

Sita Ram vs Balbir @ Bali on 15 December, 2016

Equivalent citations: AIR 2017 SC 242, 2017 (2) SCC 456, 2017 CRI. L. J. 1045, AIR 2017 SC (CRIMINAL) 210, (2017) 2 CURCC 146, (2017) 66 OCR 424, (2017) 1 RECCIVR 517, (2017) 1 UC 194, (2017) 1 ALD(CRL) 473, (2017) 1 GUJ LH 59, (2017) 1 RECCRIR 330, (2016) 12 SCALE 936, (2017) 2 KCCR 72, 2017 (2) SCC (CRI) 88, AIR 2017 SUPREME COURT 242

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Bench: T.S. Thakur, R. Banumathi, Uday Umesh Lalit

Reportable

IN THE SUPREME COURT OF INDIA

ORIGINAL JURISDICTION

CONTEMPT PETITION (CIVIL) NO.374 OF 2014

IN

CRIMINAL APPEAL NO.1834 OF 2013

Sita Ram

.....Petitioner

Versus

Balbir @ Bali

... Respondent

JUDGMENT

Uday Umesh Lalit J.

This petition under Section 12 of the Contempt of Courts Act, 1971 (hereinafter referred to as the 'Act') highlights willful and deliberate violation of the Judgment and Order dated 24.10.2013 passed by this Court in Criminal Appeal No.1834 of 2013 and seeks initiation of appropriate proceedings under the Act.

2. The petitioner, original informant in FIR No.141 dated 06.05.2011 with Police Station Kalanaur, District Rohtak, Haryana for offences punishable under Sections 148, 302 and 307 of the Indian

Penal Code read with Section 149 IPC and Section 25 of the Arms Act, was the appellant in Criminal Appeal No.1834 of 2013 assailing the Order dated 11.02.2013 passed by the High Court of Punjab and Haryana granting bail to the respondent. While setting aside the Order granting bail, this Court in its Judgment and dated 24.10.2013 observed as under:

“4. In the FIR, the Appellant/Informant has stated that Respondent No.1 fired upon his brother-in-law Vishnu from his revolver and thereafter Sombir also fired upon Vishnu. The other persons mentioned also opened fire indiscriminately leading to firearm injuries on several persons who were at the shop of the Appellant/Informant at that fateful time.

5. Respondent No.1 is indubitably a very influential person in the area, at the time of the incident he was an ex-MLA. Section 109 and Section 149, as envisaged under the IPC have been cited. By Orders dated 23.1.2013, the Addl. Sessions Judge has, on a perusal of the police report and material documents, found existence of a prima facie case under Sections 148, 302 read with Section 149, 307 read with Sections 149, 323 read with Section 149 IPC against all the accused and in addition to this a prima facie case under Section 302 IPC, 109 IPC and 25 of Arms Act against Balbir @ Bali, a prima facie case under Section 307 IPC against Naresh and Rishi, a prima facie case under Section 25 of Arms Act against Dinesh @ Kala and Sunil and a prima facie case under Section 27 of Arms Act.

6. Keeping all these factors in perspective, especially the wide-scale injuries suffered by several persons, there is a strong prima facie case of the involvement of the Respondent No.1 in the alleged crimes. Moreover, the antecedents of Respondent No.1 are such that a reasonably strong apprehension of his tampering with witnesses or leveling of threats is imminent and omnipresent. The severity of the attack should not be overlooked. For these manifold reasons, we set aside the impugned Order dated 11.2.2013, allow the Appeal and cancel the bail granted to Respondent No.1 who shall surrender to custody forthwith.”

3. Thus, while setting aside the Order granting bail, this Court took into account the role played by the respondent in firing upon the deceased and the fact that he was an influential person in the area with criminal antecedents. In keeping with direction to surrender to custody forthwith, it was expected of the respondent to do the needful. However, the record indicates otherwise and shows attempts to evade execution of consequential non-bailable warrants issued from time to time leading to delays in trial. The Orders passed by the Trial Court on 20.11.2013, 05.02.2014, 15.03.2014, 16.04.2014 and 14.05.2014 bear testimony in that behalf, which Orders were as under:

20.11.2013 “Present: Shri A.S. Kadian, Public Prosecutor for the State assisted by Shri R.K. Sehgal, counsel for the complainant.

Accused Sunil and Ajay in custody, whereas all the remaining accused except accused Balwan alias Balli on bail, with Shri O.P. Chugh, Shri Surinder Verma, Advocates.

Accused Balwan absent.

Three PWs namely Sita Ram, Ram Chander and Ram Mehar are present, but their statements could not be recorded as warrant of arrest issued against accused Balwan not received back either executed or unexecuted and an application seeking exemption of accused Balwan alias Balli from personal appearance for today along with affidavit of his son and photocopy of the Special Criminal Review Petition, has been moved. Heard. Perused. Since there is no stay granted by Hon'ble Supreme Court of India in this case and further more bail of accused-applicant Balwan had already been cancelled by Hon'ble Supreme Court of India, thus there is no merit in this application and the same is hereby dismissed and fresh warrant of arrest of accused Balwan be issued, 7.12.2013. PWs present today stand discharged and would be summoned after procuring the presence of accused Balwan.

Since there is non-compliance of the issuance of warrant of arrest against accused Balwan in view of the Order dated 24.10.2013 as passed by Hon'ble Supreme Court of India, therefore, notice be given to SHO, Police Station Kalanaur as to why warrant of arrest of accused Balwan alias Balli have not been sent back to this court either executed or unexecuted, for 7.12.2013." 05.02.2014 "Present: Shri A.S. Kadian, Public Prosecutor for the State. Accused Ajay in custody, whereas all the remaining accused on bail except accused Balwan, with counsel Shri O.P. Chugh, Advocate..... Warrant of arrest of accused Balwan received back unexecuted. Now fresh warrant of arrest of accused Balwan be issued through SP Rohtak for 15.03.2014. Notice to surety and identifier of accused Balwan alias Bali be also issued for the date fixed." 15.03.2014 "Present : Shri Surender Pahwa, Public Prosecutor for the State. Accused Ajay in custody, whereas all the remaining accused on bail except accused Balbir alias Bali.

Warrant of arrest of accused Balbir alias Bali received back unexecuted. Now fresh non-bailable-warrant against accused Balbir alias Bali be issued through SP Rohtak for 16.4.2014. Notice to his surety and identifier be issued through SHO concerned for the date fixed.

16.04.2014 "Present: Shri Surender Pahwa, Public Prosecutor for the State. Shri O.P. Chugh, counsel for accused Rohtas and Balbir @ Bali. Accused Ajay in custody while all the remaining accused on bail except accused Balbir @ Bali.....

An application has been moved on behalf of accused Balbir @ Bali in which it is stated that accused Balbir @ Bali has filed Curative Petition No.12576/2014 in the Hon'ble Apex Court and hence, intimation is being submitted before the Court. Since warrant of arrest have already been issued against accused Balbir @ Bali, hence, the filing of the application on behalf of accused is of no consequence. The non-bailable warrant which was issued against Balbir @ Bali received back unexecuted and the report is perused. Fresh non-bailable warrant be again issued against Balbir @ Bali and be sent through Superintendent of Police, Rohtak with the direction that the same be executed through some responsible police officer for 14.5.2014." 14.05.2014 " Present Shri Surender Pahwa, Public Prosecutor for the State. Shri O.P. Chugh, counsel for the accused Balbir @ Bali. Accused Ajay in custody while all the remaining accused on bail except accused Balbir @ Bali.

Non-bailable warrant issued against accused Balbir @ Bali received back unexecuted. Even the bailable warrant issued against surety has not been executed. Report perused. It appears that State is not making serious efforts for execution of the warrant of arrest. Hence, fresh non-bailable warrant be issued against accused Balbir @ Bali and the same be sent to a Superintendent of Police, Rohtak Range, Rohtak for execution with the direction to get the same executed through some responsible officer of the police for 07.07.2014. Fresh bailable warrant against surety in the sum of Rs.10,000/- be also issued for the next date of hearing.”

4. These Orders passed by the Trial Court show that although witnesses for prosecution were present to record their statements on 20.11.2013, no statements could be recorded in the absence of the accused. Further, on subsequent dates the accused in custody was produced but the respondent consistently remained absent. Though he was represented by his Advocate, the record does not indicate whether the whereabouts of the respondent were disclosed. In these circumstances, the present petition was filed in which notice was issued by this Court on 29.08.2014. Since the respondent could not be served, fresh notice was ordered to be issued on 27.10.2014 to be served through the District Judge, Rohtak. The compliance report dated 15.01.2015 was forwarded by the District Judge, Rohtak whereafter this Court passed the following Order on 19.01.2015:

“In the present contempt petition also the respondent has failed to enter appearance despite service of a notice issued by this Court. Our attention is drawn by learned counsel for the petitioner to an Order dated 14.05.2014 passed by the Trial Court who also appear to have issued non-bailable warrants against respondent No.1 which warrants also remain to be unserved despite several efforts. Be that as it may from the service report dated 14.01.2015 submitted to this Court it appears that respondent No.1 is admitted to the hospital for the past 15 months. No medical certificate to that effect is however available on record. In the circumstance we deem it fit to direct the Senior Superintendent of Police, Rohtak Range to verify whether the statement made by Amit Kumar son of the respondent regarding admission of respondent No.1 in the hospital is factually correct and to file a report before this Court regarding his medical condition if he is indeed admitted to the hospital anywhere in the State of Haryana”.

5. Accordingly Mr. Shashank Anand, Superintendent of Police, Rohtak submitted an affidavit on 16.02.2015, stating that son of the respondent in his statement recorded on 8.02.2015 had stated that his father was admitted in Privat Hospital, Gurgaon and that said son also produced Medical Certificate dated 7.02.2015 to that effect. After verifying the fact, instructions were issued to keep close watch and take the respondent in custody upon his discharge. The Medical Certificate dated 07.02.2015 was annexed to the affidavit and the Certificate reads as under:-

“PRIVAT HOSPITAL DR. SACHDEV PVT. LTD.

DLF PHASE-II, M.G. ROAD, GURGAON-122002, INDIA.

Date:07.02.2015 MEDICAL CERTIFICATE Certified that Mr. Balbir Singh is admitted in Privat Hospital since 11.04.2014 with diagnosis of An o/c of Ischaemic Heart Disease With Angioplasty done twice in past With hypertension With COPD and Acute Examination With Anxiety with Acid Peptic Disorder And GIRD.

He has improved significantly, symptomatically and no intervention was done during the hospitalization. He is likely to be discharged in next 5-7 days.....”

6. The matter was taken up on 24.04.2015 when the Counsel for the State produced copies of Medical Certificates dated 11.04.2014 and 26.03.2015. The Certificate dated 26.03.2015 stated that the respondent was fit to be produced in a Court of Law but it did not indicate whether he was discharged, and if not discharged, the reason for his continued admission. This Court, being prima facie of the view that the Hospital was providing medical asylum to the respondent to avoid arrest, ordered as under:-

“..... We are in the circumstances inclined to direct the personal presence of the Superintendent of Police, Rohtak, and Dr. Munish Prabhakar, Medical Director, Privat Hospital, Gurgaon, who shall file an affidavit and explain why:

Respondent No.1 has not been taken into custody despite an order of arrest and medical certificate dated 26th March, 2015 issued by the hospital which declares him asymptomatic.

The hospital has not formally discharged respondent No.1 if he is otherwise fit and does not require any further hospitalization. The Medical Director shall also place on record details about the medical bills raised against respondent No.1 from the date of his admission till date and the amount paid towards the same by the patient or anyone on his behalf.

7. Pursuant to the Order dated 24.04.2015 an affidavit was filed by Dr. Munish Prabhakar, Medical Director, Privat Hospital, Gurgaon on 02.07.2015. Relevant portions of paragraphs 5, 6, 7 and 8 of the affidavit were as under:-

“5. The patient had improved significantly symptomatically but required Angiography/Thallium scan for further management but never gave consent for that. He always refused consent and wanted conservative treatment. During the stay he was told many times that he can be discharged but kept on delaying the decision for being discharged. He was not making payments for his medical bills. He had kept on assuring the hospital that he will clear all the medical bills but kept on paying small amounts and promising balance of payment soon.

6. It is submitted that on 13.02.2015, the police officials at PS Kalanaur, Dist. Rohtak, Haryana had informed the Hospital that the hospital may inform the SHO, Kalanaur Police Station, Rohtak, whenever the Hospital discharges this patient.....

7. Subsequently, the Police official from Kalanaur Police Station, Rohtak vide his communication dated 15.03.2015 inter alia, requesting the Hospital to opine whether this patient can be produced in the Court of Ld. ADJ, Rohtak.

8. In response to his communication dated 15.03.2015 of the Rohtak Police, the Hospital had clearly informed them on 16.3.2015 that the patient Mr. Balbir Singh is fit to be produced in the Court. The further details of his treatment in the Hospital with a Certificate were also issued on 26.03.2015. The police officials from Rohtak by his communication dated 15.3.15 had requested the Hospital to issue a discharge slip. While respectfully reiterating that from 15.3.15 itself the police officials of Rohtak Police had been clearly told by the Hospital that this patient is fit to be taken to the Court where he is required, the Hospital once again acceded to the request of the Rohtak Police and also issued a Discharge Slip on the same day, i.e., 01.05.2015.” The affidavit went on to state that the Hospital was not aware of any direction to the respondent to surrender to custody which he had not complied with and that the respondent had cleverly continued to stay in the Hospital.

8. Shashank Anand, Superintendent of Police, Rohtak filed his affidavit dated 02.07.2015 in which developments subsequent to the filing of the earlier affidavit were detailed in paragraphs 6 to 13:-

“6. It is further submitted that on 21.02.2015, the S.H.O. Police Station Kalanaur, District Rohtak, Haryana along with other police officials of the Police Station went to the above said hospital to arrest accused Balbir @ Bali but doctors of the above said hospital refused to discharge the accused Balbir @ Bali. In this regard DDRs No.9 and No.38 dated 21.02.2015 were recorded by the SHO Police Station Kalanaur, Rohtak, Haryana.

7. That it is pertinent to mention here that on 21.02.2015, 27.02.2015 and 25.03.2015 Sh. Pawan Kumar, HPS, Deputy Superintendent of Police, Rohtak had also telephonically contacted Mr. R. N. Sharma, Administrative Officer and Dr. Prabhakar, Medical Director of the said hospital and requested them to discharge the accused Balbir @ Bali but no positive response was provided by the hospital authorities.

8. That accused Balbir @ Bali through his counsel served a legal notice dated 20.03.2015 upon SHO Police Station Kalanaur, District Rohtak, Haryana and Deputy Superintendent of Police, Rohtak, Haryana (Supervisory Officer of Police Station Kalanaur) calling upon them not to harass him, who is a patient and further, if any harassment is caused they shall be personally responsible for the same. In the said notice it was mentioned that accused Balbir @ Bali, who was under regular treatment and was unable to appear in the court, was being unnecessarily harassed by the police.

9. That on 25.03.2015, the S.H.O, of Police Station Kalanaur, District Rohtak, Haryana along with other police officials of the Police Station had gone to Privat Hospital Dr. Sachdev Pvt. Ltd., Phase-II, M.G. Road, Gurgaon to arrest accused Balbir @ Bali who was declared Proclaimed Offender in case FIR No.141 dated 06.05.2011 under Sections 148/149/323/325/307/302/109/114 IPC & 25 of Arms Act, Police Station Kalanaur, District Rohtak, Haryana but the doctors of the said hospital again refused to discharge accused Balbir @ Bali under the pretext that his treatment was going on and intimation shall be given within two days after completing his treatment. The S.H.O., Police Station Kalanaur, District Rohtak before going and after returning recorded the DDR No.12 dated 25.03.2015 at 8.20 AM and DDR No.42 at 10.20 PM mentioning all these details therein at Police Station Kalanaur, District Rohtak, Haryana.

10. That notwithstanding the issuance of medical certificate dated 26.3.2015 by Privat Hospital Dr. Sachdev Pvt. Ltd. Gurgaon, Haryana, the concerned hospital authorities intentionally did not discharge the accused Balbir @ Bali from the hospital for reasons known to them. It is further mentioned that the doctors of the said hospital orally advised the police not to arrest the accused as it may put his life in jeopardy/or danger.

11. That owing to the prevarication on part of authorities of Privat Hospital, a request was made to the Chief Medical Officer (CMO), Gurgaon, Haryana by the S.H.O. Police Station Kalanaur, District Rohtak, Haryana through ASI Mahabir Singh No.222/RTK of the said Police Station for constituting a Medical Board to give opinion whether the accused Balbir @ Bali who is getting treatment in the said hospital can be arrested from the hospital in the said situation by getting his physical condition and if not, then to provide the medical team of Doctors to accompany the police for bringing him to Rohtak so that he may be produced before the learned Court in the supervision of Doctors.

12. That the authorities of Privat Hospital Dr. Sachdev Pvt. Ltd. Gurgaon failed to formally discharge the accused Balbir @ Bali from the hospital despite several visits of the local police. Due to non-cooperation of Privat Hospital authorities, accused Balbir @ Bali could not be taken into custody despite an Order of arrest. It is further submitted that the Chief Medical Officer, Gurgaon also refused to provide an Ambulance and team of Doctors in whose supervision accused Balbir @ Bali i.e. respondent No.1 could be brought to Rohtak and produced before the learned Court of concerned Magistrate, Rohtak. The local police tried its level best to arrest the accused by making sincere efforts but due to the above said circumstances, it could not succeed in arresting accused Balbir @ Bali i.e. respondent No.1.

13. That on 01.05.2015, accused Balbir @ Bali was formally discharged by the hospital authorities and thereafter, he was immediately arrested and produced before the learned Court of concerned Magistrate, Rohtak, Haryana, on very same day by a

team of police officials headed by Sh. Pawan Kumar, HPS, Deputy Superintendent of Police, Rohtak. The learned Court issued direction to the police that “before taking him to central jail, accused shall be medicolegally examined and if the Medical officer examining the accused feels any necessity of retaining him in the hospital, then it is for him to decide. In compliance of Order dated 01.05.2015 passed by the learned Court of ACJM, Rohtak, the accused was brought before Medical Officer of PGIMS, Rohtak, who after examining the accused admitted him in ICCU vide CR No.342761 dated 01.05.2015 for evaluation, investigation, treatment and monitoring. The accused Balbir @ Bali remained admitted in PGIMS, Rohtak from 01.05.2015 to 12.05.2015. That on 12.05.2015, accused Balbir @ Bali was discharged from PGIMS, Rohtak and is since in District Jail, Rohtak, Haryana.”

9. The matter was thereafter taken up on 08.07.2015 when this Court, with a view to find out whether the Hospital had become party to attempts of the respondent to prevent the law from taking its course, passed following Order:-

“.....From the versions presented to us about the circumstances in which respondent-Balbir continued to evade arrest by the police on account of his prolonged admission to the hospital, we are prima facie of the view that an appropriate enquiry is called for in order to bring the truth to light especially with a view to finding out whether the hospital had become a privy to the attempt of the respondent to somehow prevent the law from taking its course. The fact that the respondent remained admitted to the hospital concerned for a long period without so much as paying the amount claimed by the hospital shows that the admission of the respondent to the hospital may not have been an innocent act. We do not for the present wish to say anything further at this stage lest it causes prejudice to any party. All that we need mention is that, in our opinion, the appropriate course would be to direct a proper inquiry into the circumstances in which the respondent-Balbir continued to avoid arrest and escape from the long arms of law with or without the help of the hospital concerned.

We accordingly direct the Director of Central Bureau of Investigation (CBI) to suitably nominate a senior officer to conduct an inquiry into the circumstances in which the respondent was admitted to the Privat Hospital Dr. Sachdev Pvt. Ltd. and also to report whether there was any criminality attached to the action of the management of the hospital or on the part of the doctors concerned in granting a prolonged admission to the respondent with the object of protecting the respondent from being arrested and committed to jail. We hope and trust the officer concerned completes the inquiry expeditiously and submits a report to this Court within a period of two months from today..... ”

10. An enquiry was accordingly conducted by Shri S.S. Kishore, Superintendent of Police, CBI, New Delhi. In his report dated 18.09.2015 he summarized the matter as under:-

“(4). Summary of the Enquiry Report is as follows:

Accused Balbir Singh is a heart patient and had undergone a treatment at Medanta Hospital, Gurgaon as an indoor patient from 4.9.2013 to 10.9.2013 and as an outdoor patient on 17.9.2013 and 18.10.2013 i.e. prior to cancellation of his bail by this Hon’ble Court.

After this Hon’ble Court cancelled the bail of accused Balbir Singh on 24.10.2013, the accused got himself admitted in the said Hospital on 15.11.2013.

Accused Balbir Singh remained admitted in the said Hospital for a total 527 days on three occasions viz. from 15.11.2013 to 25.12.2013 for 41 days, from 31.12.2013 to 9.04.2014 for 100 days and from 11.04.2014 to 1.05.2015 for 386 days, respectively.

Accused Balbir Singh did not give his consent for Angiography as suggested by the doctors during his admission in the said Hospital, and requested for Conservative Treatment through medicines which was agreed to by the doctors.

Accused Balbir Singh was not required to remain admitted in the said Hospital for such a long period for the Conservative Treatment which he was given in said Hospital as confirmed by Dr. Munish Prabhakar, the Consultant Physician of the said Hospital.

There was no change in the condition of accused Balbir Singh from 12.06.2014 to 1.12.2014 necessitating him to be kept as indoor patient as is evident from the table given at Para 3 (ii) (c) at Page No.5 of this Enquiry Report, still he was kept in the said Hospital for no reason.

No laboratory tests were conducted during the period from 25.02.2014 to 12.04.2014 and from 12.04.2014 to 01.5.2015 which indicate that neither illness of accused Balbir Singh was serious nor treatment given to him was intensive.

There was no cogent ground for which accused Balbir Singh was allowed to move out of the said Hospital for 47 times during the admission in the said Hospital. Rather it establishes that he was fit to move freely and was not required to be kept as indoor patient.

There was no justification for the continued admission of accused Balbir Singh in the said Hospital from 11.04.2014 to 1.05.2015 i.e. for 386 days.

Accused Balbir Singh remained admitted in the said Hospital without any payment for the first 274 days during his third admission as he was admitted in the said Hospital on 11.04.2014 and he made the first payment of Rs. 50,000/- only on 10.01.2015.

The administration of said Hospital kept the accused admitted for financial gains as they were getting approximately Rs. 9,500/- per day.

Accused Balbir Singh made full payment of his first and second admission bills in said Hospital, but paid only a part of his dues for his third admission bills.

Filing of complaint case against accused Balbir Singh in the Court of Judicial Magistrate, 1st Class, Gurgaon u/s 138 of the Negotiable Instruments Act on 20.07.2015 for dishonour of cheque of Rs. 5,00,000/- and filing of a suit against accused Balbir Singh on 13.08.2015 in the Court of Civil Judge, Gurgaon for recovery of remaining bill amounting to Rs. 29,58,459/- (Twenty Nine Lakh Fifty Eight Thousand Four Hundred and Fifty Nine) appear to be afterthoughts of the administration of the said Hospital as these have been filed after the Order dated 8.07.2015 of this Hon'ble Court.

The said Hospital on more than one occasion informed Rohtak Police in writing that accused Balbir Singh was fit to be taken to Court but did not discharge him.

It appears that Rohtak Police came to know about accused Balbir Singh being admitted in the said Hospital on 8.02.2015, but arrested the accused only on 1.05.2015.

The stand of Rohtak Police that accused could not be arrested as he was not discharged by the said Hospital does not hold substance.

Certain inconsistencies have been found in the affidavit filed by Rohtak Police. The details are mentioned in Para 3 (x) at Page Nos. 12 and 13 of this Enquiry Report.”

11. The Enquiry Report also dealt with the efforts made by local police to locate and arrest the respondent and reported as under:-

“(viii). NBWs and Efforts made by local police to locate and arrest accused Balbir Singh This Hon'ble Court had rejected the bail of accused Balbir Singh on 24.10.2013 and directed him to surrender forthwith. Accused Balbir Singh did not comply with the Order of this Hon'ble Court. Thereafter, the Trial Court of Additional Sessions Judge, Rohtak, Haryana issued various non-bailable warrants of arrest against accused Balbir Singh on 08.11.2013, 21.11.2013, 02.01.2014, 12.2.2014, 19.03.2014, 18.04.2014 and 15.05.2014 which were returned unexecuted by PS Kalanaur. None of the execution report mentioned about any enquiry from family members of the accused or his whereabouts. It was also revealed that some of the entries made in the General Diaries of PS Kalanaur in connection with the efforts for arresting the accused Balbir Singh do not correspond with the respective log books of vehicles.”

12. After considering the Enquiry Report, this Court was prima facie of the opinion, that notice was required to be issued to Dr. K.S. Sachdev, why he should not be punished for committing contempt of court. The Order dated 19.11.2015 passed by this Court dealt with the matter as under:-

“.....We have heard learned counsel for the parties and are of the view that a notice of show cause ought to issue even to Dr. K.S. Sachdev who happens to be the

Managing Director of Privat Hospital Dr. Sachdev Pvt. Ltd., Gurgaon. A notice shall accordingly issue asking Dr. K.S. Sachdev to show cause why he should not be punished for committing contempt of this Court in as much as from the material placed on record, it appears that Balbir Singh accused in Sessions Case No. 62 of 2011 was harboured by the Hospital run by the Company of which he is the Managing Director for a considerable period and prima facie without any justification and only with a view to preventing his arrest and committal to jail pursuant to the Orders passed by this Court in Criminal Appeal No. 1834 of 2013 the Orders passed by this Court in Criminal Appeal No. 1834 of 2013 dated 24.10.2013. Notice shall be directed to the Station House Officer to the Jurisdictional Police Station for service upon Dr. K.S. Sachdev.

..... Mr. Shashank Anand, S.P. shall also file his reply affidavit to the contempt petition as also the preliminary report within three weeks from today with an advance copy to learned counsel for the petitioner who will have one week thereafter to respond to the same.”

13. Accordingly, Shashank Anand, Superintendent of Police, Rohtak filed his affidavit dated 07.12.2015 submitting that he took charge as Superintendent of Police, Rohtak on 24.11.2014. He stated that the fact that the respondent had not surrendered despite cancellation of his bail by this Court was brought to his knowledge for the first time on 12.01.2015, whereafter the matter was entrusted to Deputy Superintendent of Police, Meham, Rohtak. He further stated that he became aware of the admission of the respondent in Privat Hospital, Gurgaon on 16.02.2015. He thereafter undertook steps to ensure that the respondent did not escape and deployed a guard at the hospital since 16.02.2015 right till 01.05.2015 when the respondent was finally discharged from the hospital. The affidavit further stated that soon after the enquiry report of CBI a fact finding probe to fix the responsibility/negligence/connivance on part of police officials who dealt with process of service of non-bailable warrant against the respondent was undertaken. Pursuant to the enquiry report dated 07.12.2015, vide Memo Nos.2145, 2146, 2147 and 2148 all dated 07.12.2015, necessary action was recommended against certain police officials.

14. A reply affidavit was also filed by Dr. K.S. Sachdev on 07.01.2016.

It was submitted that the hospital came to know that the respondent was required in a criminal case only on 13.02.2015. However, the affidavit did not disclose why even after 13.02.2015 the respondent-contemnor was not discharged. The affidavit stated that after it received a communication from Rohtak Police dated 15.03.2015 to get the respondent examined by a Medical Board, that the hospital on 16.03.2015 furnished a fitness report to Rohtak Police declaring the respondent to be fit to be produced in court of law. The affidavit further stated that for reasons best known to them the police did not take the respondent from the hospital despite such fitness report and the respondent was finally discharged after letter dated 01.05.2015 seeking his discharge was received from the police. The affidavit stated that no police official came to the hospital seeking

custody of the respondent and that the hospital had not refused to comply with the request of the police at any stage. It further stated:

“The prolonged admission happened as the accused trapped the Hospital by not paying. There was no criminality on part of hospital as it was totally unaware of his criminal status before 13.02.2015. The hospital did not keep him as he was paying Rs.9,500/- to the hospital, it was non- payment of this amount that gave him prolonged stay and he very cleverly used this position that for the fear of losing money, the hospital will not discharge him and he trapped the hospital very cleverly being a wily politician.”

15. We heard Mr. Rishi Malhotra, learned Advocate for the petitioner, Mr. Tushar Mehta, learned Additional Solicitor General appearing for Shashank Anand, Superintendent of Police, Mr. Dushyant A. Dave, learned Senior Advocate for Dr. K.S. Sachdev and Mr. Siddharth Luthra, learned Senior Advocate for Dr. Munish Prabhakar.

16. From the record and the Enquiry Report as stated above, it is clear that soon after the Order dated 24.10.2013 passed by this Court, the respondent remained admitted in the Hospital for a total of 527 days.

Nothing has been placed on record, nor any medical condition or reasons have been adverted to why such admission was required in the first place. As found in the Enquiry, no laboratory test was conducted during the period of admission from 25.02.2014 to 12.04.2014 and from 12.04.2014 to 01.05.2015. This shows that the illness as projected was not serious at all and no intensive treatment as indoor patient was required or called for. This prolonged admission without any justifiable medical reason was essentially to defeat the direction issued by this Court in its Order dated 24.10.2013 and repeated non-bailable warrants issued by the Trial Court.

17. The Order passed by the Trial Court on 20.11.2013 shows that an affidavit of son of the respondent was filed along with a copy of review petition. The application seeking exemption was rejected by the Trial Court and SHO concerned was issued notice why the warrant of arrest was not executed. Subsequent Orders dated 05.02.2014, 15.03.2014, 16.04.2014 and 15.04.2014 indicate that fresh warrants of arrest were issued through Superintendent of Police. Neither the respondent surrendered to custody as directed by this Court nor the concerned police took any steps to arrest him or try to find his whereabouts. No report was made to the Trial Court. What is evident is total inaction on the part of the police which helped the respondent in evading the arrest and defeating the Orders passed by this Court as well as by the Trial Court. This callous attitude and conduct of the police calls for strict administrative actions and corrective penal measures.

18. The conduct exhibited by the respondent in getting himself admitted in the hospital when there was no medical reason to justify such admission and in continuing to remain admitted till action was taken by this Court in contempt jurisdiction, exhibits scant respect and regard for the orders and processes issued by the Court. Despite issuance of notice, the respondent has neither filed any

response nor tendered any apology. Having gone through the record and considered the Enquiry Report, we have no doubt that the respondent is guilty of having committed contempt of the direction issued by this Court in its Order dated 24.10.2013 and also in obstructing the administration of justice.

19. We now turn to the role of the hospital and medical professionals. The explanation offered by Dr. Munish Prabhakar and Dr. K.S. Sachdev was that they were not aware of any direction by this Court to the respondent to surrender to custody or that the respondent was required in connection with any crime. At the outset, it must be stated that the respondent stood admitted in the hospital for 527 days. Not a single laboratory test was conducted during the period from 15.02.2014 to 01.05.2015. The papers produced on record do not in any way suggest any medical emergency which could justify continued admission of the respondent as an indoor patient. Further, during the third admission of the respondent from 12.04.2014 the first payment to the hospital was made only on 10.01.2015 i.e. nearly after 247 days. It is inconceivable that in normal circumstances a man, who has no ailment or a medical condition requiring emergency treatment would be kept as indoor patient without any laboratory test and without recovering a single paisa for more than 247 days. Moreover, the record indicates that on as many as 47 occasions during his admission the respondent was allowed to move out of the hospital without even an endorsement by any medical professional justifying such movement. The Enquiry Report further shows that there used to be regular stream of visitors during the stay of respondent in the hospital. These features clearly show that the respondent was in perfect condition of health and never really required admission in the hospital as an indoor patient. The role of the hospital was certainly not as innocent as is sought to be projected and the features detailed above clearly show that the hospital was party to the attempts on part of the respondent to defeat the Order passed by this Court.

20. When the compliance report forwarded by the District Judge, Rohtak on 15.01.2015 indicated admission of the respondent in a hospital, this Court by Order dated 19.01.2015 called for a report from the Superintendent of Police, Rohtak. The enquiry initiated thereafter resulted in recording of the statement of son of the respondent on 08.02.2015 who also produced medical certificate dated 07.02.2015. This certificate issued by Privat Hospital shows that the respondent was likely to be discharged in next 5 to 7 days. Significantly, said certificate was not even referred to in any of the subsequent affidavits filed by Dr. Munish Prabhakar or Dr. K.S. Sachdev. If the respondent was likely to be discharged in few days as certified on 07.02.2015 what went wrong in not discharging him or was there any medical emergency justifying his continued admission? Nothing is spelt out in any of the affidavits. As a matter of fact, the subsequent certificate dated 26.03.2015 did not even speak of likelihood of discharge and used the expression “.....he is fit to be produced in the Court of law as per present health condition.” The assertions made by Shashank Anand in his affidavit dated 02.07.2015 are that notwithstanding issuance of such certificate dated 26.03.2015, the hospital refused to discharge the respondent and orally advised the police not to arrest the respondent lest it may put his life in jeopardy or danger. The Enquiry Report rightly observed “.....the said hospital on more than one occasion informed Rohtak Police in writing that accused Balbir Singh was fit to be taken to court but did not discharge him.” It was only after this Court passed the Order dated 24.04.2015 directing personal presence of Dr. Munish Prabhakar with a direction to file an affidavit and explain the situation, that the hospital discharged the respondent on

01.05.2015 which then resulted in arrest and production of the respondent.

21. The explanation offered by Dr. Munish Prabhakar and Dr. Sachdev that the respondent trapped the hospital and by non-payment of the bills kept prolonging his stay in the hospital does not inspire confidence at all. If the hospital was really a victim of the machinations of the respondent, at the first opportunity i.e. when requisition was made by the police on 13.02.2015, the hospital would have responded immediately. The requisition dated 13.02.2015 had informed the hospital that respondent was a proclaimed offender and that his custody was required. This requisition was close on the heels of the medical certificate dated 07.02.2015 and if that certificate was a correct one, the time was ripe for discharge of the respondent. However, as stated by Shashank Anand in his affidavit dated 02.07.2015, the hospital refused to discharge the respondent. The theory that the hospital was trapped by the designs of the respondent is a mere eye-wash and we reject the same. Thus, the inescapable conclusion is that the hospital extended protection and asylum to the respondent to defeat the Order passed by this Court as well as those passed by the Trial Court and thereby obstructed administration of justice.

22. Dr. Munish Prabhakar has been Medical Director of the hospital and as submitted by learned Senior Counsel on his behalf, he receives salary and some percentage of consultation charges recovered from the patients. Dr. K.S. Sachdev, on the other hand, has been the Managing Director of the Company which owns and runs said hospital. We have found that the continued admission for such a long period as indoor patient was not justifiable for any reason or medical condition of the respondent. Both these medical professionals are responsible for such prolonged admission which was actuated by only one reason which was to extend medical asylum to the respondent as a cover to defeat the orders passed by this Court and the Trial Court. In this process, these medical professionals not only helped the respondent in violating the Order of this court but they also obstructed administration of justice.

23. The aforementioned conclusions then raise issues regarding the extent of liability of the contemnors. Sections 2 (b) and 2 (c) of the Contempt of Courts Act, 1971 which define 'civil contempt' and 'criminal contempt' are as under:-

“(b) “civil contempt” means willful disobedience to any judgment, decree, direction, order, writ or other process of a court or willful breach of an undertaking given to a court;

(c) “criminal contempt” means the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which-

(i) scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court; or

(ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or

(iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner;" Willful disobedience to a direction issued by this Court on

24.10.2013 on part of the respondent is quite evident. He was party to the proceedings and bound by the order and as such his liability on that court stands established. Further, by his defiance of the direction so issued, he also obstructed administration of justice. He is thus liable for committing civil contempt as well as criminal contempt. But the Medical Professionals namely Dr. Munish Prabhakar and Dr. K.S. Sachdev were not parties to the matter where the direction in question was passed.

24. As regards the liability of the aforesaid Medical Professionals, questions that arise are: 1) whether a person, who is not bound by a direction issued by the Court could be held guilty for committing contempt of court for his conduct in either directly aiding and abetting violation on part of the person who is bound by such direction; and 2) what is the extent of liability of such person.

A.] In *Seaward v. Paterson*[1] the landlord of the concerned premises had obtained an injunction against Paterson i.e. his tenant restraining him from doing or allowing to be done anything on the premises which would be a nuisance to the landlord and from using the premises otherwise than for the purposes of a private club. Alleging that the tenant had committed contempt of the court by allowing the premises to be used for boxing matches, the landlord applied for committal of two other persons, namely, Sheppard and Murray on the ground that they had aided and assisted the tenant in his disobedience to the injunction. The following passages from the Judgment of Lindley LJ are quite instructive:

"Now, Let us consider what jurisdiction the court has to make an order against Murray. There is no injunction against him-- He is no more bound by the injunction granted against Paterson than any other member of the public. He is bound, like other members of the public, not to interfere with, and not to obstruct, the course of justice; and the case, if any, made against him must be this--not that he has technically infringed the injunction, which was not granted against him in any sense of the word, but that he has been aiding and abetting others in setting the Court at defiance, and deliberately treating the order of the Court as unworthy of notice. If he has so conducted himself, it is perfectly idle to say that there is no jurisdiction to commit him for contempt as distinguished from a breach of the injunction, which has a technical meaning." "A motion to commit a man for breach of an injunction, which is technically wrong unless he is bound by the injunction, is one thing; and a motion to commit a man for contempt of court, not because he is bound by the injunction by being party to the cause, but because he is conducting himself so as to obstruct the course of justice, is another and a totally different thing. The difference is very marked. In the one case the party who is bound by the injunction is proceeded against for the purpose of enforcing the Order of the Court for the benefit of the person who got it. In the other case, the Court will not allow its process to be set at naught and treated with contempt." B] In *Z Ltd. v. A*[2] the plaintiff had obtained

injunction against certain defendants and the assets of one such defendant against whom the injunction was granted, were held by a bank. The bank was served with a copy of the injunction but the concerned defendant had not yet been served. While considering the question whether any disposal of assets belonging to the defendant by the bank would make it liable for committing contempt of Court, it was stated as under:

“I think that the following propositions may be stated as to the consequences which ensue when there are acts or omissions which are contrary to the terms of injunction. (1) The person against whom the Order is made will be liable for contempt of Court if he acts in breach of the Order after having notice of it. (2) A third party will also be liable if he knowingly assists in the breach, that is to say if knowing the terms of the injunction he willfully assists the person to whom it was directed to disobey it. This will be so whether or not the person enjoined has had notice of the injunction... I will give my reasons for the second proposition and take first the question of prior notice to the defendant. It was argued that the liability of the third person arose because he was treated as aiding and abetting the defendant (i.e. was an accessory) and as the defendant could himself not be in breach unless he had notice it followed that there was no offence to which the third party could be an accessory. In my opinion this argument misunderstands the true nature of the liability of the third party. He is liable for contempt of court committed by himself. It is true that his conduct may very often be seen as possessing a dual character of contempt of court by himself and aiding and abetting the contempt by another, but the conduct will always amount to contempt by himself. It will be conduct which knowingly interferes with the administration of justice by causing the Order of the court to be thwarted.” C] The extent of liability of third party in such actions was considered by the House of Lords in *Attorney General v. Times Newspapers Ltd.* and another[3]. In that case the Attorney General had brought action against two newspapers seeking permanent injunction restraining them from publishing material from a book written by a person who was formerly a member of the security service and by terms of his employment was bound by confidentiality which would stand breached if his memoirs were published. While the interlocutory injunctions restraining publication of the material pending trial of such action was granted against those two newspapers, three other newspapers published extensive extracts and summaries of the book following which proceedings for criminal contempt against them were brought by the Attorney General. At the trial of those proceedings those three other newspapers were held to be guilty of criminal contempt. Lord Brandon of Oakbrook concluded as under:

“.....The claims of the Attorney General in the confidentiality actions were for permanent injunctions restraining the defendants from publishing what may conveniently be called Spycatcher material. The purpose of the Millet injunctions was to prevent the publication of any such material pending the trial of the confidentiality actions. The consequence of the publication of Spycatcher material by the publishers

and editor of the Sunday Times before the trial of the confidentiality actions was to nullify, in part at least, the purpose of such trial because it put into the public domain part of the material which it was claimed by the Attorney General in the confidentiality actions ought to remain confidential. It follows that the conduct of the publishers and editor of the Sunday Times constituted the actus reus of impeding or interfering with the administration of justice by the court in the confidentiality actions.” D] In a separate concurring opinion Lord Jauncey of Tullichettle stated as under:

“I turn to consider whether there is any reason why established principle should not be applied to the situation in this case. I do not accept the proposition that to apply established principles in the foregoing circumstances would effectively be to convert every injunction from an order in personam to an order contra mundum. That proposition ignores the distinction between the breach of an order by the person named therein and interference with the course of justice resulting from a frustration of the order by the third party.”

25. In our view, the Medical Professionals namely Dr. Munish Prabhakar and Dr. K.S. Sachdev extended medical asylum to the respondent without there being any reason or medical condition justifying prolonged admission of the respondent as an indoor patient as a cover to defeat the Orders passed by this Court and the Trial Court, as stated above and thereby aided and assisted the respondent in violating the Order of this Court. By such conduct these Medical Professionals have obstructed administration of justice.

26. We thus hold that the respondent guilty of having violated the Order dated 24.10.2013 passed by this Court and for having obstructed administration of justice. We also hold Dr. Munish Prabhakar and Dr. K.S. Sachdev guilty for having helped the respondent in his attempts and thereby obstructing administration of justice. Having held so, we could straightaway have imposed appropriate punishment under the Act. However, we deem it appropriate to grant one more opportunity to these contemnors. The respondent has not filed any affidavit nor tendered an apology. At the same time for Dr. K.S. Sachdev, Managing Director of the company that owns the hospital is said to be 76 years of age. Considering the fact that these are medical professionals with sufficient standing, in our view ends of justice would be met if one more opportunity is granted to them to present their view on the issue of punishment. In the circumstances, we direct presence of these three contemnors on January 2, 2017. The respondent is in custody and therefore appropriate production warrant shall be issued under the signature of Registrar of this Court ensuring presence of the respondent before this Court. The concerned police is directed to facilitate such production of the respondent. The contemnors can also present their views and make appropriate submission in writing on or before December 23, 2016.

27. Coming to the role of the police officials in the present matter, we have already observed that the conduct exhibited by the concerned police officials in not ensuring compliance of the Orders passed by the Trial Court calls for strict administrative action. The actions in that behalf have already been initiated and for the present we rest content by observing that the disciplinary proceedings shall be

taken to logical end and the guilty shall be brought to book. We request the Director General of Police of Haryana and the Home Secretary to look into the matter and ensure that the departmental proceedings are taken to logical end at the earliest. The status report/action taken report in that behalf shall be filed in this court within three months from the date of this judgment.

28. As regards the role of Mr. Shanshank Anand, Superintendent of Police, Rohtak, we find that he took charge as Superintendent of Police, Rohtak on 24.11.2014 i.e. well after the Order dated 24.10.2013 of this Court and after the Orders directing issuance of non-bailable warrants against the respondent were passed by the Trial Court. However, even according to his own affidavit, if he became aware that respondent had not surrendered despite cancellation of his bail and that he was admitted in Privat Hospital, Gurgaon only in February 2015, the steps that he took after 16.2.2015 cannot strictly be called actions taken with reasonable promptitude. Even according to Paras 6, 7 and 8 of affidavit dated 2.07.2015 nothing was done during the period 27.02.2015 to 23.03.2015. The action apparently was initiated only after the Order dated 24.4.2015 was passed by this Court. Though we express dissatisfaction, we do not deem it appropriate to carry the matter further as against him. The notice issued to him is discharged and the petition as against him stands closed.

29. Ordered accordingly.

.....CJI.

(T.S. Thakur)J. (R. Banumathi)J. (Uday Umesh Lalit) New Delhi,
December 15, 2016

- [1] (1895-99) All ER 1127
- [2] (1982) 1 All ER 556
- [3] (1991) 2 All ER 398