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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CONT.CAS(C) 480/2020 & CM APPL. 25054/2020

RAKESH KUMAR

.....Petitioner

Through: Mr Ajay Kumar Pipania, Mr Aaksh Sethi, Ms Madhurima Soni, Mr Aditya Sharma, Mr Parcco Puniyani, Ms Nikita Garg, Mr Imtiaz Hussain and Mr Lakshay, Advocate.

versus

VIJAYANTA ARYA (DCP) AND ORS

..... Respondents

Through: Mr. Shadan Farasat, ASC (GNCTD) with Mr Bharat Gupta along with S.I. Kuldeep.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% **07.12.2021**

The hearing has been conducted through hybrid mode (physical and virtual hearing).

1. The court has already held R-3 guilty of committing contempt of court. He arrested the petitioner in breach of directions passed by the Supreme Court in *Arnesh Kumar Vs State of Bihar*, Criminal Appeal No. 1277/2014. The requisite notice was not served upon the petitioner. There were mere allegations of criminal breach of trust against the petitioner, which entailed a maximum sentence of three years. It did not warrant the arrest of a person in the manner in which it was done. The petitioner's own complaints to the police were not responded to. The highhandedness of the police officer, in specific breach of the Supreme Court's directions is evident. *Arnesh Kumar*

(supra) holds that in the event of non-service of notice under section 41A of the Cr.P.C., contempt proceedings would be initiated.

2. The petitioner's right to personal liberty is ensured by the Constitution of India. It can be curtailed only by a procedure prescribed established by law. The Supreme Court has said in *Arnesh Kumar* that notice under s. 41A Cr.P.C. is requisite. The notice was not served. The law has been breached. It is not the petitioner only who has suffered the humiliation and the indignity of being arrested; the ordeal would have affected the reputation of his family i.e. his children, wife and parents. No amount of explanation to the neighbours or those who may have seen the arrest, would undo the embarrassment and indignity suffered by the petitioner and his relatives. Arrest and incarceration destroys a person and collaterally affects many other innocent relatives. Subsequent release or acquittal of an innocent, is of no solace and offers no reparation to the loss of reputation or for the temporary loss of precious personal liberty. A stigma gets attached to the person who has been taken away, detained and/or put behind bars by the police. R-3 is deemed to have due knowledge of the rights of a citizen and the procedure prescribed in law.
3. R-3 filed an affidavit on 06.12.2021 tendering his unqualified/unreserved apology for arresting the petitioner on 23.08.2020. Time was granted to the respondents on 31.08.2020 to file a Status Report on or before the next date. An apology, if any, ought to be tendered in the first instance. There is no contrition in the apology of R-3. The said apology is a matter of last resort.

Therefore, the apology cannot be accepted. The petitioner has suffered incarceration for 11 days and presently he is out on bail.

4. In view of the above and keeping in mind that R-3 is a serving police officer with Delhi Police, that he has served for seven years and may have a long career ahead of him, R-3 is sentenced to undergo simple imprisonment for one day, along with a fine of Rs.2,000/-, as well as nominal costs of Rs.15,000/- for these proceedings, to be paid by him to the petitioner within four weeks.
5. The aforesaid sentence shall be kept in abeyance for a period of two months from receipt of the order, so as to accord R-3 sufficient opportunity to assail this order, should he so choose to.
6. The petition, along with pending application, stands disposed-off in terms of the above.

NAJMI WAZIRI, J

DECEMBER 07, 2021/rd