

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2008

C O R A M

THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR

Contempt Petition No.826 of 2008

P.Joy Bell ... Petitioner

Vs.

Thiru.V.Mahendran
Inspector of Police
North Ideal Police Station
Vellore - 4 ... Respondent

Petition filed under Section 11 of the Contempt of Courts Act, 1971 praying to punish the respondent for deliberately committing the contempt by willful disobedience for not implementing the order of this Hon'ble court dated 06.05.2008 made in Cont.P.No.1624 of 2007.

For Petitioner : Mr.Ajmal Khan

O R D E R

Heard the learned counsel for the petitioner and perused the materials available on record.

2. The petitioner has come forward with the present contempt petition praying that the respondent should be punished for willful disobedience of the order passed by this court on 21.01.2007 in Crl.O.P.No.19634 of 2006. The said Crl.O.P. had been filed under Section 482 of the Code of Criminal Procedure, seeking a direction against the Inspector of Police, North Ideal Police Station, Vellore to register a case based on the complaint of the petitioner dated 02.11.2005 and take action on the said complaint in accordance with law.

3. This court, by an elaborate order dated 24.01.2007 directed the Inspector of Police of the above said police station to register a case on the basis of the complaint of the petitioner dated 02.11.2005. This court also issued a further direction to submit a final report as expeditiously as possible and more particularly, within a period of three months from the date of receipt of a copy of the said order. Relying on the observations made by the Hon'ble Supreme Court in Jacob Mathew vs. State of Punjab reported in 2005 SCC (Crl.) 1369, this court also observed that it was the duty of the Inspector of Police of the above said department to obtain independent and competent medical opinion, preferably from a doctor in Government service qualified in the branch of medical practice who can give an impartial and unbiased opinion in respect of the alleged medical negligence of the doctors as per the guidelines issued in the above said case by the Hon'ble Supreme Court.

4. Previously, the petitioner had filed a contempt petition in C.P.No.1624 of 2007 praying that the respondent herein (Inspector of Police, North Ideal Police Station, Vellore) should be punished for not complying with the above said order. The said contempt petition had been filed based on the contention that, though a case was registered in Crime No.73 of 2007 of the above said police station, investigation was not completed and final report was not submitted. When the said petition came up for hearing, it was brought to the notice of the court that a final report had been submitted and the same was taken on file as C.C.No.103 of 2008 on the file of the learned Judicial Magistrate No.4, Vellore. In view of the same, the said contempt petition was closed after recording compliance.

5. Not satisfied with the same, the petitioner has now come forward with the present contempt petition stating that the order of this court dated 24.01.2007 was not fully complied with in its letter and spirit in so far as the respondent (the investigation officer) did not get an independent medical opinion from a Medical Officer in the Government service. A perusal of the order of this court as well as the relevant portion of the judgment of the Supreme Court extracted by this court in its order dated 24.01.2007 will make it clear that the direction to get an independent opinion from a Medical Officer in Government service is only preferable and not mandatory. What is mandatory is that a medical opinion should be obtained from a competent medical practitioner before charging the accused for medical negligence. In this case the list of witnesses annexed to the Final Report gives an indication that a qualified medical practitioner has given his opinion regarding the alleged medical negligence committed by the accused persons. Therefore, this court is not in a position to accept the contention of the petitioner that the respondent disobeyed the direction issued by this court.

6. It should also be noticed that all cases of failure to comply with the order will not amount to contempt of court. Only willful disobedience to the order will amount to contempt. In this case, the respondent, during investigation has chosen to get an independent medical opinion from a qualified doctor. Therefore, the omission on the part of the respondent to get opinion from a Medical Officer in the Government service cannot be construed to be willful disobedience to the order of this court. If at all the petitioner is not satisfied with the medical opinion collected by the Investigation Officer, namely the respondent herein in this case, the remedy open to him is to seek appropriate direction in an appropriate court and not by filing a contempt petition. Moreover, in the light of the order dated 06.05.2008 made by this court in Contempt Petition No.1624 of 2007 recording compliance and closing the said contempt petition, the said question already decided cannot be re-agitated by filing a fresh contempt petition.

6. For all the reasons stated above, this court comes to the conclusion that the contempt petition does not even merit admission and the same deserves to be dismissed at the stage of admission itself. Accordingly, the contempt petition is dismissed.