

**RESERVED****Court No. - 42****AFR****Case :- CONTEMPT APPEAL No. - 6 of 2018****Appellant :- Ashok Kumar****Respondent :- Ram Pal****Counsel for Appellant :- Dharam Veer Singh, Imran Ullah****Counsel for Respondent :- Sanjeev Mishra****Hon'ble Manoj Misra, J.****Hon'ble Virendra Kumar Srivastava, J.****(Delivered by Hon'ble Manoj Misra, J)**

This is an appeal under section 19 of the Contempt of Courts Act, 1971 against the order dated 01.11.2018 passed by learned single judge in Contempt Application (Civil) No.3035 of 2018 by which the learned single judge held the appellant guilty of contempt of court for defying the interim order dated 10.04.2018 passed in Crl. Misc. Writ Petition No. 8980 of 2018. The appellant has also challenged the consequential order of punishment dated 14.11.2018 by which a fine of Rs. 1,000/- and sentence of simple imprisonment of one month has been imposed upon him.

The facts giving rise to the instant appeal are as follows:

One Vijendra Singh lodged a first information report (for short FIR) on 26.12.2017 at P.S. Shikohabad, District Firozabad, which was registered as Case Crime No. 1206 of 2017, against Ram Pal; Anand; and Vikram Singh for offences punishable under Sections 363; 366 I.P.C. and section 3/4 Pocs0 Act. In the FIR the aforesaid persons were suspected as to have enticed away informant's minor daughter Anju Kumari, aged about 16 years, as she had been missing since 22.12.2017. Challenging the FIR, Anju Kumari and the accused filed Crl. Misc. Writ Petition No. 8980 of 2018 in this court by claiming that Anju and Ram Pal (the petitioner no.2 in that

petition) were adult and of their own free will they had married each other and therefore no offence has been committed. They relied on Voter ID Card to demonstrate that the date of birth of Anju was 01.01.1999. In that petition, on 10.04.2018, an interim order was passed, which is extracted below:-

*“Exemption application is allowed.*

*Heard learned counsel for the petitioner(s) and learned A.G.A. for the State.*

*Learned counsel for the petitioners submits that victim is petitioner no.1 - and accused is petitioner no. 2 are major and they have also solemnized their marriage and they are living happily as husband and wife; victim herself is the deponent of the affidavit filed in support of the writ petition; there is a joint affidavit of both the petitioners in support of the present writ petition; as per Voter ID Card the date of birth of victim petitioner no. 1 is 01.01.1999. Learned counsel for the petitioners has further placed reliance upon a judgment of the Apex Court rendered in Criminal Appeal No. 1142 of 2013 - Sachin Pawar Vs. State of U.P., decided on 02.08.2013.*

*Learned A.G.A has accepted notice on behalf of respondents no. 1 to 3.*

*Issue notice to respondent no. 4. Steps to be taken within ten days.*

*Counter affidavit to be filed within four weeks by the learned A.G.A. as well as respondent no. 4 and rejoinder affidavit to be filed within three weeks thereafter.*

*List thereafter.*

*It is directed that until further orders of this Court, the petitioners shall not be arrested relating to case crime no. 1206/2017 U/s 363/366 IPC and Section 3/4 POSCO ACT, P.S. Shikohabad, District Ferozabad. ”*

Ram Pal, one of the accused, with whom Anju is stated to have got married, filed Civil Misc. Contempt Application No. 3035 of 2018 against Ashok Kumar, Sub-Inspector, Police Station Shikohabad, Firozabad (the appellant). In paragraph 10 of the affidavit filed in support of the contempt application, it was stated that contemnor - opposite party (the appellant herein) had arrested Anju Kumari (petitioner no.1 of Crl. Misc. Writ Petition No. 8980 of 2018) on 20.05.2018 and has illegally detained her without any court's order.

On the aforesaid contempt application, on 29.05.2018, the court requested Sri K.R. Singh, Additional Chief Standing Counsel, to obtain instructions from the contemnor with regard to the averments made in paragraph 10 of the affidavit (supra).

It may be observed that on 30.05.2018, a supplementary-affidavit was also filed by Ram Pal in support of the contempt application which has been brought on record as Annexure 6 to the affidavit filed in support of the appeal. The relevant paragraph nos. 2, 3, 4 and 5 of that affidavit of Ram Pal are extracted below:-

*“2. That on 20.05.2018 when applicant and his wife Smt. Anju was went to house of his Mause at Jasrana then some persons gave information to the parent and other family members of Smt Anju then parent and other family members of Smt. Anju reached to the house of Mause of applicant and started quarreling there and also beaten to the applicant badly, then applicant escaped there for saving his life and during this period someone dial 100 number, then Police of Police Station Jasrana reached there and taken Smt. Anju along with her parent and other persons to Police Station Jasrana and after sometime, Police of Police Station, Jasrana handover Smt. Anju to Police of Police Station-Shikohabad and Opposite Party taken Smt. Anju in his custody.*

3. That when this facts came to know by the applicant then he immediately approached to Police of Police Station-Shikohabad where the Opposite Party misbehaved with applicant and told to implicated him in case punishable under Section 376 I.P.C.

4. That applicant came to his well wisher that opp. Party has taken heavy consideration from parent of Smt. Anju and due to this reason, he behind the applicant for his arrest.

5. That when all the effort made by applicant was failed to release his wife Smt. Anju in illegal custody of opp. Party then he filed Civil Misc. Contempt Petition before this Hon'ble Court and when notices was issued to the opp. Party then he escaped from legal proceeding, on 30.05.2018 the opp. Party given custody of Smt. Anju to her parent.

6. That when this fact came by the opp. Party that contempt application filed by the applicant against him then started harassing the applicant and his family members and told to implicate them in false other criminal case and due to this reason applicant and his family members are living under fear.”

On 23.07.2018, the contemnor-appellant filed his counter-affidavit in the contempt proceeding. In paragraph 9 of the counter-affidavit, it was submitted that Anju is minor; she had studied in Chiraunji Lal Chadami Lal Primary School, Firozabad; her Class V marks-sheet indicates her date of birth as 03.07.2002; and that in Adhar Card No. 773331613062, her date of birth is 03.07.2002. In paragraph 13 it was stated that the contemnor-appellant had not arrested Anju. Rather, on 22.05.2018, her father had come to the police station along with Anju and had given an application that his daughter had come back home today. They had supplied copy of the order dated 10.04.2018 passed in Crl. Misc. Writ Petition No. 8980 of 2018.

It was stated that on 22.05.2018 statement of Anju was recorded by Lady Sub-Inspector, Minu Som. In paragraph 15 it was stated that contemnor-appellant had not arrested Anju but as the FIR alleged kidnapping of Anju, therefore, as per law, her statement under Section 161 Cr.P.C. was recorded and, thereafter, her medical examination was done by Doctor of Government Hospital, Firozabad. Whereafter she was produced before the Special/Additional District Judge, Court No.8, Firozabad and, on the direction of the Additional District Judge, her statement was recorded by a Judicial Magistrate under Section 164 Cr.P.C. It is stated that, thereafter, the contemnor again went to the court of Additional District Judge, Court No.8 for appropriate directions regarding custody of the victim (Anju) as she was minor. It is stated that the Additional District Judge directed that she should be given to her father therefore the custody of Km. Anju was given to her father.

In reply to the averments made in the affidavit filed by the contemnor-appellant, a rejoinder-affidavit was filed by Ram Pal (Annexure 11 to the affidavit filed in support of the appeal). In paragraph 10 of the rejoinder-affidavit, it was stated that the victim-Anju was arrested by opposite party on 20.05.2018 with the connivance of her family members whereas the GD entry was made after two days.

On 23.08.2018, another affidavit was filed by contemnor-appellant (Annexure 13 to the affidavit filed in support of the appeal). In paragraph 7 of the said affidavit, it was stated that on 22.05.2018, Anju came along with her father at police station Shikohabad and her father had given an application to the Station House Officer, P.S. Shikohabad, Firozabad that his daughter had come to his residence on 22.05.2018, which was reflected by the GD entry of 22.05.2018. It was stated that on

the above application of Anju's father, signature of Anju was also there. In paragraph 9, it was stated that statement of Anju was recorded by Lady Sub-Inspector, Minu Som, and, thereafter, for her medical test, on 22.05.2018, Anju was produced before Chief Medical Officer, Government Hospital, Shikohabad. In this affidavit it is also stated that on 22.05.2018, Anju went along with her father back to her home. On 23.05.2018, Anju again came with her father to Police Station. On 23.05.2018, her X-ray was done at District Hospital to ascertain her age. On 23.05.2018, she again went back with her father and she stayed with her parents up to 25.05.2018. On 25.05.2018, the Investigating Officer received the age report of Anju from Chief Medical Officer, Shikohabad, Firozabad as per which she was aged 17 years. In paragraph 14, it has been stated that upon receipt of X-ray report, a call was made by the Investigating Officer to the father of Anju to produce her before ADJ, Court No. 8 for recording her statement under Section 164 Cr.P.C. In paragraph 15, it is stated that on 25.05.2018, Anju came with her father before ADJ, Court No.8 and thereafter she was produced before ADJ (Pocso), Court no.8, Firozabad. The ADJ (Pocso), Firozabad directed for recording of her statement under Section 164 CrPC by a lady Judicial Magistrate of District, Firozabad. Consequently, her statement was recorded. In paragraph 16, it is stated that on 25.05.2018 Km. Anju again went with her father to her home. In paragraphs 17 and 18, it is stated that as statement recorded under Section 164 CrPC was kept in a sealed cover and its copy was not provided to the Investigating Officer, on 25.05.2018 no time was left to record statement of Anju, therefore, Anju and her father were directed to appear before ADJ (Pocso), Court No.8, Firozabad on 26.05.2018. On 26.05.2018, Anju, her father and the contemnor

were in Court and sought permission of the Additional District Judge, Firozabad to note the statement of Anju in case diary. Upon grant of permission, on 26.05.2018, vide Parcha No. 8, statement of Anju, recorded under section 164 Cr.P.C., was entered in the case diary. Thereafter, for appropriate orders in respect of her custody, Anju along with her father was produced before the court of ADJ. It is stated that the ADJ (Pocso), Court No.8, Firozabad had inquired from Anju about her education upon which she responded by saying that she had studied in Chiraunji Lal Chadami Lal Primary School, Firozabad. Consequently, the ADJ (Pocso), Court No.8, Firozabad directed for production of school records of Km. Anju upon which the contemnor went to the school and collected marks-sheet of Class V of Anju which disclosed her date of birth as 03.07.2002. In paragraph 19 of the affidavit it is stated that, on 26.05.2018, the contemnor directed the father of Anju to produce Anju before Court on 28.05.2018 because 27.05.2018 was Sunday. In paragraph 20 of the affidavit, it is stated that on 28.05.2018, the Investigating Officer was out of station in connection with his official work therefore he directed the father of Anju to be present in the court of ADJ (Pocso), Court No.8, Firozabad on 30.05.2018. In paragraph nos. 21 and 22 of the affidavit, the contemnor - appellant stated as follows:

*“21. That the Investigating Officer/deponent along with father Vijendra Singh and Km. Anju (victim) appeared before the Court of Additional District Judge (Pocso) Court No.8, Firozabad and the Additional District Judge perused the case diary and other documents and thereafter he directed that Km. Anju is not in police custody and he gave an application to the police for further proceeding and further order of Hon'ble High Court is awaited in Writ Petition No. 8980 of 2018, therefore, the Km. Anju (Victim) is not in police custody*

*and thus the person who brought the girl, she should be given in his custody and he has directed for further order of Hon'ble Court, she should be given in the custody of her father as she is minor. Therefore, the Investigating Officer/deponent instructed to the mother and father of Km. Anju to kept her in safe custody and whenever she is required to Court as well as police, she should be produced before the authority and thereafter the father and mother of Km. Anju gave undertaking on 30.05.2018 before the Investigating Officer/deponent and they also made their signatures on the undertaking and the same is also been recorded in the case diary dated 30.05.2018 (Parcha No.9). For kind perusal of this Hon'ble Court, photocopy as well as typed copy of Case Diary dated 30.05.2018 (Parcha No.9) and undertaking of mother and father of Km. Anju (victim) are being annexed herewith and collectively marked as Annexure No. 7 to this affidavit.*

22. *That on 30.05.2018, the oral direction of the Court as well as undertaking of the father has been mentioned in the GD at Police Station Shikohabad dated 30.05.2018 at 11:45 A.M. For kind perusal of this Hon'ble Court, photocopy of the GD entry at Police Station Shikohabad dated 30.05.2018 is being annexed herewith and marked as Annexure No.8 to this affidavit. ”*

After exchange of affidavits, on 29.08.2018, the learned Single Judge, after perusing affidavits, framed charge against contemnor-appellant. The charge framing order dated 29.08.2018 is extracted below:-

*“The Writ-Court, being prima facie convinced that the applicant had married Anju Kumari and they were major on the date of marriage, granted interim protection to them by order dated 10.4.2018 by passing the following order :-*

*"Exemption application is allowed.*

*Heard learned counsel for the petitioner(s) and learned A.G.A. for the State.*

*Learned counsel for the petitioners submits that victim is petitioner no.1 - and accused is petitioner no. 2 are major and they have also solemnized their marriage and they are living happily as husband and wife; victim herself is the deponent of the affidavit filed in support of the writ petition; there is a joint affidavit of both the petitioners in support of the present writ petition; as per Voter ID Card the date of birth of victim petitioner no. 1 is 01.01.1999. Learned counsel for the petitioners has further placed reliance upon a judgment of the Apex Court rendered in Criminal Appeal No. 1142 of 2013 - Sachin Pawar Vs. State of U.P., decided on 02.08.2013.*

*Learned A.G.A has accepted notice on behalf of respondents no. 1 to 3.*

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*Counter affidavit to be filed within four weeks by the learned A.G.A. as well as respondent no. 4 and rejoinder affidavit to be filed within three weeks thereafter.*

*List thereafter.*

*It is directed that until further orders of this Court, the petitioners shall not be arrested relating to case crime no. 1206/2017 U/s 363/366 IPC and Section 3/4 POSCO Act, P.S. Shikohabad, District Firozabad."*

*The instant contempt application has been filed primarily with the allegation that (i) Anju Kumari wife of the applicant was illegally detained at the police station since 20.5.2018 and (ii) she was handed over to her parents against her wish.*

*After going through the material placed on record and the statement of Anju Kumari recorded under Section 164 CrPC, this Court is not convinced that she was detained at the police station against her wish since 20.5.2018.*

*In respect of the second allegation, the Court finds that there is prima facie evidence to show that her custody*

*was handed over to her parents by the opposite party on the basis of some alleged oral direction by Addl. District Judge (POCSO) Court No.8, Firozabad. Anju Kumari in her statement, both under Section 161 CrPC and 164 CrPC, had categorically stated that she had married the applicant out of her sweet will and she would like to go with him. However, admittedly, instead of permitting her to go with her husband, her custody was handed over to her parents on the basis of alleged oral direction by the POCSO Court.*

*The intent and purport of interim order of this Court was also not to interfere with the free movement of the applicant and Anju Kumari and at least not to compel Anju Kumari to accompany her parent against her wish.*

*Having regard to the above fact, this Court frame the following charge against the opposite party :-*

*1. You, the opposite party, is guilty of handing over custody of Anju Kumari, contrary to her wish, to her parents, in gross defiance of the intent of interim order of this Court dated 10.4.2018.*

*The opposite party is called upon to answer the charge by filing his reply within three weeks.*

*List on 24 September 2018, on which date the opposite party shall remain personally present alongwith his reply in the shape of affidavit and other evidence, if any. ”*

In response to the charge framing order, another affidavit was filed by the contemnor – appellant, dated 11<sup>th</sup> October, 2018. In this affidavit, the averments made in the earlier affidavits were reiterated. The thrust of the defence was that Anju was never arrested by the contemnor and since she had been in custody of her father when she was produced at the police station on 22.05.2018, she, being a minor, continued in his custody and, therefore, the contemnor - appellant did not violate or disobeyed the interim order passed by this court.

The learned Single Judge after scanning through the pleadings held the contemnor - appellant guilty vide order dated 01.11.2018. The relevant portion of the order dated 01.11.2018 passed by the learned Single Judge, which is impugned in this appeal, is extracted below:-

*“In the backdrop of the averments and defence of the contemnor noted, herein above, it is not disputed that the contemnor had knowledge of the writ court order; the victim was taken into custody by the contemnor as is reflected from the case diary (parcha no. 7), wherein, it is noted that the contemnor had taken the victim from the Thana alongwith the lady home guard to present the victim before the POCSO Court and got her statement recorded under Section 164 Cr.P.C. The victim in her statement categorically stated that she had on her own and free will had gone with the applicant and both of them contracted marriage and are living as husband and wife; she (victim) wants to stay with the applicant. Thereafter, the case diary records that regarding custody of the victim contemnor visited the Junior High School and from there obtained the marksheet of class V of the victim, wherein, the date of birth of the victim is recorded as 03.07.2002 being a minor. As per the averments made in defence, victim was produced before the POCSO court and the entire proceedings before the POCSO court is oral and on the oral directions of the POCSO court the contemnor proceeded to deal with the victim. The averments taken in totality and closely scrutinized, it is apparent that the contemnor had removed the victim from the custody of the applicant and handed her over to the father against her wishes. The case diary nowhere records that the victim accompanied her father to the Thana, rather, the case diary (parcha no. 7) clearly records that the contemnor had taken the victim from the Thana to the POCSO court. It is, thus, apparent that the contemnor had taken the victim into custody and detained her at the Thana in violation of the*

*writ court order, thereafter, handed over the custody of the victim to her father. To justify his conduct, the contemnor has resorted to falsity by stating that all his acts in producing the victim before the POCSO court, getting her statement recorded under Section 164 Cr.P.C., thereafter, handing over the victim to her father was on oral directions of the POCSO court. An attempt has been made by the contemnor to cast aspersion upon the POCSO court to cover his illegal conduct without the contemnor or the father having moved any application for custody of the victim. The entries in the case diary recorded by the Investigating Officer cannot override the procedure prescribed in law, contemnor being a member of the disciplined force has not only willfully and deliberately flouted the writ court order but has indulged in acts of indiscipline by becoming law and court unto himself. The audacity of the contemnor is unpardonable. The contemnor in order to cover up his illegal act obtained the alleged affidavit of the father of the victim and got the case dismissed, though as per the contemnor on investigation the girl was found minor but contemnor did not file police report nor did he make any application to recall the order of the writ court quashing the criminal case.*

*In view of the discussions, findings and conclusions recorded hereinabove, the contemnor is held guilty for contempt of court.”*

After holding the contemnor - appellant guilty for contempt of court, the learned Single Judge fixed 14.11.2018 for hearing the contemnor - appellant on sentence. After hearing him on sentence, on 14.11.2018, awarded punishment as follows:-

*“In view of the discussion, findings and conclusion recorded, the contemner, Ashok Kumar, Sub Inspector, is imposed punishment of simple imprisonment of one month besides a fine of Rs.1,000/- (One Thousand). The contemner is directed to deposit the fine within one*

*month from today. In the event of failure to deposit the fine within time, it shall be recovered from his salary in accordance with law. The punishment of simple imprisonment shall be served by the contemner and he shall surrender before the Chief Judicial Magistrate, Allahabad, within one month from today. ”*

We have heard Sri Imran Ullah for the appellant. No one appeared from the other side.

The thrust of the submissions made by Sri Imran Ullah, learned counsel for the appellant, had been that the order passed by the writ court of which violation is alleged is to the effect that the petitioner shall not be arrested in Case Crime No. 1206 of 2017, P.S. Shikohabad, District Firozabad. From the documents placed on record, it is clear that Anju was not arrested by the police in violation of the writ court's order and in fact the charge framing order itself records satisfaction that the applicant could not substantiate that the victim was detained at the police station since 20.05.2018 against her wish. It has been submitted that the inference drawn by the learned Single Judge that Anju-victim was taken into custody by the contemnor- appellant, as reflected by Parcha No. 7 in the case diary, is not justified as the entry only reflects that the contemnor had taken the victim from the Thana (police station) along with Lady Home-guard to the court of ADJ (Pocso), Court No.8 for getting her statement recorded under Section 164 Cr.P.C. This act would not amount to taking her into custody more so when she was brought by her father to the police station with an assertion that she is minor. It has been urged that as already a first information report was registered and there was no stay on the investigation, the recording of the statement of the victim under Section 164 CrPC was by no means a contumacious conduct. Had there been a stay on

investigation of the case, then the act of recording statement under sections 161 and 164 CrPC might have been in violation of the order but since there was no stay on the investigation and the victim was not arrested by the police but produced by her father, the recording of her statement by itself would not amount to contempt of court. It has been urged that the view taken by the learned Single Judge that to hide his conduct, a false statement has been made that, under oral direction, the victim-Anju was given in the custody of her father is not at all justified, firstly, because there was no such charge framed and, secondly, because the victim had come with her father and was neither arrested nor taken into custody by the police. Hence, there was no occasion to hand over her custody to her father.

In addition to above, Sri Imran Ullah also invited attention of the Court to the stand taken in the supplementary affidavit filed in the contempt application, at page 111 of the paper book, to demonstrate that from the own statement of Ram Pal (the applicant in contempt proceeding), it appears that the victim-Anju had gone to her Mause's house at Jasrana where, upon information, her parents arrived and dialed 100. Where after, police of police station Jasrana arrived and took away Anju and, thereafter, handed over Anju to police of police station Shikohabad. It has been submitted that it is therefore clear that the police of police station Shikohabad had never arrested the victim. Under the circumstances, as there is nothing on record to show or to prove that the police of police station Jasrana handed over custody of the victim to the police of police station Shikohabad, the stand taken by the contemnor that the victim was produced by her father on 22.05.2018 appears to be correct and, in fact, was impliedly accepted while passing the charge framing order in which the claim of the applicant that the

victim was arrested and detained at the police station was disbelieved.

It has been submitted by Sri Imran Ullah that the learned Single Judge has based his order on conjectures and surmises without there being any documentary evidence to suggest that the victim-Anju was arrested by the police and was handed over to her father. Rather, the documents indicated that the victim had come to the police station in the custody of her father where after her statement was recorded under Section 161 CrPC as well as Section 164 Cr.P.C. It has thus been prayed that the order convicting the contemnor-appellant is not legally justified and is liable to be set aside.

We have given thoughtful consideration to the submissions made on behalf of contemnor-appellant and have perused the record carefully.

Before we proceed to address the submissions of the learned counsel for the contemnor-appellant with reference to the facts of the case, we must remind ourselves of the legal position. For a person to be held guilty of civil contempt of court it has to be found beyond reasonable doubt that that person has willfully disobeyed any judgment, decree, direction, order, writ or other process of a court (vide section 2(b) of the Act, 1971). The term wilful is of significance. In ***Ram Kishan v. Tarun Bajaj, (2014) 16 SCC 204***, the apex court, in paragraph 12 of the judgment, as reported, in respect of the term wilful, observed as follows: *“The word “wilful” introduces a mental element and hence, requires looking into the mind of a person/contemnor by gauging his actions, which is an indication of one’s state of mind. “Wilful” means knowingly intentional, conscious, calculated and deliberate with full knowledge of consequences flowing therefrom. It excludes casual, accidental,*

*bona fide or unintentional acts or genuine inability. Wilful acts does not encompass involuntarily or negligent actions. The act has to be done with a “bad purpose or without justifiable excuse or stubbornly, obstinately or perversely”. Wilful act is to be distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It does not include any act done negligently or involuntarily. The deliberate conduct of a person means that he knows what he is doing and intends to do the same. Therefore, there has to be a calculated action with evil motive on his part. Even if there is a disobedience of an order, but such disobedience is the result of some compelling circumstances under which it was not possible for the contemnor to comply with the order, the contemnor cannot be punished.*

In ***Sudhir Vasudeva v. M. George Ravishekar***, (2014) 3 SCC 373, the apex court in paragraph 19 of the judgment, as reported, observed: *“The power vested in the High Courts as well as this Court to punish for contempt is a special and rare power available both under the Constitution as well as the Contempt of Courts Act, 1971. It is a drastic power which, if misdirected, could even curb the liberty of the individual charged with commission of contempt. The very nature of the power casts a sacred duty in the Courts to exercise the same with the greatest of care and caution. This is also necessary as, more often than not, adjudication of a contempt plea involves a process of self-determination of the sweep, meaning and effect of the order in respect of which disobedience is alleged. The Courts must not, therefore, travel beyond the four corners of the order which is alleged to have been flouted or enter into questions that have not been dealt with or decided in the judgment or the order violation of which is alleged. Only such*

directions which are explicit in a judgment or order or are plainly self-evident ought to be taken into account for the purpose of consideration as to whether there has been any disobedience or wilful violation of the same.”

Contempt proceedings are quasi-criminal in nature. The standard of proof required is in the same manner as in other criminal cases. The alleged contemnor is entitled to the protection of all safeguards /rights which are provided in the criminal jurisprudence, including the benefit of doubt. The case should not rest only on surmises and conjectures **{vide Kanwar Singh Saini v. High Court of Delhi, (2012) 4 SCC 307 (para 38)}**. In **Gupta, T.C. v. Bimal Kumar Dutta, (2014) 14 SCC 446 : (2015) 1 SCC (Civ) 340**, in paragraph 10 of the judgment, as reported, it was observed: “.....A contempt action being in the nature of quasi-criminal proceeding the degree of satisfaction that must be reached by the court to hold a person guilty of commission of contempt would be akin to what is required to prove a criminal charge, namely, proof beyond reasonable doubt. The order of the court in respect of which violation is alleged must, therefore, be clear, unambiguous and unequivocal and defiance thereof must be apparent on the very face of the action with which a contemnor is charged. An interpretation of the terms of court’s order in respect of which disobedience is alleged would not be appropriate while dealing with a charge of contempt. Such a charge cannot be brought home by unravelling the true meaning of the court’s order by a subsequent order when there is an apparent ambiguity, lack of clarity or dichotomy in the initial order.”

From the law noticed above what is clear is that mere disobedience of court's order is not enough to make a person guilty of civil contempt. What is important is that there should be

willful disobedience. To find out whether there has been wilful disobedience of an order, the order of which disobedience is alleged has to be considered as it stands. It would not be appropriate to unravel the true import of it through interpretation, particularly, when a different view of it could legitimately be taken. The Courts must not, therefore, travel beyond the four corners of the order which is alleged to have been flouted or enter into questions that have not been dealt with or decided in the judgment or the order violation of which is alleged. Only such directions which are explicit in a judgment or order or are plainly self-evident ought to be taken into account for the purpose of consideration as to whether there has been any disobedience or wilful violation of the same.

In the instant case, we find that the contempt application was filed by alleging that the victim Anju was arrested on 20.05.2018 by the police by flouting the interim order dated 10.04.2018 passed in CrI. Misc. Writ Petition No. 8980 of 2018. In the charge framing order dated 29.08.2018, the learned single judge has specifically observed that from the material brought on record as also the statement of the victim recorded under section 164 CrPC the allegation that the victim was arrested on 20.05.2018 by flouting the interim order was not proved. Thus, the learned single judge has not proceeded on the charge that the victim was arrested in violation of the order dated 10.04.2018 but on the charge that the contemnor was guilty of handing over custody of Anju, contrary to her wish, to her father/ parent, which amounted to gross defiance of the intent of the interim order dated 10.04.2018.

The order dated 10.04.2018 was an order restraining arrest of the petitioners. Restrain was put against the State authorities. There was no restrain put on the petitioner to be

with her own parents. There is nothing on record that the victim Anju was arrested and given to her parents. The learned Single Judge has inferred the above position on the ground that statement of the victim was recorded under Section 161 CrPC and thereafter she was produced by police force for recording of her statement under Section 164 CrPC. And that, thereafter, on the basis of non existent oral direction of Pocso Court, she was left in the custody of her father against her wishes. The aforesaid inferences are uncalled for inasmuch as there was no stay order against investigation therefore, once the victim was produced before the police, in absence of any stay against investigation of the case, keeping in mind that a first information report had already been registered and documents were produced to suggest that the victim was a minor, with date of birth recorded as 03.07.2002, recording of her statement, by itself, cannot be treated as an act which willfully flouted the interim order dated 10.04.2018.

The charge against the contemnor-appellant that by handing over the custody of the victim to her father, the contemnor-appellant had gone against the true spirit of the order dated 10.04.2018, in our view, has not been satisfactorily established for the following reasons:-

*(a) Firstly, it has not been proved at all that the victim was taken into custody by the police therefore the charge of her custody being passed over to her father does not arise.*

*(b) Secondly, from the GD entries, it appears that father of the victim had produced the victim at the police station on 22.05.2018 which implies that the victim was already in her father's custody and as there was no order either in*

*respect of maintaining her custody with any party or in respect of handing over custody to any party, there could be no violation of the arrest stay order on mere oral direction of the contemnor-appellant to the father of the victim to keep the victim in his custody till proper custody order is passed.*

The observations of the learned single judge that the contemnor-appellant has set up a false defence about oral directions of Pocso Court with regard to custody is beyond the scope of the charge framed against the contemnor-appellant, particularly, in the context of proceedings relating to civil contempt, and as such these observations are uncalled for and are hereby expunged.

For all the reasons recorded above, we are of the considered view that it has not been proved beyond reasonable doubt that the contemnor - appellant willfully disobeyed the writ court's interim order dated 10.04.2018 passed in Crl. Misc. Writ Petition No. 8980 of 2018. Hence, the order holding the contemnor - appellant guilty of contempt of court and the consequential punishment order are liable to be set aside. The contempt appeal is accordingly **allowed**. The orders dated 01.11.2018 and 14.11.2018 are set aside. There is no order as to costs.

**Order Date :- 18.9.2019**  
Sunil Kr Tiwari