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SATWANT SINGH

v.

MALKEET SINGH

(Civil Appeal No. 3001 of 2008)

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JULY 20, 2017

[KURIAN JOSEPH AND R. BANUMATHI, JJ.]

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Contempt of Courts Act, 1971 – s.2(b) – Civil contempt – Appellant-contemnor, the investigating officer arrested respondent on a charge which was added subsequently u/s.307 IPC after the grant of anticipatory bail – Appellant punished for contempt of court’s order – On appeal, held: Appellant tendered an apology explaining that he had only carried out the instructions of the superior officer and he bona fide understood the order passed by the Court to mean that the respondent was entitled to protection u/s.438, Cr.P.C. only in respect of those offences reflected in the order and s.307, IPC having been added subsequently there was no impediment in proceeding with the investigation after arresting the respondent on that count – In the facts of the instant case, it is a plausible explanation to show that there was no wilful or deliberate attempt to violate the Court order – Apology is one of the defences in the case of a civil contempt and the Court is bound to explain as to why the apology should not be accepted – The sincere and unconditional apology tendered by the appellant is accepted – The conviction and sentence imposed on the appellant is set aside – Code of Criminal Procedure, 1973 – s.438 – Penal Code, 1860 – s.307.

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Allowing the appeal, the Court

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HELD: 1. The addition of charge was based on a subsequent investigation on the direction issued by the Senior Superintendent of Police after disposal of the Section 438 petition by the High Court and the arrest also was carried out on his instruction. It is significant to note that when the FIR was originally registered Section 307 had been included. It was deleted based on the instruction of a superior officer. After such deletion only, the respondent approached the High Court. [Para 3] [489-G-H; 490-A-B]

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2. In the facts of the present case, it is a plausible explanation to show that there was no wilful or deliberate attempt to violate the Court order. No doubt, it would have been certainly more appropriate to apprise the Court on this development and seek modification. On the facts of this case, however, there was no intentional move to overstep the order of the Court. Apology is one of the defences in the case of a civil contempt and the Court is bound to explain as to why the apology should not be accepted. The apology tendered by the appellant has to be accepted. The conviction and sentence imposed on the appellant is set aside, accepting his sincere, genuine and unconditional apology in writing before this Court and the High Court. [Paras 4-7] [490-D, E-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3001 of 2008.

From the Judgment and Order dated 28.05.2007 in CACP No. 7 of 2007 in COCP No. 833 of 2006 and 13.07.2007 in R. A. No.78—CII of 2007 in CACP No. 7 of 2007 in COCP No. 833 of 2006 of the High Court of Punjab and Haryana at Chandigarh.

Sudhir Walia, Ms.Niharika Ahluwalia, Dr. Abhishek Atrey, Advs. for the Appellant.

Vikas Mahajan, Vishal Mahajan, Vinod Sharma, Bhaskar Y. Kulkarni, Advs. for the Respondent.

The Judgment of the Court was delivered by

KURIAN, J. 1. This is a case where the appellant was punished for civil contempt as defined under Section 2(b) of the Contempt of Courts Act, 1971.

2. Both the learned Single Judge and the Division Bench have taken the view that once the respondent had been granted interim bail under Section 438, Cr.P.C. as per order dated 17.02.2006, his arrest on 26.05.2007 on a charge which has been later on added under Section 307, IPC constitutes contempt.

3. We find that this addition of charge is based on a subsequent investigation on the direction issued by the Senior Superintendent of Police

A after disposal of the Section 438 petition by the High Court and the arrest also was carried out on his instruction. It is significant to note that when the FIR was originally registered Section 307 had been included. It was deleted based on the instruction of a superior officer. After such deletion only, the respondent approached the High Court.

B 4. We find that the appellant had tendered an apology explaining his conduct before this Court in the Civil Appeal. We also find that the appellant had tendered unconditional apology explaining that he only carried out the instruction of the Superintendent and he *bona fide* understood the order passed by the Court to mean that the respondent is entitled to protection under Section 438, Cr.P.C. only in respect of those offences reflected in the order dated 17.02.2017. Section 307, IPC having been added subsequently there was no impediment in proceeding with the investigation after arresting the respondent on that count. In our view, in the facts of the present case, it is a plausible explanation to show that there was no wilful or deliberate attempt to violate the Court order. No doubt, it would have been certainly more appropriate to apprise the Court on this development and seek modification. On the facts of this case we are, however, convinced there was no intentional move to overstep the order of the Court.

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E 5. It is in that context, his apology becomes relevant. The appellant has tendered an unconditional apology for *bona fide* exercise of his powers as an Investigating Officer. Apology is one of the defences in the case of a civil contempt and the Court is bound to explain as to why the apology should not be accepted.

F 6. In the facts and circumstances of the case, we are of the view that the apology tendered by the appellant has to be accepted.

7. In this view of the matter, the Appeal is allowed. The conviction and sentence imposed on the appellant is set aside, accepting his sincere, genuine and unconditional apology in writing before this Court and the High Court.

G 8. The Appeal is allowed in the above terms.