
Before V.K. Bali and B. Rai, JJ.

M.M. SHARMA,—Appellant

versus

DILAWAR SINGH,—Respondent

C.A.C.P. No. 20 of 1998

20th January, 1999

Contempt of Courts Act, 1971—Ss. 10 and 19.1—High Courts Rules and Orders, Chapter 12 Part B of Volume 4—Rls. 9 and 10—Addl. District Judge, Rewari convicted by learned Single Judge under the Contempt of Courts Act for violating a stay order passed by District Judge, Narnaul—Appeal against conviction—Order of suspension from service passed against the plaintiff stayed by Trial Court and in appeal ADJ staying operation of order of Trial Court on the day when transfer application preferred by the plaintiff for transferring the case from the Board of ADJ also pending and heard—District Judge staying proceedings before the ADJ—Factum of knowledge of passing of stay order not established nor therefore, disobedience thereof—Plaintiff's application and affidavit in support containing interlineations not initialled before the Oath Commissioner by which interlineations plaintiff seeking to show that ADJ had knowledge of stay order communicated in writing—Contempt requires to be established beyond reasonable doubt—Plaintiff's plea not found tenable—Order of conviction set aside.

Held, that the appellant did not have knowledge of the stay granted by the superior court i.e. the Court of District Judge, Narnaul and the possibility of respondent having added the words "and proceedings stayed" later in point of time, i.e. when the appellant had already passed the interim order, cannot be ruled out. In the circumstances we are of the opinion that the appellant did not have the knowledge of the order passed by the superior court and did not intentionally disobey the same. In any case, it is very very doubtful that he had such a knowledge. No doubt, it is true that no Judicial Officer should be interested in hearing any particular case, as has also been observed by the learned Single

Judge, but it is also equally true that no Judicial Officer should be afraid of hearing and deciding any case.

(Para 24)

R.S. Cheema, Sr. Advocate with R.S. Sihota, Advocate *for the Appellant*.

Vijay Jindal Advocate *for the Respondent*.

JUDGMENT

V. K. Bali, J.

(1) This appeal arises from an order dated 2nd December, 1998, passed by learned Single Judge of this Court, holding the appellant—M.M. Sharma, an Additional District Judge, posted at Rewari, in the State of Haryana, guilty of contempt having violated an order of superior court and punishing him so as to pay a fine of Rs. 1,000.

(2) On several issues, both on law and fact, Mr. Cheema, learned counsel for the appellant, pleads for setting aside of order passed by learned Single Judge. Mr. Vijay Jindal, learned counsel for respondent-Dilawar Singh, however, joins issues with Mr. Cheema on all the questions, be of law or fact and obviously pleads for dismissal of this appeal. Before, however, the contentions raised by learned counsel are taken into consideration and commented upon, it will be useful to give backdrop of the events culminating into filing of the contempt petition by the respondent, which has resulted into conviction and sentence of the appellant, even though the facts have been given in details by learned Single Judge.

(3) Dilawar Singh, who, we were informed during the course of hearing and as is recorded in our interim order dated 14th December, 1998 as also his counter affidavit dated 4th September, 1998, was a lawyer at one time and even remained Vice-President of Bar Association, Panipat. However, at the relevant time, he was holding the post of Assistant Food and Supplies Officer in the State of Haryana. For some acts of indiscipline, with which we are not concerned at all, he was placed under suspension on 31st December, 1997. He challenged the order aforesaid by way of civil suit which came to be filed on 6th January, 1998. During the currency of the suit, he maintained an application for ad-interim injunction directing the respondent-State so as not to implement the order of suspension.

The Civil Court, before whom the matter with regard to grant of stay, came up for hearing, restrained the State from implementing the impugned order of suspension. The said order, as is clear from the impugned judgment passed by learned Single Judge, was passed without hearing the State. Against this *ex parte* order, the department preferred an appeal in the Court of Additional District Judge, Rewari, which came up for hearing before the appellant. *Vide* order dated 9th February, 1998, the appellant allowed the said appeal and set aside the *ex parte* order of injunction. Aggrieved by the aforesaid order, respondent filed a Civil Revision in this Court which was disposed of on 16th March, 1998, with a direction to the Trial Court to dispose of the application for stay within two weeks of the date of receipt of order, without being influenced by any observation made by the appellant in his order dated 9th February, 1998. In this second bout of litigation regarding grant or refusal of the injunction, the learned trial court once again granted injunction to the respondent *vide* order dated 16th May, 1998, this time, after hearing both the sides. Constrained, the State filed an appeal in the Court of Additional District Judge, Rewari, which as the things would have it once again came up for hearing before the appellant. Dilawar Singh, who was naturally respondent in the said appeal, had filed caveat through his counsel Shri N.S. Sachdeva, Advocate. It is the case of respondent that he had also filed an application through his counsel for transfer of the appeal pending before the appellant to some other court of competent jurisdiction primarily on the ground that the appellant had already expressed his view while earlier allowing the appeal of the State on 9th February, 1998 against which he had preferred a revision in this Court, with the result, already mentioned. It has further been his case that the transfer application aforesaid came up for hearing before the District Judge, Narnaul on 27th May, 1998, who in turn, issued notice for 4th June, 1998 to the State of Haryana and stayed further proceedings before the Additional District Judge, i.e. the appellant herein. It is further the case of respondent that despite the fact that the appellant was informed not only of pendency of the transfer application before the District Judge, Narnaul and the date fixed therein, but also that further proceedings in the said appeal pending before the appellant have since been stayed, the appellant still proceeded with the matter and granted stay to the State. It is this order of the District Judge, Narnaul that is said to have been deliberately violated by the appellant. Gravamen of the charge levelled by the respondent is, thus, intentional violation of order dated 27th May, 1998 passed by the District Judge, Narnaul.

(4) Pursuant to notice issued by the learned Single Judge, appellant entered defence and while practically admitting all the facts, as have been stated above, however, vehemently denied knowledge of stay granted by the learned District Judge, Narnaul on 27th May, 1998 either orally or in writing. The crucial point that, thus, came to be focused for determination by the learned Single Judge or before us was and continues to be as to whether the appellant was informed in writing, as is the case of the respondent, that District Judge, Narnaul,—*vide* his order dated 27th May, 1998, had stayed proceedings in an appeal preferred by the State which was admittedly pending and listed for hearing before the appellant on the same date, i.e. 27th May, 1998. Before we may, however, notice the rival contentions of learned counsel for the parties, on the crucial factual issue, referred to above, it would be appropriate to state that be it a criminal or civil contempt, the allegations constituting contempt have to be proved similarly as a criminal charge has to be proved. Unless and until, therefore, a finding is recorded that the allegations made by an aggrieved party are proved beyond shadow of reasonable doubt, no order of conviction can be recorded in a contempt matter. Further, when the contempt is alleged against a judicial office, and arises from the orders passed by him in judicial proceedings pending before him, it further becomes relevant to see if the concerned judicial officer had some intention to deliberately flout the order passed by the superior court.

(5) In *S.S. Roy v. State of Orissa* (1) Supreme Court, while dealing with a case of a Magistrate 1st Class, who, by misconceiving his powers, exercised a jurisdiction not vested in him by law and without any justifying circumstances, made an order under Section 144 Cr. P.C.,—*vide* which a civil Court peon was restrained from executing a warrant of arrest issued by an Additional Munsif in connection with the execution of a money decree, held that the Magistrate was not influenced by any extraneous consideration or dishonest motive in making the order. It was further held “the Magistrate could not be found guilty of contempt of the court of Additional Munsif because there was nothing to suggest any wilful culpability on his part. Brief facts of the case reveal that the Magistrate was found guilty of contempt by the High Court by reason of his having made an order under Section 144 of the

(1) A.I.R. 1960 S.C. 190

Criminal Procedure Code, by which a civil court peon was restrained from executing a warrant of arrest issued by an Additional Munsif in connection with the execution of a money decree. The High Court held that in purporting to make the order under Section 144 Cr. P.C., the Magistrate misconceived his powers and did exercise a jurisdiction not vested in him by law and that no circumstances existed which would justify the Magistrate in passing an order of that nature under Section 144 Cr. P.C. However, by so holding, the High Court also held that the Magistrate was not influenced by any extraneous consideration or dishonest motive in making the order. While relying upon a *Privy Council Judgment in Barton v. Field*, (2) it was held that the error must be a wilful error proceeding from improper or corrupt motives in order that he may be punished for contempt of Court. It was further held that on the facts, the Magistrate could certainly be said to have acted without proper care and caution but there is nothing on the record to suggest any wilful culpability on his part. Even though, in the ultimate analysis, Supreme Court stated that it did not by any means approve the conduct of the Magistrate but there was no justification for proceeding in contempt against him. In *B.K. Kar v. Hon'ble the Chief Justice and Another* (3), it was observed that "before a subordinate court can be found guilty of disobeying the order of the superior court and thus to have committed contempt of court, it is necessary to show that the disobedience was intentional. There is no room for inferring an intention to disobey an order unless the person charged had knowledge of the order". It was further held that "the knowledge must be obtained from a source which is either authorised or otherwise authentic and it could not be laid down as a law that every telegram (about the order of the superior court) purporting to be signed by an advocate or a pleader is per se guarantee of the truth of the facts stated therein and also of the fact that it was actually sent by the person whose name it bears. In order to assure the subordinate court about these matters an affidavit from the party would be necessary."

(6) The other proposition that has since been well settled by now is that if the allegation of a person be that the person facing charge of contempt had knowledge of the order, the one, who asserts that a person had knowledge of the order must prove this fact beyond

(2) (1843) 4 Moo P.C.C. 273

(3) A.I.R. 1961 S.C. 1367

all reasonable doubt. If there is any doubt, the benefit ought to be given to the person charged with contempt of court. This was so held in *Bhunn Prasad and others v. The State of UP and Another* (4).

(7) Having analysed the principles on which the crucial question needs determination, time is now ripe to assess the evidence suggesting authentic knowledge of the stay order passed by the superior court, by the appellant herein. Whereas, it is the positive case of the respondent that he had informed the factum of stay to the appellant in writing while making an application in that behalf supported by an affidavit, equally positive case of the appellant is that insofar as words "and proceedings stayed" are concerned, the same have been added later in the application and affidavit. The learned Single Judge, we may mention at this stage itself, has believed the version of the respondent primarily on the ground that if the date of proceedings in a transfer application filed by the respondent, before the District Judge, Narnaul, was known to him and was informed in writing to the appellant herein, there could be reason with him to have not informed about the stay which was more material part of the order passed by the District Judge, Narnaul on 27th May, 1998. The whole case appears to have been decided on the basis of what we have stated above.

(8) The first document that deals with the issue in hand is the application supported by an affidavit of respondent Dilawar Singh. With a view to appreciate the controversy, it will be appropriate to reproduce the application and affidavit in extenso. We are firstly reproducing the application and affidavit as they were typed and thereafter mentioning the words which have been added with hand. The application and affidavit read as follows :—

In the court of Shri M.M. Sharma, Additional District Judge, Rewari.

STATE OF HARYANA AND OTHERS

versus

DILAWAR SINGH

Subject : *Stay of proceedings:*

Sir,

The applicant wants to submit as under :—

That the applicant has already moved the court of learned District Judge, Narnaul for transfer of the present appeal

(4) A.I.R. 1963 S.C. 1348.

pending in this Court, to some other Court of competent jurisdiction. It is, therefore, requested that the proceedings in this appeal may kindly be stayed till the decision of the transfer application.

Place : Rewari

Applicant

Dated 27th May, 1998.

(Sd/)... ,

(Dilawar Singh)
A.F.S.O. Rewari.

AFFIDAVIT

In the Court of Shri M.M. Sharma, Additional District Judge,
Rewari

STATE OF HARYANA AND OTHERS

versus

DILAWAR SINGH

AFFIDAVIT

I, Dilawar Singh, Assistant Food and Supplies Officer, Rewari, do hereby solemnly affirm and declare as under :-

1. That the appeal, titled as above, is pending in this Hon'ble Court.
2. That the applicant has already moved the court of learned District Judge, Narnaul for transfer of the present appeal pending in this Court, to some other court of competent jurisdiction.

Sd/- Deponent.

Verification :

Verified that the contents of above paras are true to the best of my knowledge and belief. Nothing has been concealed therein. Verified at Rewari on 27th May, 1998.

Dated 27th May, 1998.

Sd/-

Deponent.

(9) The words which have been added in hand after the word "Narnaul" in second line of un-numbered para 2 of the application and numbered para 2 of the affidavit, read thus :—

"Pending for 4th June, 1998 and proceedings stayed."

(10) It may further be mentioned that the words "pending for 4th June, 1998" were written at one time whereas the words "and proceedings stayed" were written at an other time. In other words, "pending for 4th June, 1998" and "proceedings stayed" were not written at one and the same time. It may also be noticed here that whereas after the words "pending for 4th June, 1998", respondent had put his initials and once he had initialled, the words "and proceedings stayed" were later mentioned. It is again proved on records that on his initials after the words pending for 4th June, 1998", the word "and", before the words "proceedings stayed" has been over-written on the initials appended by the respondent. The learned Single Judge while dealing with this issue, observed as follows :—

In my opinion, he (respondent herein) added the words "and proceedings stayed" at the time of filing the application. No doubt, there is some over-writing on the initials which he put after the words "pending for 4th June, 1998" but this could have been done at the time of filing the application. The petitioner has further given a satisfactory explanation. He first thought that he would add a separate line regarding the stay order but after putting his initials he changed his mind and added the words "and proceedings stayed". There is nothing unnatural about it. Moreover, the petitioner through his counsel produced in court at the time of arguments a certified copy of the application as also of his affidavit which he filed in the Court on 27th May, 1998. The certified copies were applied for and obtained on 27th May, 1998 itself. The fact thus indicates that the tampering, if any, could not have taken place after 27th May, 1998. (Emphasis supplied).

(11) We would deal with these findings of the learned Single Judge in the context of the contentions raised by learned counsel for the appellant but reverting to the stage of filing of application and affidavit of respondent Dilawar Singh, we are of the view that the words added in hand are at a place that the sentence does not

make a proper sense. The sentence after adding the words after the word "Narnaul", would read as follows :—

"That the applicant has already moved the court of learned District Judge, Narnaul, pending for 4th June, 1998 and proceedings stayed, for transfer of the present appeal pending in this Court, to some other court of competent jurisdiction."

(12) To make a proper sense of the added words, normally, these words should have been added at the end of the para where there was also sufficient space to do the respondent to have mentioned that the proceedings have been stayed after the word "Narnaul" and then to state that the next date fixed in the case was 4th June, 1998 and not *vice-versa* as in the case. We make the same comments with regard to the affidavit leaving additional comments thereon to be mentioned in the forgoing paras, as argued by learned counsel for the appellant. We are convinced that the words "and proceedings stayed" were not written at a time when the words "pending for 4th June, 1998" were written in hand for the additional reason that the words "pending for 4th June, 1998" even though in the same ink, are thinner than the words "and proceedings stayed". There is yet another reason to hold the words "and proceedings stayed" were written later than the words "pending for 4th June, 1998" and the same is that if all these words were written at the same time, respondent would have initialled at the end and not twice over, i.e. one after the words "pending for 4th June, 1998" secondly after the words "and proceedings stayed". We have seen the application and affidavit in original as also their enlarged photo copies with the help of magnifying glass and are of the view that the word "and" has been over-written on the initials of respondent. Dilawar Singh. It will be now appropriate to deal with the findings recorded by the learned Single Judge, as have been extracted above.

(13) In the first portion of the findings, as extracted above, learned Single Judge, held that in my opinion, he added the words "and proceedings stayed" at the time of filing the application and that even though there was over-writing on the initials which he put after the words "pending for 4th June, 1998" but this **could** have been done at the time of filing the application. (Emphasis supplied). In the later part of the portion, extracted above, learned Single Judge, mentioned that Dilawar Singh had furnished a satisfactory explanation. He first thought that he would add a separate line regarding the stay order but after putting his initials

he changed his mind and added the words "and proceedings stayed" and that there was nothing unnatural about the same. We find that such is not the case projected in the contempt petition and that such explanation came for the first time in counter affidavit to written statement of appellant with utmost respect to the learned Single Judge, we are of the view that there are some contradictions in the findings, as mentioned above. Either the respondent Dilawar Singh had written all the words, as mentioned in the application and affidavit in hand, at the same time or he had mentioned the words "pending for 4th June, 1998" and "and proceeding stayed" on two different occasions. If he had written all these words in one go, there was no question for him to have explained the over-writing on his initials after the words "pending for 4th June, 1998". Assuming, the findings of the learned Single Judge, as extracted above, can be read to mean that immediately after he had initialled after the words "pending for 4th June, 1998", words "and proceedings stayed" were mentioned, then, in that case, the findings fall in the area of possibilities and not by way of a definite conclusion. We only hasten to add that if it was possible for Dilawar Singh to have mentioned the words "and proceedings stayed" immediately after he had written words "pending for 4th June, 1998", there could also be possibility that the words "and proceedings stayed" were added later on, as in the case of the appellant. The matter does not rest here as we find intrinsic evidence coming from the records of the case which would strengthen our view that the words "and proceedings stayed" were added later on. It is at this stage that it is relevant to mention that there is no allegation whatsoever against the appellant that he had any personal interest in the matter. It is also not the case of respondent Dilawar Singh that the State had influenced the appellant nor is it his case that the officer has acted *mala-fide* or is an officer of unnatural gusto. No allegations of *mala-fide* or that the officer is otherwise rude, having been made by the respondent apart, we, as a matter of abundant caution, sent for the confidential records of this officer. All through his judicial career, which spans over a period of 18 years, the appellant by the Inspecting Judges of this Court has been described to be a man of integrity. He has not earned even a single adverse report.

(14) All his reports are Good or Very Good and not below that we are quite conscious that depicting his confidential record is neither very necessary nor relevant, except for a limited purpose, i.e., to see as to whether the officer could have any axe to grind or was obdurate or had inherent obstinacy in his nature which could

further show deliberate non-observance of the order passed by the higher court.

(15) Coming now to the additional factors that strengthen our view, as referred to above, let us examine the order passed by the appellants on 27th May, 1998 granting stay to the State. The same reads as follows :—

Present : Shri Dalip Singh, GP for the appellants.

Shri Dilawar Singh, respondent in person.

Notice of this appeal was issued to Shri N.C. Sachdeva, Advocate. He came to me some time back and told me that he was not appearing in this case on behalf of the respondent. Heard. It was prayed by learned Government Pleader for the State that operation of the impugned order of the trial Court be stayed till the final decision of this appeal. An application has been moved before me by Shri Dilawar Singh respondent stating that the proceedings of this appeal be stayed as the transfer application has been filed by him before learned District Judge, Narnaul and that the same has been fixed for 4th June, 1998. An affidavit in support of this application has been filed before me. No order of learned District Judge, Narnaul to show that the proceedings of this case have been stayed by learned District Judge, Narnaul has been produced before me. I have gone through the impugned order passed by the trial Court. The operation of the order of the trial Court dated 16th May, 1998 is stayed till further orders. To come up on 6th June, 1998 for awaiting the order of learned District Judge, Narnaul, if any. LCR be also requisitioned for the date fixed.

Sd/-

ADJ Rewari. 27th May, 1998”

(16) A reading of the order aforesaid would demonstrate that the appellants clearly mentioned therein that an application had been filed before him stating that the proceedings of this appeal be stayed as the transfer application had been filed by Dilawar Singh before the learned District Judge, Narnaul and the same had been fixed for 4th June, 1998. He further mentioned that an affidavit in support of the application had also been filed before him. The order

further mentions that no order of learned District Judge, Narnaul to show that the proceedings of this case have been stayed by the learned District Judge, Narnaul, has been produced before him. It is conceded between learned counsel for the parties and so is also clear from the order itself that Dilawar Singh was present in person when the order aforesaid was passed. There was no question for respondent Dilawar Singh not to have protested in loud voice that he had mentioned in his application and affidavit that proceedings have been stayed by the District Judge, Narnaul, if in fact and reality he had so mentioned in his application and affidavit. The application preferred by the respondent for transferring the appeal from the court of appellant, came up for hearing before the District Judge, Narnaul on 4th June, 1998. The order passed by the learned District Judge, Narnaul, transferring the said appeal from the court of appellant, reads as under :—

“Present : Shri R.P. Saini, Adv. for the appellant.

Shri P.D. Gupta, G.P. for the State.

It is an admitted fact that Shri M.M. Sharma, learned Additional District Judge, Ist Rewari, in this case, has already expressed his opinion while deciding the appeal between the parties on 9th February, 1998. It is also argued by learned counsel for the applicant that inspite of the Caveat application filed by the applicant, learned Additional District Judge Shri M.M. Sharma has granted the stay order to the opposite-party.

2. Without giving any comments on this last aspect of the arguments put-forth on behalf of the applicant and taking into consideration the fact that Shri M.M. Sharma, learned Additional District Judge, Ist Rewari, has already expressed his opinion pertaining to the matter involved in this appeal, this appeal is withdrawn from his court and transferred to the court of Shri R.K. Bishnoi, learned Additional District Judge, IInd Rewari for disposal in accordance with law. Parties to appear before the transferee court on 6th June, 1998. Papers be consigned.

(17) While dealing with the transfer application, learned District Judge observed that it was argued by learned counsel representing Dilawar Singh that despite caveat application having been filed, learned Additional District Judge had granted stay order

to the opposite party. It was not the contention of the counsel representing Dilawar Singh that despite stay granted by the District Judge, Narnaul, appellant-M.M. Sharma had granted stay to the opposite party. The counsel for Dilawar Singh was content to mention the fact of only caveat having been filed.

(18) Reverting now to the affidavit given by respondent Dilawar Singh in support of his application with regard to the transfer application preferred by him having been adjourned to 4th June, 1998 and further ordering stay of proceedings in the matter before the appellant, it would be seen that even though additions made in the affidavit in hand have been initialled by Dilawar Singh but the same were not initialled by the person before whom the affidavit was sworn. Chapter 12 Part B of Volume 4 of the Rules and Orders of the Punjab and Haryana High Court deals with affidavits. The relevant part of Rule 9 thereof reads as follows :—

“9. Contents of affidavits : (i) Every affidavit containing any statement of facts shall be divided into paragraphs and every paragraph shall be numbered consecutively, and, as nearly as may be, shall be confined to a distinct portion of the subject.”

19. Rule 10 which has direct bearing on the facts of the present case, reads as follows :—

“10. Affidavits generally to be confined to facts which are within defendant’s knowledge.—

(i) xx xx xx xx

(ii) All interlineations, alterations or erasures in an affidavit shall be initialled by the person swearing it and the person before whom it is sworn. Such interlineations, alterations and erasures shall be made in such manner as not to obliterate or render it impossible or difficult to read with the original matter. In case such matter has been obliterated so as to make it impossible or difficult to read it, it shall be re-written on the margin and initialled by the person before whom the affidavit is sworn.”

(20) Sub-rule (ii) of Rule 10, reproduced above, would manifest that all interlineations, alterations or erasures have not only to be initialled by the person swearing the affidavit but also

by the person before whom it was sworn. Concededly, the Oath Commissioner, before whom the affidavit was sworn, had not initialled the additions made in hand in the affidavit. This further strengthens the view of the court that when the application and affidavit in support thereof was filed in the Court, it did not contain the words "and proceedings stayed".

(21) Having expressed our view on the crucial factual question as posed above, on the basis of the relevant documents available on records, the findings of the learned Single Judge that in case Dilawar Singh knew and duly intimated the factum of date in his transfer application pending before the District Judge, Narnaul, there was no occasion for him to have either not known or informed the appellant about grant of stay therein, still remains to be commented upon. It may be reiterated that it is on this assumption that Dilawar Singh knew about the date in the transfer application preferred by him and, therefore, must have known that the proceedings have been stayed, that the matter has turned against the appellant, resulting into order of conviction and sentence recorded against him. We would like to mention, with all humility and respect to the learned Single Judge that a fact constituting core of charge of Contempt of Court has to be proved by evidence and not on assumptions. That is the cardinal principle which has to be kept in mind while recording a finding of conviction. We do appreciate that whatever has been observed by the learned Single Judge is relevant but the question that needs determination is as to whether the same is appropriate and satisfies jurisprudential principles of law of contempt. We are of the considered view that the assumption drawn by the learned Single Judge that since Dilawar Singh knew and informed the appellant about grant of stay in the transfer application preferred by him, is not sufficient to record a finding of conviction. As mentioned above, a definite conclusion as such on the assumption, referred to above, could not possibly be drawn. Assumptions or presumptions are deductions of facts and flight of imagination of human mind. Flight of imagination may be faulty, assumption or presumption may be alluring or pervasively away from reality. We may add here that if it was possible to draw an assumption of the kind, as has been, an assumption could also be drawn in favour of the appellant that he was not informed of the stay granted by Dilawar Singh for the reason that there was no reason or occasion for him so as not to have stayed the proceedings if he had actually been informed particularly when he did mention in his order the information received by him to the effect that transfer application had been filed in which the next date was 4th June, 1998.

(22) There is an additional reason as to why the assumption, as noticed above, should not be considered conclusive in this case. Insofar as contempt petition is concerned, nothing material has been mentioned therein as to how Dilawar Singh came to know about the stay having been granted by the District Judge, Narnaul on the same very day when stay was granted by the appellant, even though, it is an admitted case that Rewari is at a distance of about 50 kms. from Narnaul. However, when the appellant in his written statement denied having been informed, orally or in writing, about the stay and seriously challenged the said statement of Dilawar Singh by pleading that the respondent had interpolated the application and affidavit in his hand, by mentioning the words "and proceedings stayed" afterwards, in connivance with the Ahlmad, Dilawar Singh filed an additional affidavit along with number of documents and affidavits of other persons. It is in the affidavit of Gokal Chand Yadav, an Advocate practising at Rewari, attached with the additional affidavit of Dilawar Singh, that it was mentioned that at about 10.15 AM on 27th May, 1998 he had informed one Dalip Singh on phone from Narnaul that in the transfer application, proceedings have been stayed and also told Dalip Singh to pass on the information that he had given him on telephone, to Dilawar Singh. Insofar as said Dalip Singh is concerned, he did not file his affidavit before the learned Single Judge that he had received such an information from Gokal Chand Yadav, Advocate, who, even though, practising at Rewari, was on that particular day and time at Narnaul. It is only during the pendency of this appeal and that too when Mr. Cheema, learned counsel for the appellant, had concluded his arguments and the case was adjourned, that the affidavit of Dalip Singh was filed. We are of the view that Dalip Singh was an important witness and his affidavit ought to have been filed in the very first instance. Filing of affidavit of Dalip Singh, during the pendency of this appeal and that too after the counsel for the appellant had concluded his arguments, appears to us to be an after-thought. What is more intriguing is that the counsel representing respondent Dilawar Singh in the transfer application preferred by him before the District Judge, Narnaul, was not Gokal Chand Yadav, Advocate. Shri R.P. Saini, Advocate had represented him in the court of District Judge, Narnaul, as would be clear from order, Annexure P-1, dated 27th May, 1998 passed by Shri Pritam Pal, District Judge, Narnaul. It is in his presence that the transfer application was adjourned to 4th June, 1998 and meantime further proceedings in the appeal pending before the appellant were stayed. There is not a word mentioned in the affidavit of Gokal Chand

Yadav, Advocate, Annexure P-10, that Mr. R.P. Saini, Advocate had asked him to inform either Dalip Singh or respondent Dilawar Singh that stay has been granted. Nothing is forthcoming from the affidavit, Annexure P-10, as to why and in what connection Gokal Chand Yadav was at all present in the court of District Judge, Narnaul when the stay was granted in the transfer application preferred by Dilawar Singh. All that is mentioned is that the matter was taken up by the District Judge, Narnaul at 9.30 AM and further proceedings in the appeal were stayed. It is not the case of Dilawar Singh that he had requested Shri Gokal Chand Yadav, Advocate, to convey him the order passed in the transfer application. So is also not deposed in the affidavit of Mr. Yadav. Further, nothing at all is forthcoming from the records of the case that may reveal that Gokal Chand Yadav was in know of the fact that Dilawar Singh would be present in the Courts at Rewari on 27th May, 1998. Further, it is relevant to mention here that Gokal Chand Yadav was not the counsel representing Dilawar Singh even in the appeal which came up for hearing before the appellant herein on 27th May, 1998. His counsel in the trial Court was one Mr. Sachdeva, Advocate and inasmuch as caveat had been filed, it is conceded position that notice was issued to him before stay matter was taken up for hearing. From the facts, as have been fully detailed above, it is possible that Dilawar Singh only came to know about the date fixed by the learned District Judge, Narnaul and not that further proceedings have also been stayed. The possibility that the first information that might have been received by Dilawar Singh was only with regard to fixing of the date, can not be ruled out.

(23) Learned counsel representing the respondent, however, contends that there was no question for the respondent to apply and get the certified copies of the application and affidavit on 27th May, 1998 itself wherein all the words i.e., "pending for 4th June, 1998" and "and proceedings stayed" were mentioned as there was neither any time nor any occasion for Dilawar Singh to have interpolated the words "and proceedings stayed" later on, as is the contention of learned counsel for the appellant. It may be mentioned here that the learned Single Judge has also taken this matter into consideration and held that "moreover, the petitioner, through his counsel produced in court at the time of arguments a certified copy of application as also of his affidavit which he filed in the Court on 27th May, 1998. The certified copies were applied for and obtained on 27th May, 1998 itself. The fact thus indicates that the tampering, if any, could not have taken place after 27th May, 1998". Whereas,

we are in respectful agreement with the observations made by the learned Single Judge that tampering could not have taken place after 27th May, 1998, but it does not mean that the same could not have taken place after the application and affidavit were filed in the Court. It is too well known that after the Presiding Officer passes an order and adjourns the case, file goes to the Ahlmad. If certified copy of proceedings or order is applied for, the file also goes to Copying Branch. Before, Dilawar Singh obtained the certified copy of the application and affidavit, the file ought to have gone in many hands. The possibility of tampering the application and affidavit and inserting the words "and proceedings stayed" on 27th May, 1998 itself but after the case was adjourned by the appellant, can not be ruled out. It is then argued by learned counsel for the respondent that there was no question for Dilawar Singh to have made a complaint to the Inspecting Judge of the High Court that the appellant, despite the stay granted by the District Judge, Narnaul, had proceeded with the case, had Dilawar Singh not known about the stay having been granted and having not mentioned such fact in his application and affidavit. We do not find any merit in this contention of the learned counsel as well. As we have already held above, if Dilawar Singh at the first instance had come to know only about the next date fixed in his transfer application before the District Judge, Narnaul and not the grant of stay, and had come to know of the stay later in point of time, obviously at a time when he made a complaint to the Inspecting Judge, by then he had derived knowledge of the stay. Nothing much, thus, hinges upon the complaint made by Dilawar Singh to the Inspecting Judge of the High Court.

(24) From the discussion made above, we are of the view that the appellant did not have knowledge of the stay granted by the superior court, i.e., the court of District Judge, Narnaul and the possibility of respondent having added the words "and proceedings stayed" later in point of time, i.e., when the appellant had already passed the interim order, can not be ruled out. In the circumstances, as fully detailed above, we are of the opinion that the appellant did not have the knowledge of the order passed by the superior court and did not intentionally disobey the same. In any case, it is very very doubtful that he had such a knowledge. No doubt, it is true that no judicial officer should be interested in hearing any particular case, as has also been observed by the learned Single Judge, but it is also equally true that no Judicial Officer should be afraid of hearing and deciding any case.

(25) It is well settled that "doubt" cannot be equated with "proof". Even if it is doubtful that the appellant did not have knowledge of the order passed by the superior court staying proceedings in the transfer application, the appellant, in our view, cannot be convicted for having committed contempt of court under the Contempt of Courts Act, 1971. This appeal, thus, deserves to be accepted and is accordingly accepted. While doing so, we set aside the order passed by the learned Single Judge.

(26) Before we may part with this order, we would like to mention that if, perhaps, the State, in the appeal preferred by it against the order staying suspension of respondent Dilawar Singh, had not asked for a stay, the appellant, even on the information that transfer application had been filed in the court of District Judge, Narnaul and the next date has been fixed as 4th June, 1998, should have normally adjourned the case. We would have certainly adversely commented upon the conduct of the appellant of his proceeding with the matter, even though he was only informed about the filing of the transfer application and the next date of hearing. If perhaps, as mentioned above, State might have not pressed for stay. We do not wish to make any comments upon the merits of the controversy with regard to grant or refusal of the stay by the appellant as it would certain prejudice either of the parties in the said case. We only observe in passing and that too for the purpose of deciding the present case only that the subordinate court had stayed suspension of Dilawar Singh pending enquiry against him and may be, the appellant, keeping in view merits of the appeal as also urgency involved therein, did not adjourn the case to await the decision in the transfer application. In these circumstances, we do not wish to comment upon even the conduct of the appellant in staying the operation of order impugned in the appeal filed by the State before him, despite the fact that he was informed that a transfer application has since already been filed and the case has been fixed for 4th June, 1998.

(27) We may also mention that respondent Dilawar Singh has filed reply in this appeal along with some documents. Even though, no formal orders about the said documents were passed but we have heard arguments based upon the said reply and documents but the same also do not strengthen the case of the appellant.

R.N.R.