIAR
&
MOHAMMED NIAS C.P., JJ**

.....
Cont. Case (Civil) No. 808 of 2022
.....

Dated this the 27th day of July, 2022

JUDGMENT

Mohammed Nias.C.P.J.,

The above Contempt of Court Case (Civil) is filed by the petitioner, who is the sole accused in Crime No. 254 of 2022 registered by Wadakkancherry Police Station, Thrissur District, for offences punishable under Sections 406 and 420 of the Indian Penal Code.

2. The petitioner submits that he was arrested in total violation of the judgment of the Supreme Court in **[Arnesh Kumar v. State of Bihar & Anr. [2014 (3) KHC 69]**. There was non-compliance of issuance of notice under Section 41A of the Code of Criminal Procedure, 1973 ("Cr.P.C." for short), before arresting the petitioner. The action of the respondent is aggravated as the respondent had also violated Annexure-A3, an order in an application seeking anticipatory bail, which after recording the submission of the learned Public Prosecutor that no case was registered against the petitioner, dismissed the petition with

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a direction to the Station House Officer, Wadakkancherry to give notice under Section 41A of Cr.P.C., if the presence of the petitioner is required for any legal necessity. The petitioner submits that it is in gross violation of the judgment of the Hon'ble Supreme Court as well as the direction of the Sessions Court referred above, the petitioner was arrested on 18-3-2022 at 4.30 p.m. On production before the learned Magistrate remanded the petitioner to judicial custody for a period of 14 days.

3. We had issued notice to the respondent who appeared and filed a counter affidavit on 13-6-2022, trying to justify his action and stating that there are serious charges against the accused and the immediate arrest of the accused was necessary to recover the belongings and also to avoid exerting external influence on the complainant and the witnesses.

4. We were not satisfied with the said affidavit, and on the request of the learned Government Pleader appearing for the respondent, permission was granted to file an additional affidavit. A second affidavit was filed on 21-6-2022 re-iterating that the petitioner had cheated the de facto complainant and that, after the arrest of the accused on 18-3-2022, the respondent was engaged in the law and order duty as well as in the pending cases under investigation and cited

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that as a reason for the delay in procuring the accused to police custody. It is further stated in the affidavit that Annexure-A3 order of the Sessions Court was passed in the year 2018 but the FIR was registered in the year 2022 and the Investigating Officer as well as the Station House Officer were new comers in the Police Station, they had no prior knowledge about the order. It was also submitted that neither the petitioner nor their relatives or his Advocate had informed the Investigating officer about Annexure-A3 order and thus sought apology for the action in ignoring the said order.

5. We pointed out to the respondent that even in the absence of the order of the Sessions Court, the law of the land mandated to follow the directions in **Arnesh Kumar (Supra)**. Again permission was sought to file an additional affidavit which was filed on 11-7-2022 stating as follows:

“ 2. It is respectfully and humbly submitted that at the time of arrest of the accused on 18-3-2022, this respondent failed to take note of the direction contained in Annexure A4 judgment of the Honourable Supreme Court wherein it was categorically held that notice under Section 41A of the Code of Criminal Procedure is a per-requisite for arresting an accused in cases where offences punishable with imprisonment for a term which may be less than 7 years or which may extent to 7 years whether with or without fine.

3. It is most respectfully and humbly submitted that the above said omission from my part was not willful or deliberate, but due to my oversight. It is

humbly submitted that I have not acted in accordance with the procedure of law established by the Honourable Apex Court. I once again submit that the same was not deliberate or intentional, but only due to an oversight from my part.

4. Hence it is respectfully submitted that this respondent is having high regard and due respect to the Orders of the Honourable Apex Court and of this Honourable Court and know that this respondent is bound to follow and implement the order of the Honourable Apex Court. There is no willful laches on the part of the respondent. But the same happened due to an oversight from the part of this respondent. Hence I deeply regret for the inconvenience caused to this Honourable Court and may kindly be pardoned in the aforesaid facts and circumstances of the case taking into consideration of my unconditional apology.

5. I hereby tender my unconditional apology for the inconvenience caused to this Honourable Court. Hence I humbly submit that this Honourable Court may be pleased to consider the aforesaid facts and accept the above facts and exonerate this respondent from further proceeding by dropping the above Contempt Case”.

6. Learned counsel for the petitioner re-iterated his contention that since the arrest being in total violation of the decision in **Arnesh Kumar (supra)** as well as Annexure-A3 order passed by the Sessions Court, no leniency may be shown to the respondent. It is further argued that since he was in jail for 15 days, consequent to the illegal arrest as above, adequate compensation may be directed to be paid to him. On hearing the learned counsel on either side and going through the affidavit filed on 11-7-2022, we deem it appropriate to

accept the affidavit tendering unconditional apology and to drop the contempt of court proceedings. This however, will not prejudice any of the rights of the petitioner to take appropriate proceedings in accordance with law to claim compensation for the acts done against him. All contentions of the parties in that regard are left open.

7. Before we part, we deem it proper to remind that the power to arrest an individual vested in the State and exercised through its police officers at various stages of the criminal justice process, cannot be used as a punitive tool or as a measure of harassment unmindful of the duty to take into account the safeguards provided under Section 41 of the Cr.P.C. before the arrest of a citizen. We remind, the authorities concerned that any attempt to circumvent the orders of the court is derogatory to the very dignity of the court and administration of justice. The directions issued by the courts, particularly, by the Supreme Court has to be complied as such without any exception or justification. The directions so issued are binding and must be obeyed by the parties and all concerned *stricto sensu*.

8. Accordingly, we direct the State Police Chief to take such steps to see that the police in the State of Kerala is directed to scrupulously follow the directions in the judgment of the Supreme Court in **Arnesh Kumar** (supra) as well as the recent Judgment in

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Satender Kumar Antil v. Central Bureau of Investigation & Another (2022 SCC Online SC 825), particularly, the directions contained in paragraph 73 of the said judgment.

This Contempt of Court Case (Civil) is closed as above.

**Sd/-A.K.JAYASANKARAN NAMBIAR,
JUDGE**

**Sd/-MOHAMMED NIAS C.P.,
JUDGE**

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APPENDIX OF CON.CASE (C) 808/2022

PETITIONER ANNEXURES

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| Annexure A1 | THE CITIZEN COPY OF THE FIR IN CRIME NO. 254 OF 2022 REGISTERED BY THE WADAKKANCHERRY POLICE STATION, THRISSUR DISTRICT |
| Annexure A2 | THE TRUE COPY OF THE AGREEMENT DATED 01.11.2017 BETWEEN THE PETITIONER AND FATHER OF THE DEFACTO COMPLAINANT |
| Annexure A3 | THE TRUE COPY OF THE ORDER DATED 21.07.2018 IN CRL MC NO. 999/2018 PASSED BY THE LEARNED SESSIONS JUDGE, THRISSUR |
| Annexure A4 | THE TRUE COPY OF THE DECISION OF ARNESH KUMAR V. STATE OF BIHAR AND ANR REPORTED IN 2014 (3) KHC 69 |