

*Certified copy of order dated 20/01/2024*  
**IN THE COURT OF SUB JUDGE (C .J.M) JAMMU**

File No.173/Misc

CNR No.: JKJM020077592021

D.O.I. 29.11.2021

Date of Order: 20.01.2024

Jagdev Singh S/O Daya Ram R/O H.No. 15/8 Extension Nanak Nagar, Jammu. **(Applicant)**

**Versus**

1. Harjeet Singh, Executive Magistrate Ist Class Jammu South.
2. Bharat Bhushan Sharma, SHO Police Station Gandhi Nagar Jammu. **(Contemnors/non-applicants)**

IN THE MATTER OF:-Application for initiating contempt proceedings against the contemnors for wilful disobedience of the order dated 24.11.2021 passed by the Court.

**CORAM :- ANJUM ARA**  
**(UID No. JK00130)**

**Present :**

1. Ms. Minakshi Slathia, Advocate for the applicant.
2. Mr. Priyanshu Sharma, Advocate for Non-applicant No.1
3. Nemo for non-applicant No.2

**ORDER**

1. By the ambit of this order, I shall dispose of above titled application filed by the applicant for initiating contempt proceedings against the contemnors.
2. It is stated in the application that an execution petition titled Sudesh Sharma Vs Jagdev Singh seeking implementation of order dated 30.12.2017 for deposition of rent arrears is pending before the court and next date is fixed for 30.11.2021. On 24.11.2021 the applicant filed an application with regard to de-sealing of shop

No.2 situated at H.No.162/B Main Road Shastri Nagar Jammu which was sealed/attached by the court in the above titled execution petition. After hearing the Ld counsel for the applicant, the court has passed the order dated **24.11.2021**. The operative Para of the order is re-produced as under:-

*"Having considered the totality of the circumstances as aforementioned, let the shop in question be de-sealed/un-sealed and items so attached be released in favour of applicant Jagdev Singh against proper receipt subject to the condition that applicant shall file an undertaking before this court to the effect that he shall deposit an amount of rupees one Lakh in this court on 30.11.2021. Copy of this order be sent to Executive Magistrate and SHO Police Station Gandhi Nagar, Jammu for compliance only after applicant files the requisite undertaking as aforesaid and not otherwise".*

3. On 26.11.2021 the applicant has filed the undertaking before the court to the effect that applicant shall deposit an amount of Rs.1,00,000/- in this court on **30.11.2021** and the same was accepted by the court. Thereafter, the court forwarded the copy of the order dated **24.11.2021** to the Executive Magistrate Ist Class Jammu South and SHO Police Station Gandhi Nagar Jammu. The order was served by the applicant to the contemnor No.1 and 2. On 27.11.2021 the contemnor No.1 came on spot and de-sealed the shop No.2 in presence of the applicant and contemnor No.2 and thereafter the contemnor No.1 and 2 left the spot. After 2-3 hours both the contemnors again came and again sealed the said shop without any order. After enquired by the applicant they have no answer to satisfy the applicant on what reason the said shop was sealed. The contemnor No.1 and 2 further threatened the applicant that if the applicant opens the shop, they will book him and lodge an FIR against him. The applicant has no other option left but to approach the court against the arbitrary and wilful disobedience of the order dated 24.11.2021. It is further submitted that despite full knowledge of the order dated 24.11.2021 passed by the court, the contemnors in utter disregard of the above said order dated 24.11.2021 sealed the said shop and thereby committed the contempt of the above said

Notified to the ...  
Chief Justice ...  
Authorised ...  
6-Evidence Act



order of the court and are liable to be punished for the same. The contemnors wilfully committed the contempt of the order of the court just to favour the other party namely Sudesh Sharma and harassed the applicant, as such, the applicant seeks appropriate directions to the contemnors to de-seal/unseal the above said shop and be also punished for committing the contempt of order dated 24.11.2021. The contemnors have deliberately and intentionally disobeyed the order of the court and intentionally showed great disrespect to the order of the Court and thus have committed the contempt of the court. Lastly, it is prayed that contemnors may be punished for committing the contempt of the court.

4. Notice of this application were issued to the non-applicants. Ld counsels for the parties' cause appearance on behalf of non. applicants on 06-12-2021 and both counsels filed vakalatnama on their behalf. Non-applicant No.1 filed reply to the application on 17.12.2021, whereas non-applicant No.2 failed to file reply and remained absent from the proceedings of the case and vide order dated 08.12.2023 ex-parte proceedings were initiated against him.
5. Non-applicant no.1 in his reply has submitted that in the operative part of the order dated 24.11.2021, more particularly, in Para -6 there was a direction passed by this court which specially prescribes for compliance of the order dated 24.11.2021 only on the condition that the applicant files the requisite undertaking and not otherwise. It is apposite to mention here that the copy of the Order forwarded to non-applicant No.1 had nowhere mentioned that the applicant had already filed the undertaking to the tune of Rs, 1.00 lac before the court. When the non-applicant No.1 visited the spot for the purpose of de-sealing the shop No.2, asked the applicant to provide the receipt of the amount deposited as undertaking before the court to which the applicant did not respond due to which the non-applicant could not de-seal the said shop in pursuance of the directions passed by this court. Thereafter, an application was filed by the applicant for initiating

contempt proceeding against the non-applicants for disobeying the order dated 24.11.2021 passed by his court. It is further submitted that the non-applicant on 06.12.2021 brought the entire gamut of circumstances connected to the reasons of non-compliance. However, it was also made clear during the course of proceedings that the non-applicant No.1 has no intention to disobey the mandate of order dated 24.11.2021 and have the highest regard for this court, so there is no question of disobeying the directions passed by this court. This court was kind enough towards the non-applicant No.1 and 2 to allow them to implement the order dated 24.11.2021 in its letter and spirit on or before 4.30 PM on the same date i.e. 06.12.2021. It goes without saying that the non-applicants immediately rushed to the spot and de-sealed the premises on 06.12.2021 itself around 5.30 PM in presence of the shopkeeper namely Jagdev Singh (applicant) and all the twenty four seized items were handed over to Jagdev Singh i.e. applicant. An inventory was made by the non-applicants regarding the seized items along with photographs. Copy of the compliance report dated 06.12.2021 along with inventory and photographs are annexed with the reply. Lastly, it is prayed that application of the applicant may be dismissed.

6. I have heard arguments advances by Ld counsels for the parties and perused file.

sd- 7. Ld counsel for applicant reiterated the averments made in the application and further argued that the non-applicants have deliberately not obeyed the order of this court. The order was duly forwarded to the non-applicants for compliance. Non-applicants de-sealed the shop but after sometime without any order of the court they again sealed the shop which fact is evident from the photographs placed on record. Therefore the non-applicants have committed contempt of court as such they be punished accordingly or at least they be directed to tender an unconditional apology before the court.

Certified to be true copy

Chief Judicial Magistrate

Sub Divisional Magistrate

Magistrate

Magistrate

8. Ld counsel for the non-applicant No.1 vehemently argued that non-applicant has not disobeyed the court order and has highest regard for the court, so there is no question of disobeying the directions of this court. He further submitted that when the non-applicant No.1 visited the spot for the purpose of de-sealing of the shop, he asked the applicant to provide the receipt of the amount deposited in the court as per the direction passed by the court to which the applicant did not respond and more-so, the copy of order which was forwarded to the non-applicant No.1, without any mention as whether the applicant has furnished the undertaking and deposit the amount as directed as and even applicant could not produce any document of the requisite undertaking being filed as such non-applicants could not comply the directions. The applicant instead of furnishing the receipt/document filed the present contempt application which is not maintainable under law. Ld counsel derived the attention of this court towards the photocopy of order forwarded to non-applicant No.1 for compliance wherein there is no mention whether applicant had filed undertaking or deposited the amount as directed. Even otherwise also the non-applicant has complied the order of this court when the court directed him to implement the order on the same date i.e. 06.12.2021. The non applicant immediately rushed to spot and de-sealed the premises on the same day at about 5.30 PM in presence of the shopkeepers. Ld counsel further submitted that since the non-applicants have complied the order of this court, as such, application filed by the applicant be dismissed. Ld counsel also relied upon the case titled ***Mrityunjoy Das and another Versus Sayed Hasibur Rehman and others-2001 AIOR (SC) 1293 in which Hon'ble Supreme Court has held that:***

*"Where the order is susceptible to interpretations of one in favour of contemnor and other in favour of complainant, benefit should be given to the contemnor, the burden of proof will be on the person who alleged such contempt of court."*



9. The applicant has alleged that in an execution petition, this court vide order dated 24.11.2021 passed the direction for de-sealing and un-sealing the shop in question with further directions to release the items in favour of the applicant against proper receipt with further condition that applicant shall file an undertaking to the effect that he shall deposit an amount of Rs. one lakh in the court on 30.11.2021 and the order was directed to be forwarded to the Executive Magistrate and SHO Police Station Gandhi Nagar Jammu for compliance only after applicant files requisite undertaking and not otherwise. It is further alleged that applicant filed undertaking before the court on 26.11.2021 and on 27.11.2021 non-applicant No.1 came on spot and de-sealed the shop and after 2-3 hours both non-applicants again came on spot and re-sealed the shop without any order. On the other hand, it is submitted by the non-applicant No.1 that the order dated 24.11.2021 was forwarded to him but there was no mention that the applicant has filed the undertaking before the court. As such, he asked the applicant to provide receipt of amount deposited but the applicant did not respond, as such, he could not de-seal the shop.

10. Perusal of file clearly reveals that order passed by this court for de-sealing was subject to condition that applicant shall file requisite undertaking that he will deposit amount worth Rs. 1 lakh before the court on 30.11.2021 and not otherwise. Photocopy of the order forwarded to non-applicant No.1 clearly reveals that there is no mention of this fact as to whether applicant has filed an undertaking or has deposited the amount. It was in these circumstances and on account of omission in copy of order forwarded by the court that non-applicants were not in a position to de-seal the shop and could not comply the directions. Immediately after issuance of notice in this application, the non-applicants through their respective counsel's cause appearance before the court on 06-12-2021 and thereafter they implement the order on the same day. It also transpires from the record that

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compliance report was filed by the non-applicant No.1 before the court on 17.12.2021 wherein it was clearly stated that the order of this court dated 24.11.2021 has been implemented in its letter and spirit in presence of the shopkeepers and all the seized items were handed over to the applicant and an inventory was made by the non-applicants regarding seized items and a copy of the report in the shape of Annexure -1 duly signed by the non-applicant No.1, PSI Basharat Hussain of Police Station Gandhi Nagar Jammu, applicant and witness which also clearly establishes that the order of this court was duly implemented by both the non-applicants in presence of applicant and witnesses and seized items were also handed over to the applicant. Photocopy of list of inventory along with photocopies of photographs have also been annexed with the compliance report.

11. Allegation that there was violation on the part of the non-applicants does not seem to be deliberate in view of the circumstances and in view of the documents placed on record. Needless to state that order was passed by this court on 24.11.2021 whereas same has been implemented on 06.12.2021 at 5.30 PM when the non-applicants came to know that applicant has furnished an undertaking as directed, they immediately rushed to the spot and implemented the order of this court. The circumstances brought on record by the non-applicant No.1 itself explained that there was lack of understanding which resulted in non-implementation of court order on the same day and consequently contempt application was filed by the applicant. It was only when the non-applicants cause appearance before the court and came to know that undertaking has been submitted by the applicant; they immediately rushed to the spot and implemented the order of this court. There appears no malafide or deliberate attempt on the part of non-applicants in flouting the order of this court. More-so, the applicant failed to establish that non-applicants deliberately and intentionally have violated order of this court which can lead to contempt proceedings against them. Applicant failed to prove the assertion that the non-

applicants have committed the contempt of the court. Therefore, contempt proceedings as prayed for cannot be initiated mainly on the basis of probabilities and assertions made in the application.

12. In the backdrop of observations made hereinabove, I am of the considered opinion that applicant has failed to establish and prove that the non-applicants have deliberately violated the order of this court and they are to be proceeded for wilful disobedience of the order passed by this court on 24.11.2021. More-so, the order has already been implemented without any fail by the non-applicants. In view of the facts and circumstances of the case; application filed by the applicant seems to be without any merit, as there is nothing on record to suggest that the non-applicants deliberately and intentionally disobeyed the order of this court.

13. ***Accordingly, application in hand is dismissed being devoid of merit.*** File be compiled and consigned to records.

**Announced  
20.01.2024**

  
**Sub Judge (C.J.M)  
Jammu**

Controlled to be true copy  
Chief Judicial Magistrate  
Jammu  
Under Section  
133 Cr.P.C.



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NAME OF LITIGANT :

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