

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C.P.No.D-2633 of 2019

Date Order with signature of Judge

Present

Mr. Justice Aqeel Ahmed Abbasi
Mr. Justice Abdul Mobeen Lakho

Priority

1. For orders on CMA No.12805/2022
2. For orders on CMA No.10124/2022
3. For hearing of CMA No.11742/2019
4. For hearing of main case.

16-05-2022

Mr. Ghulam Rasool Korai, Advocate for the
Petitioner.

Mr. Jawad Dero, A.A.G.

1. Learned counsel for the petitioner seeks urgency on the ground that the order passed by this court on 24.06.2019 has not being complied with by the alleged contemnors, therefore, the petitioner has filed CMA No.10124/2022 under Article 204 of the Constitution read with Section 3 and 4 of the Contempt of Court Ordinance, 2003 against the alleged contemnors. Urgency granted.

2. Through listed application filed under Article 204 of the Constitution read with Section 3 and 4 of the Contempt of Court Ordinance, 2003, the petitioner has named four persons namely, (i) Akhter Ali Sheikh, Municipal Commissioner, KMC, (ii) Mushtaq Ahmed Mahar, I.G. Sindh, (iii) Syed Moonis Alvi, CEO, K-Electric and (iv) Asif Inam, EVP, PTCL as alleged contemnors for having violated the Court's order dated 25.02.2021, however, record shows that no order has been passed by this Court on 25.02.2021 in the instant petition, whereas, an order was passed by this Court on 24.06.2019 in the following terms:-

“ Learned A.A.G. present in Court requests for time to seek instructions and to file comments. Let comments on behalf of all the Respondents, if any, shall be filed before the next date of hearing with advance copy to the learned counsel for the Petitioner. In the meanwhile, official Respondents are directed to ensure that no one shall be allowed to erect illegal barriers on the public roads or thoroughfare and/or to erect mobile dhabas or cabins in violation of law and permission by competent authority in accordance with law.”

From perusal of the contents of instant petition and the reliefs sought therein, it appears that the petitioner has made a prayer with multiple reliefs, including directions to Karachi Police and KMC to remove illegal barriers, dhabas, shops, cabins etc. and not to allow unauthorized and illegal parking in the Red Zone, particularly on Beaumont road and Brunton road. In the instant petition, Province of Sindh, Inspector General of Police and KMC have been shown as respondents, whereas, on 24.06.2019 an order was passed by this Court while issuing directions to the official respondents in above terms. However, it appears that in the listed application it has not been pointed out as to how, the order passed by this Court has been violated by the alleged Contemnors, who were not arrayed as party in the petition on the one hand, nor any specific directions were issued to alleged

contemnors No.3 & 4, who are not even party in the instant petition. It appears that petitioner, after a lapse of two years from the date of above order, in order to pressurize public functionaries including Municipal Commissioner (KMC) and I.G.P. Sindh as well as to CEO, K-Electric and EVP, PTCL, has mentioned their names as alleged contemnors, however, without pointing out any violation of Court's order as referred to hereinabove, whereas, it has been allegedly that above order has not been complied with by all the four alleged contemnors, who are not even party to the proceedings. Since the reply/comments on behalf of the official respondents have not been filed so far, therefore, allegations of violation of Court's order, if any, otherwise need to be verified, therefore, unless, violation of Court's order is established or prima-facie reflects from the record, filing of contempt application is pre-mature under the facts and circumstances of instant petition.

We may observe that contempt of Court proceedings, being criminal in nature, cannot be initiated in a casual manner unless there are cogent reasons, and material available on record to support the allegations against the alleged contemnors, therefore, on mere allegations, requiring the Court to probe into the alleged violations and to make out a case of contempt, initiation of the contempt of Court proceedings, would amount to abuse of the process of law. In the instant case, except

directions as contained in order dated 24.06.2019 there seems no order or directions of this Court to alleged contemnors to the effect as detailed in the contempt application, whereas, official respondents were directed to ensure that no one shall be allowed to erect illegal barriers on the public roads or thoroughfare and/or to erect mobile dhabas or cabins in violation of law and permission by competent authority in accordance with law. Thereafter, petitioner did not pursue the matter, which has been fixed in Court after a lapse of three years from the date of order dated 24.06.2019, however, petitioner has not placed on record any material or report, which may reflect that current position of the alleged encroachment etc. on the subject roads/area. In the absence of such particulars, nominating the aforesaid persons by name to be dragged in contempt of Court proceedings cannot be approved, as it would amount to abuse of the process of law at one hand, and would place a clog on the reputation and service of public functionaries and the professional career of Chief Executives of private companies/organisations.

While confronted with hereinabove position, and asked to point out any specific violation of Court's directions by the allege contemnors, learned counsel for the petitioner could not submit reasonable explanation, and submits that petitioner will not press the contempt application (CMA No.10124/2022), provided directions

may be issued to the official respondents, particularly to the officials of KMC to remove encroachment i.e. illegal barriers, shops/dhabas from the subject roads, and Police may be directed to not allow illegal parking on the subject roads/area. Accordingly, the contempt application (CMA No.10124/2022) is dismissed as not pressed.

However, respondents are directed to ensure that order already passed by this Court on 24.06.2019 shall be complied with and the report may be submitted in Court on the next date of hearing. Learned A.A.G. present in Court is also directed to intimate Court's order to the concerned officials and to seek instructions regarding compliance of order passed by this Court on 24.06.2019 and to submit report before the next date of hearing.

(3&4) Adjourned to be fixed soon after summer vacations.

Judge

Judge