

IN THE HIGH COURT OF SINDH, AT KARACHI

C.P No. S-510 of 2016

CMA No.2585/2016

CMA No.6976/2016

CMA No.6328/2016

Muhammad Moinuddin.....Petitioner

Versus

Rashid Khan and 3 others.....Respondents

Date of hearing: 12.07.2017

Syed Muhammad Akbar, Advocate for the Petitioner.

Mr. Zahoor Shah, D.P.G. alongwith SIP Nazeer Ahmed Arain.
Incharge, Legal Branch, District Central, Karachi.

ORDER

ADNAN-UL-KARIM MEMON, J:- The captioned Petition was disposed of by this Court vide Order dated 01.04.2016 with the following observations:-

“Learned counsel for the petitioner submits that petitioner shall be satisfied if SHO Police Station Pakistan Bazar, Karachi is directed to entertain petitioner’s application filed earlier on 3.3.2016 received at Police Station on 8.3.2016 in letter and spirit and further petitioner may be saved from illegal tactics of respondent No.1 by official respondents.

Learned State counsel on court notice submits that State functionaries are legally bound to provide legal protection to all the citizens including the petitioner without any discrimination and ensures that official respondents shall conduct themselves strictly in accordance with law and provide legal protection of life, honor and property to the petitioner.

Learned counsel for the petitioner, being satisfied with the above statement made by learned State Counsel, seeks disposal of instant petition which is disposed of with directions to Respondent No.2 to conduct strictly in accordance with law and provide necessary legal protection of life, honor and p property to either parties.”

2. On 09.04.2016, Petitioner filed listed application (CMA No. 2585 of 2016) and on 30.09.2016, Petitioner filed listed application (C.M.A. No. 6976/2016) for initiation of contempt proceedings against the alleged contemnor on account of his willful, intentional and deliberate act of disobeying the above mentioned order passed by this Court. On 29.08.2016, the petitioner filed listed application (CMA No. 6238 of 2016), under section 151 CPC for releasing all the articles snatched by alleged contemnors and others ancillary relief (s).

3. Syed Muhammad Akber, learned counsel for the Petitioner has argued that despite clear directions in the above said Order the contemnor has not complied with the same. Per learned counsel the alleged contemnor has not only violated the Order of this Court but he has also destroyed valuable articles of the Petitioner worth millions of rupees; that the contemnor is adamant to cause harassment by not providing legal protection to the Petitioner as directed by this Court; that alleged contemnor (SHO, P.S. Pakistan Bazar, Orangi Town, Karachi) in connivance with Respondent No.1 (Rashid Khan) in defiance of above said Order raided the house of the Petitioner, assaulted ladies, torn out their clothes and robbed the amount from boxes of the house as well as attacked brother in law of the Petitioner and his neighbor Jamil and fractured his both hands; that contemnor has misused his power and authority by causing financial loss to the Petitioner by taking certain articles into his custody; that the contemnor has committed cognizable offence. Per learned counsel contemnor submitted respective Reports on 17.10.2016 and 31.10.2016 which are ambiguous and misleading. He lastly contended that

contemnor was duty bound to protect life and property of the petitioner as directed by this Court but he miserably failed to do so; therefore contemnor is liable to be proceeded for his illegal actions.

4. Mr. Zahoor Shah, Assistant Prosecutor General has submitted parawise reply on the listed application; copy whereof was supplied to the learned counsel for the Petitioner. He argued that alleged contemnor has not violated the order of this Court and acted in accordance with law as depicted in the order passed by this court; that in compliance of the order of this court dated 12.7.2016 passed in Constitution Petition No. D-1813 of 2016 raid was conducted at Gutka Factory situated at Ghaziabad, Orangi Town and recovered huge quantity of Gutka, raw material as well as other objectionable objects; arrested eighteen workers employed in the factory who resisted their arrest with fire arm weapons; that cases were registered against them; that samples of Gutka were sent to Chemical Examiner; that positive report has been received which prima-facie suggests involvement of the Petitioner and his workers; that the alleged contemnor is neither indulged in any sort of illegal activity nor violated the orders passed by this Court; that alleged contemnor has acted in compliance of the order passed by this Court in above specified Constitution Petition. He lastly prayed for dismissal of the listed applications.

5. I have considered the submissions of the parties and perused the orders passed by this court as well as material available on record.

6. Perusal of order dated 1.4.2016 reveals that this Court has disposed of the instant Constitution Petition with directions

that official respondent shall conduct themselves strictly in accordance with law and will provide protection of life, honour and property to either party.

7. Record reflects that parties have disputed their respective claims, Petitioner is charged with the allegation of running Ghutka factory, criminal case has been registered against him and his factory workers and Chemical Report supports the stance taken by the alleged contemnor. At this juncture I am of the view that the case of Petitioner cannot be reopened and discussed. And, at the most the factum that whether there is any violation of the order passed by this court can be looked into.

8. Reverting to the stand taken by the Petitioner that the alleged contemnor has destroyed valuable articles worth millions of rupees and committed cognizable offence. In this regard, Petitioner has remedy under the law to approach competent forum against alleged act of the alleged contemnor if he desires so.

9. In the light of above discussion, the listed application of the Petitioner cannot be considered. Therefore, initiation of contempt proceedings against the alleged Contemnor/Respondents shall tantamount to nullifying the effect of the order passed by this Court in Constitution Petition No. D-1813 of 2016, as it was agitated that in the area where some unscrupulous persons were operating "**Gutka Factory**", whereby directions were issued to the concerned SHO to considered the applications of petitioner/Rashid Khan and to proceed with the matter as per law.

10. In the light of facts and circumstances of the case and reasons alluded to above, initiation of contempt proceedings against the alleged Contemnor/Respondent at this juncture are not called for.

However, public functionaries are duty bound to protect life, liberty and property of every citizen.

11. As a result of above discussions, I am not inclined to proceed further and the listed applications bearing CMA No.2585/2017, 2976/2016 and 6328/2016 respectively having no merit, are dismissed.

12. Foregoing are the reasons of short order dated 12.7.2017, whereby the listed applications were dismissed.

J U D G E