

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

CMPMO No.216 of 2022
Reserved on: 10.09.2025
Decided on: 22.09.2025

Santosh Kumar ... Petitioner

Versus

Pushpa Devi & others ... Respondents

Coram

Hon'ble Mr. Justice Ajay Mohan Goel, Judge.

Whether approved for reporting?¹Yes

For the petitioner : Mr. Rajiv Rai, Advocate.

For the respondents : Mr. Surya Chauhan, Advocate, for respondent No.1.

Ajay Mohan Goel, Judge

By way of this petition, the petitioner has, *inter alia*, prayed for the following relief:-

“A. That the Hon'ble Court may kindly be pleased to quash the entire proceeding under Order 39, Rule 2-A vide C.M.A. No.421-6 of 2021 titled as Pushpa Devi Versus Ram Pyari & others vide Annexure P-1, including summoning order qua the petitioner.”

2. Brief facts necessary for the adjudication of this petition are that in the proceedings initiated by the respondents herein under Order 39, Rule 2-A of the Civil Procedure Code, the present petitioner has been impleaded as a party. Feeling aggrieved by issuance of the process against him in the said proceedings, he has

¹ Whether reporters of the local papers may be allowed to see the judgment?

approached this Court, praying for the relief mentioned hereinabove.

3. Learned Counsel for the petitioner has drawn the attention of the Court to the application filed under Order 39, Rule 2-A of the Civil Procedure Code (Annexure P-1) and submitted that a perusal thereof demonstrates that there is no allegation against the petitioner which can be said to be an allegation of willful disobedience of any direction passed by the learned Court below. He submitted that the petitioner was not a party in the civil suit and all that is alleged against the petitioner is that on the day when the other parties purportedly disobeyed the orders passed by the Court, dated 28.08.2021, in terms whereof, the parties were directed to maintain status-quo, the police officials instead of stopping the digging work being carried out by the party respondents, did not rely upon the version of the applicants about the interim order passed by the Court and threatened the family members of the applicants to remove their Car from the suit land, which was parked in the Courtyard of the house of the applicants. The police officials remained at the spot till 6:00 p.m., but did not stop the digging work of the suit land by the respondents, who violated the status-quo order. The police officials also instigated the respondents and no action was taken against the driver of the JCB. He submitted that these allegations are bald allegations and fact of the matter is that

the petitioner happened to be at the site on the basis of a complaint which was received at Police Station, Jhandutta from the proforma respondents in this case, dated 28.08.2021 and he reached spot with a view to maintain the law and order. Learned Counsel submitted that the daughter of respondent No.1 started misbehaving with the police officials at the spot and proceedings under Section 186 of the Indian Penal Code were also carried out and thereafter, the family members of respondent No.1 gave an undertaking that they will remove the Car from the suit land before 5:00 p.m. on 29.08.2021. He submitted that the police officials including other respondents asked respondent No.1 to produce the copy of injunction order, but the same was not produced and in the absence of any injunction order being shown to the petitioner, the allegations levelled against him were not sustainable.

4. On the other hand, learned Counsel for respondent No.1 submitted that the present petitioner not only disobeyed the Court orders, but he also instigated the offending respondents, who were violating the Court orders. He submitted that the petitioner was there at the behest of the other party and his act was to assist the other party in violation of Court order. Accordingly, he submitted that as there was no infirmity in issuance of the process, present petition be dismissed.

5. At the very outset, this Court would like to make an observation that it would not like to go into the allegations and counter allegations which are the subject matter of the proceedings before the learned Court below. The moot issue before this Court is as to whether under Order 39, Rule 2-A of the Civil Procedure Code, a person who is not a party before the learned Trial Court, can be made as a party respondent or not.

6. Order 39, Rule 2-A of the Civil Procedure Code deals with the consequences of disobedience or breach of injunction. This provision reads as under:-

“2-A. Consequence of disobedience or breach of injunction.

(1) *In the case of disobedience of any injunction granted or other order made under [rule 1 or rule 2](#) or breach of any of the terms on which the injunction was granted or the order made, the Court granting the injunction or making the order, or any Court to which the suit or proceeding is transferred, may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not exceeding three months, unless in the meantime the Court directs his release.*

(2) *No attachment made under this rule shall remain in force for more than one year, at the end of which time if the disobedience or breach continues, the property attached may be sold and out of the proceeds, the Court*

may award such compensation as it thinks fit to the injured party and shall pay the balance, if any, to the party entitled thereto.”

7. In terms of the said provision, in the case of disobedience of any injunction granted or other order made under Rule 1 or Rule 2 of Order 39, Rule 2-A of the Civil Procedure Code or breach of any of the terms on which the injunction was granted or the order made, the Court granting the injunction or making the order, or any Court to which the suit or proceeding is transferred, may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not exceeding three months. This provision *per se*, does not restricts itself to the parties in the lis. The expression usual therein is ‘person’.

8. In this regard, Hon’ble full Bench of the Madras High Court in *Vidya Charan Shukla Versus Tamil Nadu Olympic Association and another*, AIR 1991 Madras 323, after referring to various judgments of the various High Court, has held as under:-

“46. We can see thus clearly that the Courts in India invariably accepted the law applied in England and found (1) a party to the suit if he had notice or knowledge of the order of the Court and (2) a third party or a stranger, if he had aided or abetted the violation with notice or knowledge of the order of injunction guilty of

civil contempt and otherwise found a (bird party guilty of criminal contempt if he has been found knowingly obstructing implementation of its order of direction, if it is found in the instant suit that Sri Shukla was directly or indirectly a party defendant in the suit and the order of the learned single Judge was directed to his conduct also and he violated the order after notice or knowledge, he shall be guilty of civil contempt. He can still be found guilty of civil contempt if he is found to have aided and abetted the violation of the order of the Court. Even otherwise it is found that he obstructed or attempted to obstruct the implementation of the Court's injunction/direction, he may be found guilty of criminal contempt provided he had the notice or the knowledge of the order of the Court. It will be only after a determination of the nature of the disobedience that it will be possible for the Court to say whether the procedure applied to a civil contempt shall be applied to the contempt proceeding in his case or the procedure applied to a criminal contempt will be applied to it. In the former case, the learned single Judge shall be competent to proceed. In the latter case, it shall be before a Division Bench and subject to such conditions as are envisaged under the Contempt of Courts Act, 1971. We have however no hesitation, in view of the principles of law noticed by us that this Court's power as the Court of Record will extend not only to the determination of the contempt but also the determination whether on the allegations brought before it, a civil contempt is made out or a criminal contempt is

made out and instead of any action of committal for contempt, the Court should make any such order which would be in the administration of justice or not. We have already noticed that there are provisions in Order XXXIX Rule 2A of the Code of Civil Procedure as a remedy for the violation of temporary or interim injunction. Besides what is contemplated under Order XXXIX Rule 2A of the Code of Civil Procedure, Courts have found another source of power in Section 151 of the Code of Civil Procedure and if that is also ignored for a moment, this Court's power as a Court of Record and a Court of Special jurisdiction is preserved under Articles 215 and 225 of the Constitution of India. There have been cases before several Courts in which when faced with situations that some order or direction was violated and the violation resulted in grave and serious injury, the Courts took the view that the Code of Civil Procedure is not exhaustive. There are cases which say that if remedy to do justice is not provided for in the Code or any other Act, the High Court must not fold its hands and allow injustice to be done.”

9. In *Prafulla Kumar Mohapatra Versus Jaya Krushna Mohapatra and Others*, AIR 1994 Orissa 173, High Court of Orissa held as under:-

“3. I shall first deal with the submission whether a person who is not a party to the proceeding can also be proceeded against for his alleged act of violating the order of injunction. The word 'person' as appearing in Sub-rule (1) of Rule 2A of Order 39 is wide enough to engulf a

person, who is an agent, a servant and a workman. Rule 2A was introduced by the Amending Act of 1976. It takes the place of Sub-rules (3) and (4) of Rule 2 of Order 39. The said sub-rules have been deleted from rule 2 by the said Amending Act. In addition to reproducing the provisions of Sub-rules (3) and (4) of Rule 2, the new Rule 2A provides for the breach of an order of injunction passed under Rule 1 of the said Order, and it also provides penalty for the breach or disobedience of an order of injunction made under Rule 1 or Rule 2. While considering a case under Sub-rules (3) and (4) of Rule 2, as it existed prior to the amendment, the apex Court in The State of Bihar v. Sonabati Kumari, AIR 1961 SC 221, held that the expression 'person' appearing in Order 39, Rule 2(3) has been employed merely compendiously to designate every one in the group defendant, his agents, servants and workmen and not for excluding any defendant against whom the order of injunction has primarily been passed. In Kamini Debt (and after her) Nanda Kishore Dash v. Puma Chandra Nath, (1987) 63 Cut LT 326, and Kumarber Sehoo v. State of Orissa, (1990) 69 Cut LT 726, a similar view was expressed by this Court. If such were not the law, orders of injunction would be rendered nugatory by their being contravened by the agents and servants of the parties, and it could be conveniently defied by setting up a third party. This legal position is brought out by the terms of an injunction order set out in Form 8 of Appendix F to the CPC. Whether a person not impleaded in the suit and not named in the

injunction order can be proceeded against under Order 39, Rule 2A for violation of the order depends on the facts and circumstances of the case. An injunction is an equitable relief and it is trite law that equity acts in personam. Therefore, an injunction is a personal matter. An injunction is a judicial process whereby a person is ordered to be restrained from doing or to do a particular act or thing in a particular manner. The former is called the "restrictive injunction" and the latter a "mandatory injunction". An interlocutory or interim injunction is to preserve matters "in site" until the case can be tried. The ordinary rule, therefore, is that the person disobeying the order of injunction is to be proceeded for contempt as the person named in the writ. Persons who are not parties where order of injunction is passed are normally not to be proceeded against for disobeying the injunction. However, the exception to this general rule is that where it is alleged and proved that the person who violated the order of injunction was an agent or servant or workman of the person against whom the order of injunction was passed, the proceeding can be validly initiated against such person. In such a case the person violating the order can be proceeded against, and also who have acted in abetting violation of order of injunction. Violation of an injunction is punishable under the Code itself. Nature of the proceeding and quality of evidence which are required to be proved and established may be of the standard of a criminal proceeding, though the proceeding is punitive in nature. However, stricter proof than civil actions is

necessary. Though the proceedings under Order 39, Rule 2A have a punitive aspect as is evident from the contemner being liable to be ordered in civil prison, they are designed to effect the enforcement of or to execute the order. This is clearly brought out by their identity with procedure prescribed by Order 21, Rule 32 for the execution of a decree of a permanent injunction. It is, however, to be borne in mind that where a person who is not a party to the suit is proceeded against in order to punish him it is essential that he should be made a party to the proceeding for violation and it should be brought home by sufficient and unimpeachable evidence that he had been guilty of abetting violation of injunction. A party proceeded against for violation of injunction can prove his innocence in the following manner, i.e. by proving that (a) the order was not within knowledge, or (b) the order was ambiguous and was reasonably capable of more than one interpretation or (c) that in fact he did not intend to disobey the order, but conducted himself in accordance with his interpretation of the order. The question whether a party has understood an order in a particular manner, and has conducted himself in accordance with such a construction is primarily one of fact. The party setting up such a plea has to prove it.”

10. Similarly, High Court of Karnataka at Bengaluru in *Writ Petition No. 54219 of 2019 (GM-CPC)*, titled *Smt. T. Geetha Versus Sri. Ranganth & others*, decided on 05.02.2024, held as under:-

“11. A bare reading of Order XXXIX Rule 2A of CPC

refers to disobedience or breach of injunction by 'any person'. There is no reference to the parties to the suit, but specific reference is to 'the person guilty of such disobedience or breach'. Therefore, the finding of the Trial Court that against the stranger Order XXXIX Rule 2A cannot be invoked, cannot be accepted.

11. Thus, the consistent view of various High Courts in this matter is that a person who has not been restrained by an order of injunction cannot be committed for being in breach of it, however, he may be committed for contempt, with knowledge of injunction, he aids and abets its breach. However, for the purpose of determination of this fact, obviously, the findings will have to be returned, whether the accused in such case was having the knowledge of its injunction and he aided and abetted its breach.

12. This Court is of the considered view that as far as this exercise is concerned, the same shall have to be undergone in the Court where the proceedings under Order 39, Rule 2-A of the Civil Procedure Code are pending. In these proceedings, the present petitioner can prove his innocence by proving that **(a)** the order was not within his knowledge, **(b)** that he did not disobey the order, **(c)** that he has committed no act which can be inferred to be an act, which can be construed to be the disobedience of the Court order, **(d)** that the Court order was neither produced nor made available for

the perusal of the Court.

13. Therefore, in light of the above observations, as this Court is of the considered view that no illegality was committed by the learned Court below in issuing the process to the petitioner, as the process can also be issued under Order 39, Rule 2-A of the Civil Procedure Code to a stranger, these proceedings are dismissed and liberty is reserved to the petitioner to put-forth his contentions before the learned Court below, which shall therefore, proceed in the matter in the light of the case law discussed hereinabove. Pending miscellaneous application(s), if any also stand disposed of accordingly.

(Ajay Mohan Goel)
Judge

September 22, 2025
(Rishi)