(11) Consequently, I accept this petition and hereby quash the complaint (Annexure P.1) and the consequent proceedings thereon pending in the Court of Chief Judicial Magistrate, Ferozepur.

S.C.K.

Before Hon'ble Swatanter Kumar, J.

JAYVIR SINGH,—*Petitioner.*

versus

RAJ KUMAR & OTHERS,—*Respondents.*

C.O.C.P. No. 1361 *of* 1995.

12 September, 1996.

Contempt Courts Act. 1971—*S.* 12—*Interim direction of Court not to impound bus of the petitioner passed on* 12*th October*, 1994—*Respondent-state filing written statement and contesting claim—Stay order in operation—In contempt petition defence set up that copy of stay order not served upon not worthy of trust—In reply affidavit on the one hand defence set up and also unqualified apology tendered in case Court found any violation of the order—Such apology in the face of justification of the action is unacceptable—Balance between magnanimity of Court and majesty of justice does not extend at the cost of lowering the majesty and administration of justice—Apology not accepted and guilty officials punished for contempt of Court to suffer civil imprisonment for* 15 *days and to pay a fine of Rs.* 1,000 *each.*

Held, that the defence put forward by the respondents that the copy of the order was not served upon them is not worthy of any trust and cannot be relied upon. Firstly for the simple reason that the things must be taken to have happened in their normal course with reasonable sense of prudence all should have acted. It is very difficult to believe that a person who has approached the High Court and the Court had passed an order in favour of the party, the party would not take benefit of such orders as would be required in the normal course of business. Considered from any reasonable standard of normal human conduct, the defence put forward by these respondents appears to be not correct. Specially in a trade where every day running of the vehicles is the source of income for the petitioner, he would normally take all steps to ensure the smooth running of his trade especially when he has an order from the Division Bench of the High Court.

(Paras 8 & 9)

Further held, that the tendering of this apology is purposeless and is not sincere regret of the default of the respondents in any manner whatsoever. The facts and the conduct of the respondents even before this Court in justifying the violation of the orders of the Courts by them, leaves no doubt in my mind that the apology tendered did not show that they were penitent and the apology was a mere expedient to assuage the Court. As such the apology tendered cannot be accepted as it would not at all be sufficient atonement.

(Para 16)

Further held, that the Court while exercising powers under the provisions of this Act has to derive a balance between magnanimity and majesty of justice. Whenever the situation so demands, the justice may show its magnanimity but not at the cost of majesty of justice. In other words, it must always tilt in favour of majesty of justice and administration of justice rather than leaving the contemners unpunished and opening a protected filed for reoccurrence of such violations of orders of Court.

(Para 18)

Further held, that the justification and apology cannot be hand in hand as they are two things which are incompatible. The apology can never be offered as a defence. It presumes guilt and prays for purging a contempt on offering of a sincere trueful apology being sincere regret and intent to the atonement of guilt. Thus, on the one hand the respondents have denied knowledge of the order for all this long period and pleaded and justified innocence, and on the other hand, this meaningless apology is being offered. The entire conduct of the respondents demonstrates clearly intentional and wilful violation of the order dated 12th October, 1994 passed by the Division Bench of this Court. Further it has clearly interferred with the administration of justice.

(Para 19)

Further held, that I direct these respondents to undergo civil imprisonment for a period of 15 days and to pay a fine of Rs. 1,000 each. The contempt petition is accordingly allowed.

(Para 21)

S. S. Dahiya, Advocate, *for the Petitioner.*

N. S. Bhinder, District Attorney, Haryana, *for the Respondents No.* 2 & 3.

JUDGMENT

Swatanter Kumar, J.

(1) The petitioner, Jayvir Singh, had filed Civil Writ Petition 14980 of 1994 for issuance of appropriate writ order or direction to

the respondents to permit the petitioner to operate his buses on Rajgarh Hissar via Jhupa route and further not to impound the buses of the petitioner. The dispute in regard to issuance of permit arose primarily for the reason that the permit has to be counter-signed by other State than the State issuing the permit. In this case, the permit was to be counter-signed by the State of Haryana. This resulted in filing the writ petition. It will be appropriate to refer to the prayer made in the writ petition at this stage.

"It is, therefore, respectfully prayed as under :—

(i) that a writ in the nature of mandamus or any other writ, order or direction be issued to the respondent directing them not to impound the bus of the petitioner ;

(ii) that an appropriate writ, order or direction be issued to the respondents directing them to perform their duty in accordnce with law and not to impose fine without the authority of law.

(iii) that any other appropriate order or direction which this Hon'ble Court may deem fit in the circumstances of the case be issued.

(iv) that requirement of issuance of prior notices to the respondents and filing of certified copies of the annexures with the writ petitions be waived. Photo copies of annexures P-1 and P-2 may be allowed.

(v) that an interim order restraining the respondent from impounding the bus of the petitioner be issued and any other interim order which this Hon'ble Court may deem fit, may also be passed."

(2) Keeping in view the above averments in the petition, the Court has passed the following order on 12th October, 1994 :—

"Present : Mr. S. S. Dahiya, Advocate. Notice of motion to the respondents for 16th November, 1994. To come up alongwith C.W.P. No. 11610 of 1994 on the date already fixed in that petition. Interim directions are issued in the same terms as in the aforesaid writ petition.

The 12th October, 1994.

(Sd.) . . .
S. S. Grewal.
A. S. Nehra.
Judges

(3) The order passed by the Division Bench of the Court in the above referred civil writ petition No. 11610 of 1994 reads as under :—

> "Notice of motion to the respondents. Notice of motion has been accepted by Mr. P. S. Kadian, Deputy Advocate General, Haryana on behalf of the respondents, who may file reply to the same on September 5, 1994.
>
> Meanwhile the respondents are directed not to impound the bus of the petitioner."

(4) These interim orders continued even after the respondents had put in appearance and these writ petitions are still pending before the concerned Bench. On these facts, the grievance of the petitioner in the present petition under Section 12 of the Contempt of Courts Act, 1971 is that respondents No. 1 to 3 have violated the direction of this Court intentionally and wilfully. According to the petitioner, the respondents especially respondents No. 2 and 3 out of malice and in prejudicial manner forcibly impounded bus No. RNK 25 belonging to the petitioner on two occasions i.e. on 21th November, 1995 and 24th November, 1995 in utter violation and disobedience of the order of the Court. According to the petitioner the order was served by the High Court on the respondents. Consequently they had put in appearance in the writ petitions and particularly they were actually shown the copy of the order on both the occasions, but in spite of the order being shown to these respondents, the respondents torn the copy of injunction (order shown to them) and stated that they do not care for the orders of the High Court. Consequently the petitioner was helpless spectator in spite of the injunction order in his favour, to his bus being impounded. The petitioner was able to get the vehicles released with great difficulties and after paying Rs. 4,000 which was imposed as fine/penalty by the respondents for two days' impounding of vehicle. The copies of challans impounding the vehicles are annexed to the petition as Annexure P-1 and P-2, while the receipts of fine imposed instantly on the same very day are annexured to this petition as Annexures P-4 and P-5 respectively. This harassment of the petitioner was obviously in addition to physical harassment, he and his passangers have to undergo as well as financial loss that the petitioner has incurred. *Vide* order dated 4th December, 1995, this Court issued notice to show cause as to why contempt proceedings be not initiated against them returnable on 26th February, 1996. However, respondent No. 1 has appeared in person and even filed an affidavit to show that he had

relinquished the charge of his post in October, 1995 while admittedly the bus was impouned in November, 1995 much after he had relinquished the charge of his post as secretary State Transport Controller, Haryana. This fact was not disputed by the learned counsel for the petitioner and in fact he conceded that respondent No. 1 Mr. Raj Kumar was erroneously impleaded as party. In view of this admitted fact, the name of respondent No. 1 was directed to be deleted from the array of parties in the petition,—*vide* order dated 18th July, 1996. Learned counsel for the petitioner did not implead the present incumbent of the post even till date.

(5) Respondents No. 2 and 3 have filed separate replied in the main petition. The stand of respondent No. 3 in his reply is that he joined the post of General Manager, Haryana Roadways, Hissar on 15th May, 1995. The order of the Court is stated to have never served upon him and thus, there was no question of violation of the order dated 12th October, 1994. All other allegations are denied. Respondent No. 3 Shri Pritam Lal, Transport Sub Inspector in his separate reply submitted that the order of stay granted by the High Court was never served upon them and they were not even served the copy of the order on 21st/24th November, 1995. This respondent admits that the vehicles were impounded and fine/penalty of Rs. 2,000 was imposed and the vehicles were released thereafter.

(6) According to this respondent, in fact, there is no denial of this event even by respondent No. 2. According to these respondents, they had impounded the buses for committing various violations and admittedly also for running the bus on the route in question without permit of Haryana. The following paragraph in the reply of respondent No. 3 needs to be reproduced at this stage :—

> "That in reply to para No. 3 of the petition it is submitted that on 21st November, 1995 at 12.20 P.M. the bus No. RNK-25 of the petitioner was checked at bus stand Hisar and same was impounded carrying 50 passengers on hire from Rajgarh to Hisar without registration Certificate, without route permit of Haryana. At that time the driver of the bus could not produce stay order passed by this Hon'ble High Court. The office of the petitioner is just opposite the bus stand Hisar and the driver of the bus called the petitioner at the spot and the petitioner also could not produce any of the documents mentioned above and stay order granted by this Hon'ble Court. In

these circumstances the bus in question was impounded under Section 207 of the Motor Vehicle Act, 1988. The petitioner on the same day compounded the offence mentioned in challan before the Secretary, Regional Transport Authority, Hisar and paid Rs. 2,000. Thereafter the bus in question of the petitioner released on the same day."

(7) In the rejoinder filed on behalf of the petitioner, it has been averred that the order of stay was sent by the Assistant Registrar (Rule) for immediate compliance in October, 1994 itself to the respondents, the photostat copy of the order was shown to the respondents on 21st/24th November, 1995 and the allegation that the stay order was not produced, is factually incorrect and *mala fide* act on the part of the respondents.

(8) The facts emerging from the record before this Court thus indicate not only the intention on the part of the respondents No. 2 and 3 to violate the orders of the Court, but in fact show trend of actual wilful and intentional act on the part of these respondents to disobey or circumvent the order passed by the Court. Repiles filed on behalf of the respondents are not only vague, but to some extent even support the case of the petitioner. This fact cannot be disputed that there were number of writ petitions involving the same questions and stay orders had been granted by the Division Bench of the Court even in connected matters. The defence put forward by the respondents that the copy of the order was not served upon them, is not worthy of any trust and cannot be relied upon.

(9) Firstly for the simple reason that the things must be taken to have happened in their normal course with reasonable sense of prudence all should have acted. It is very difficult to believe that a person who has approached the High Court and the Court had passed an order in favour of the party, the party would not take benefit of such orders as would be required in the normal course of business. Considered from any reasonable standard of normal human conduct, the defence put forward by these respondents appears to be not correct. Specially in a trade where every day running of the vehicles is the source of income for the petitioner. he would normally take all steps to ensure the smooth running of his trade especially when he has an order from the Division Bench of the High Court. Even if it is assumed for the sake of arguments that on 21st November, 1995, the petitioner was not having the

copy of stay order, then it is very unlikely that he would not have ensured the production of copy of stay order on 24th November, 1995 especially in view of the fact that he had admittedly paid Rs. 2,000 as penalty on 21st November, 1995 itself. The version of the respondents is that not only the driver of the bus did not have stay order or copy thereof, but even the office of the petitioner which was opposite to bus stand where it was standing, also did not have certified copy of the order or even photo stat copy of the order which could be brought to their notice. According to the petitioner, on 21st November, 1995, the copy of the order was given to these respondents, but they torn the copy of the order and again on 24th November, 1995 Driver Shish Pal had given photostat copy of the order which was ignored by the respondents while saying that they would not care for the order of the Court. The petitioner has annexed to the petition Annexure P-6, letter addressed by the Assistant Registrar (writ) of this Court dated 14th October, 1994 to the State Transport Commissioner, Haryana, Chandigarh as well as to the Secretary, Regional Transport Authority, Hisar who is respondent No. 2 now annexing the copy of interim order passed in favour of the petitioner. The relevant part of Annexure P-6 reads as under :—

> "I am directed to forward herewith for immediate compliance a copy of the order dated 12th October, 1994 passed by this Court in the noted case. Together with a copy of order dated 25th August, 1994 passed in the CWP 11610 of 1994."

Thus all the respondents and specially respondent No. 2 in the present case were expected to comply with the order of the Court and direct all concerned subordinate not to impound the vehicles of of the petitioner for default of road permit. No explanation has been tendered by the respondents in this regard. These allegations of the petitioner in the rejoinder have been denied again for want of receipt of the order. Respondent No. 3 admittedly joined his duty on 5th September, 1995 and both the occurrences in question are subsequent to the period of his joining the duty. It may also be relevant to mention here that the learned counsel for the respondent in the writ petition had put in appearance for the first time on 19th December, 1994 and reply in the writ petition was also filed on 10th February, 1995. In these circumstances it is difficult to believe that concerned officer who was to regulate the permit of the route in question would not be even aware of the proceedings and the orders passed by the Court in the writ petition.

(10) The cumulative effect of above facts and necessary inevitable inference from the conduct of the respondents and even from the reply filed before this Court by them, is that there was intentional and wilful violation of the orders of the Court by these respondents.

(11) The Division Bench of this Court in the case of *Court on its own motion* v. *N. S. Kanwar* (1) has held as under :—

> "From the above quoted dictionary meaning of the term 'wilful' and the decisions of the Courts, it is reasonable to derive that term 'wilful' 'disobedience' used in section 2(b) of the Contempt of Courts Act, 1971 cannot be construed to mean that an act must in all cases be designed and deliberate to be held as Civil Contempt. If a party who is fully in know of the order of the Court or is conscious and aware of the consequences and implications of the Court's order, ignores it or acts in violation of the Court's order, it must be held that disobedience is wilful. In our view ordinarily it is never practicable to prove the actual intention behind the act or omission. A Court can approach the question only objectively and it may presume the intention from the act done as every man is presumed to intend the probable consequence of his act."

(12) Respondents No. 2 and 3 are Government employees and are expected to discharge their duties in a fair and disciplined manner. They act in furtherance to certain statutory provisions and none of their Act should be one outside their jurisdiction and never with the intention to circumvent the order of the Court. There is an inbuilt obligation attached to their duty that they must act in accordance with law, rules and comply the orders of the Court. They cannot and must not be instrumental in violating such orders and then try to justify their conduct for such violation on flimsy grounds. At this stage I consider it appropriate to refer to the observations of Edmund Daview, L.J. which reads as under :—

> ".....and if indeed it be the case that she has to go unpunished for her contumacy, justice vanishes over the horizon and the law is brought into disrupte."

(13) It is true that onus to prove violation of the orders of the Court initially lies on the petitioner who approaches the Court but

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(1) 1995 (1) Recent C.R. 201.

once this primary burden is discharged to the satisfaction of the Court, then it is for the respondents to show and prove to the contrary. Admittedly the nature of duties of these respondents are to check the buses and if necessary impound them for violation of various provisions of the Motor Vehicles Act and other regulations made by the competent authorities. Both the petitioner and the respondents would not only be familiar with day to day functioning of each other but would be fully aware of the same. The order of stay granted by the High Court in the normal course of the duties of the respondents ought to have come to their notice and in any case I have no doubt in my mind that this was actually brought to their notice on the relevant dates. It is even strange to imagine that for a period of more than one year the respondents would not be aware of the orders of the Court when the bus was being admittedly plied on the same route.

(14) The conduct and the defence raised by the respondents is primarily intended to obstruct the adminsitration of justice by pleading ignorance of the orders of the Court. The law ought not to tolerate such indignity. In *Jennison* v. *Backer* (1972 All England Reports 997 at page 1006), it was observed as under :—

> "The law should not be seen to sit by limply, while those who defy it go free and those who seek its protection lose hope."

(15) Learned counsel appearing for both these respondents then argued that these respondents had challenged the petitioner's bus in question not for violation of route permit but in fact for a number of other offences, which they have committed under the provisions of Motor Vehicle Act. They had impounded the buses while exercising the powers under Section 207 of the Motor Vehicles Act (hereinafter referred to as the Act) for other violations.

(16) This contention on behalf of the respondents is again misleading. It is true that the challan forms Annexures P/1 and P/2 annexed to the petition show that the bus of the petitioner was impounded for other offences but more true is that the bus of the petitioner was impounded for plying the same "without route permit Haryana". This violation by the petitioner has been specifically indicated in the challan forms and penalty imposed for such violation. This attitude of the respondents in showing their highhandedness in face of the order of the Division Bench sufficiently indicates their intentional and wilful violation of the orders of the Court. The action of the respondents certainly has interferred with the administration of justice and clear intention on the part of the respondents

not to care for the orders passed by the Division Bench of this Court. In Annexure P/2, the name of the Driver has been specifically recorded, while in Annexure P/1, the name of the owner was recorded who was driving the vehicle himself and it has been averred by the petitioner that at that time he possessed the copy of stay order and had actually shown the same to these respondents. To some extent intentional, wilful, violation of the order of the Court and its knowledge has to be gathered from the attending circumstances. Such attending circumstances in the present case are certainly overwhelming and there is no reason for the Court to disbelieve the case put forward by the petitioner. As such, I am not inclined to accept the contention of the learned counsel appearing for these respondents. They in the garb of exercise of powers under Section 207 of the Act for other alleged violations, the respondents could't frustrate or render the order passed by the Division Bench as ineffective. There is clear and apparent, intentional and wilful violation by respondents No. 2 and 3 upon the order passed by the Division Bench of this Court dated 12th October, 1994. This brings me to consider the usual last paragraph of the affidavit, the relevant portion of which reads as under :—

> "There is no disrespect of this regard on the part of deponent. Still the Hon'ble High Court at any stage find that there is any violation of the order of Hon'ble High Court on the part of deponent than deponent tendered unqualified and unconditional apology."

I have no doubt in holding that the tendering of this apology is purposeless and is not sincere regret of the default of the respondents in any manner whatsoever. The above facts and the conduct of the respondents even before this Court in justifying the violation of the orders of the Court by them, leaves no doubt in my mind that the apology tendered did not show that they were penitent and the apology was't mere expedient to assuage the Court. As such the apology tendered cannot be accepted as it would not at all be sufficient atonement. (*Kuldeep Rastogi* v. *Vishwanath* (2).

(17) The Supreme Court in the case of *M. Y. Shareef and another* v. *The Hon'ble Judges of the High Court of Nagpur and others* (3), observed as under :—

> "With regard to apology in proceedings for contempt of Court, it is well settled that an apology is not a weapon of defence

(2) A.I.R. 1979 Delhi 202.
(3) 1955 (1) S.C.R. 757.

> to purge the guilty of their offence; nor is it intended to operate as a universal panacea, but it is intended to be evidence of real contriteness".

(18) The Court while exercising powers under the provisions of this Act has to derive a balance between magnanimity and majesty of justice. Whenever the situation so demands, the justice may show its magnanimity but not at the cost of majesty of justice. In other words it must always tilt in favour of majesty of justice and administration of justice rather than leaving tne contemners unpunished and opening a protected filed for reoccurrence of such violations of orders of Court. In the present case the respondents have all through justified their conduct, but when they found the attitude of the Court not favourable to their stand, they turned back to offer an apology. The meaning of true apology was described by Shri Jaspal Singh, J. in the case of *Court of its own motion* v. *B. D. Kaushik and others* (4), (Full Court), in the following manner :—

> "Apology is a speech of the heart. Remorse is its seed. It is nourished by atonement and sustained by some spiritual essence. It is a state of grace. Was it then, an apology ? The sequence of events and the proceedings lay bare the truth. And the truth is that it was not an apology but a farce. It stemmed not from the heart but from the teeth."

(19) It is equally settled principle of law that the justification and apology cannot go hand in hand as they are two things which are incompatible. The apology can never be offered as a defence. It presumes guilt and prays for purging a contempt on offering of a sincere trueful apology being sincere regret and intent to the atonement of guilt. Thus, on the one hand the respondents have denied knowledge of the order for all this long period and pleaded and justified innocence, and on the other hand, this meaningless apology is being offered. The entire conduct of the respondents demonstrates clearly intentional and wilful violation of the order dated 12th October, 1994 passed by the Division Bench of this Court. Further, it has clearly interferred with the administration of justice.

(20) In our system the primary consideration of the Court is proper administration of justice. This august institution is the

(4) 1991 (4) Delhi Lawyer 316 at page 341.

foundation of democracy in our country. Interference in the administration of justice with the intention to undermine its prestige glory and causing interference with the orders of the Court unprovoked and with intention and wilful disrespect could hardly be overlooked by the Courts. The power exists to ensure that justice shall be done. The public at large no less than an individual litigent have interest and a very real interest in justice being effectively administered. Unless it is so administered the rights and indeed the liberty of individual will perish. (Salmon L.J. in *Jennison* v. *Baker* (5).

(21) For the reasons aforestated I am of the firm view that respondents No. 2 and 3 have intentionally and wilfully violated the orders of the Division Bench dated 12th October, 1994. Consequently I direct these respondents to undergo civil imprisonment for a period of 15 days and to pay a fine of Rs. 1,000 each. The contempt petition is accordingly allowed.

R.N.R.

Before Hon'ble P. K. Jain, J.

JIWNI AND OTHERS,—*Petitioners*

versus

STATE OF HARYANA AND OTHERS,—*Respondents.*

Crl. M. No. 7505-M of 1995

20th September, 1996

Indian Penal Code, 1860—Ss. 323, 406, 498-A & 506—Code of Criminal Procedure, 1973—Ss. 181, 184, 220 & 223—Offence of criminal breach of trust—Place of trial—Offences triable together—Jurisdiction of Court.

Held, that all crime is local and that proper and ordinary venue for the trial of the crime is the area of jurisdiction in which, on evidence, the facts occurred and are alleged to constitute the crime. However, there are certain exceptions to this General Rule. An offence of criminal breach of trust can be inquired into and tried by

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(5) (1972) 1 All E.R. 997.