

(1983) 03 KL CK 0001
In the High Court Of Kerala

Abraham

APPELLANT

Vs

Director of Telecommunications and Others

RESPONDENT

Date of Decision : 11-03-1983

Acts Referred:

Contempt of Courts Act, 1971 — Section 12

Citation : (1983) CriLJ 1372

Hon'ble Judges : P. Subramonian Poti, Acting C.J.;K.S. Paripoornan, J

Bench : Division Bench

Judgement

P. Subramonian Poti, Actg. C.J.

1. This is a petition by the petitioner in O. P. 9243 of 1982. for taking action for contempt against respondents 1 to 3 they being the Director of Telecommunications, Trivandrum. the Divisional Engineer, Telephones, Trivandrum, and the Junior Engineer, Telephones, Kozthancherry. The basis for making this application is that the order of this Court in C. M. P. 2165 of 1983 in O. P. 9243 of 1982 directing reconnection of the telephone (33 of the Kozhancherry Exchange) forthwith was not respected by the respondents. After going through the averments in the petition we did not find a case made out against respondents 1 and 2 and therefore we confined notice to the 3rd respondent in the petition.

2. He has appeared before us to-day. The order of this Court in C. M. P. 2165 of 1983 was passed on 28-1-1983. The petition for stay had been posted on several dates earlier and when it was finally heard on 15-12-1982 it is said to have been represented by Central Government counsel that the Original Petition itself could be heard on 23-12-1982. Accordingly it was directed to be posted for final hearing on 23-12-1982. But on that day the case could not be heard and under the circumstance the petitioner moved C, M. P. 2165 of 1983 seeking a direction restoring the telephone 33 Kozhancherry Exchange. It was so moved with notice to the Central Government Counsel and the order Ext. p1 was passed on 28-1-1983, after such notice. On the request of the petitioner's counsel the

order was handed over on the same day and according to the petitioner his counsel informed him on 1-2-1983. telegraphically that reconnection of the telephone was ordered by the court. On receipt of the telegram the petitioner is said to have made representation to the 3rd respondent but the latter declined to act on it on the ground that he had not received any order from Court. Thereupon the petitioner came to Ernakulam and obtained the order. He handed over the order to the 3rd respondent on 3-2-1983 and according to the petitioner the 3rd respondent said that he was not bound by the orders of the High Court but only by orders of his official, superiors. The Photostat copies of the order are said to have been taken by the petitioner and these are said to have been posted to respondents 1 and 2 on 4-1-1983. There are averments made in the petition to show that the 3rd respondent's conduct was not inadvertent but was because the petitioner refused to oblige him by issuing a free pass for travelling in his bus as desired. This is an averment which is denied. It is also denied that the order was handed over on 3-2-1983. According to 3rd respondent this was only on 4-2-1983. For the purpose of this petition we do not want to go into the truth or otherwise of the background stated for intentionally putting off implementing the order of this Court. Assuming that there was no such background and also that the order was received only on 4-2-1983 we have to consider why till 13-2-1983 reconnection was not given when the order of this Court directed that reconnection should be given forthwith. In fact the first duty he had once he received the order, was to effect reconnection and that should be as far as possible on the same day giving priority over any other work he had. The order of 28-1-1983 was passed in the presence of Central Government counsel and therefore the respondent must be taken to have notice even on that day, but we assume that he did not get actual notice till the 4th. We must remember that on 10-2-1983 the petitioner had moved a petition for contempt in which allegations were made against the 3rd respondent as to why he did not act in accordance with the order of this court. It was only after receipt of notice by the Central Government counsel and possibly after the 3rd respondent came to know of this petition that reconnection was given on 13-2-1983. We must also remember that, there was a telephone connection to the petitioner's house and that therefore there was no question of drawing any new line. There was only the question of taking the apparatus over to that house and fixing it up. That could certainly be done with expedition if only the 3rd respondent was inclined to do so. It is significant that despite the very detailed averments in the petition and particularly the reason why the 3rd respondent had acted in this manner, in the counter affidavit of the 3rd respondent we see very little by way of answer for the delay in effecting reconnection. After referring to the fact that the order was received by him on the morning of 4-2-1983 he goes on to say that he gave reconnection on 13-2-1983 after checking up the lines and repairing the instruments. According to him the petitioner was not present at his residence on 12-2-1983 and the wife of the petitioner did not permit him to give reconnection on 12-2-1983, The time lag between 4-2-1983 to 12/2/1983 is not even attempted to be explained and there is no answer for the inaction. In these

circumstances we have no hesitation to say that the 3rd respondent is guilty of contempt, in disobeying the order of this Court in letter and in spirit.

3. The proviso to Section 12(1) of the Contempt of Courts Act permits remission of the punishment awarded or discharge of the accused on apology being made to the satisfaction of the Court. The apology need not be one made in Court but made in such a manner that, considering the circumstances of the case, the Court is satisfied that the apology in that manner would be proper. The apology must necessarily be bona fide. Any apology would be lacking in good faith if it is not made honestly but made merely for fear that there will be punishment. The assessment of the genuineness of his regret must be on the basis of the averments in the statement of the offender. We do not find any circumstance which leads us to consider the conduct, of the 3rd respondent as due merely to neglect or indifference. There is a wanton disregard of the order of this Court.

4. Necessarily what punishment should be imposed must engage our attention, particularly now that we do not accept the apology tendered in the counter-affidavit. We gave an occasion to the 3rd respondent who appeared before us to explain his conduct. He has nothing to offer by way of explanation for the delay in obeying the order of this Court, which delay, in the nature of things, is very material. He offered to tender apology in any other form so as to make amends for his conduct. He also assured the Court, that he will not conduct himself in this manner in future. We take note of this. But we cannot, leave the matter there.

5. To a user of a telephone disconnection is a matter of serious consequence, This Court in passing the interim order for immediate reconnection has taken due note of this circumstance; The conduct by the Junior Engineer in flouting the order would be very well known to the people of the locality. If at all 3rd respondent, wants to make amends it is not by offering a ritualistic apology in the affidavit, filed in this Court. We feel the apology must be made openly in a manner that reaches the local public of Kozhancherry, That may perhaps serve a larger purpose, as a deterrent to those who treat the orders of Court with callous disregard or indifference. The 3rd respondent has agreed to offer unconditional apology in public in the locality in which he is functioning, namely in the Kozhancherry Panchayat. We think that the appropriate course would be to welcome this. Sri Mathews P. Mathews, the President of the Advocates Association who belongs to Kozhancherry has agreed to preside over the meeting which may be convened at Kozhancherry with the concurrence of the Panchayat President. Kozhancherry. The High Court will address him and we hope he would cooperate. If at the meeting so arranged the 3rd respondent apologizes for his conduct we shall consider the question of acceptance of such apology as sufficient to save 3rd respondent from the consequence of his offending conduct. The meeting need not be one where there are speeches but only convened to enable expression of regret by the 3rd respondent publicly. Sri. Mathews P. Mathews will intimate the 3rd respondent as to the date of the meeting. We place on record our appreciation of the attitude of the President of the Advocates Association in

undertaking a very unpleasant task of presiding over a meeting of this nature. We expect him to report about the meeting. Post the case after two weeks for further orders. Furnish a copy of this order to Sri. Mathews P. Mathews immediately, A copy of this order will be sent to the Panchayat President, Kozhancherry Panchayat immediately with a request to convene a meeting.

6. This is a petition to review the judgment passed on 18-2-1983 holding that the 3rd respondent is guilty of contempt in disobeying the order of this court in letter and in spirit, that the apology offered in the counter-affidavit cannot be accepted for reasons mentioned in the order and that in view of the offer by the offender to tender apology in any other form so as to make amends for his conduct he be permitted to tender an apology in public, We therefore made directions to tender apology in Kozhancherry where the 3rd respondent, is working ns a Junior Engineer, Telephones.

7. An apology may or may not be accepted by a court depending upon whether a court is satisfied with the genuineness of the apology tendered and the seriousness of the contempt. If the apology is empty or hollow there is no meaning in accepting the apology. Quite often we find ritualistic mention in counter-affidavits of offer of apologies. Quite often they may not be expressions of sincere regret. The mere fact that an apology is offered need not save a person from consequences of his guilt if he is found guilty of contempt. The Court will have to consider judiciously whether there is genuine regret expressed and whether in the circumstances that apology would be sufficient and adequate.

8. If a person desires to go back on the willingness to apologise before it is accepted or the expression of the apology in the form directed by the Court is carried out it is open to him to resile from his offer. That is because the apology its purely voluntary in character and the Court cannot enforce the apology when the party goes back on his offer. If any person who has offered an apology to be made in a particular manner feels later that he should not have made that offer even if he subsequently apologises it is doubtful whether the apology would be sincere. The third respondent here, faced, with a situation that his apology tendered in the counter affidavit was not accepted in the Court, offered that he will apologise by publishing regret in newspapers. It was then that the court suggested that he may apologise in public at Kozhancherry in the Panchayat office. This the third respondent was willing to do. Now the third respondent seems to feel that to go over to Kozhancherry and apologise there "means more humiliation than what has already taken place." He refers to the publicity that the news of the proposed apology has received and conceives that as sufficient punishment for him. If the third respondent has second thoughts over his offer of apology and therefore seeks review of the order we must naturally agree that he need not apologise. That is left to his volition. Of course, whether the apology already offered by him in the counter-affidavit of a similar apology to be again made in Court would be sufficient or not is another matter. For the reasons stated, in the circumstances of the case, such an apology would not be sufficient.

That we have already mentioned in our judgment.

Therefore we vacate the judgment with regard to the public apology to be offered by the 3rd respondent. The case will take its own course. We direct the office to post the case for further orders on the 7th of March and direct the 3rd respondent to be present. Communicate by telegram to the Panchayat President, Kozhancherry that the conduct of the meeting whereat Sri. Narayanan Unni Junior Engineer is to offer apology tomorrow stands cancelled.

9. We are concerned with the further action to be taken in the matter now that we have found the third respondent guilty of contempt u/s 12 of the Contempt of Courts Act, 1971. He is found to have wilfully disobeyed the order of this Court to give telephone reconnection to a subscriber forthwith. We rejected his offer to tender apology in court as we found it hollow. Subsequent events have shown that the offer was rightly not accepted by the court. He then offered to apologise in public and the court accepted the offer. Some controversy seems to have arisen as to the propriety of the Court adopting such a course. We have no doubt that in a case of this nature it would be appropriate for a contemner to offer a public apology and the court to accept it. But that must be done of his own free will. The contemner seems to have had second thoughts over his offer later. In fact he felt that the publicity of the matter and "the humiliation" to which himself "and the entire wing of the employees similarly situated will be put to in the matter of tendering apology" was never in his contemplation at that time. We naturally permitted him to withdraw the offer to tender apology in public. Consequently the question of further action to be taken has arisen for our consideration,

10. This court had occasion to consider the object of imposing punishment on the Contemner in Vincent Panikulangara Vs. Gopala Kurup, Dealing with the offer of apology in this court this court observed thus At P. 2102 of Cri LJ:

...once the case falls within the scope of contempt the punishment has to be deterrent unless it be that the same object is otherwise served, perhaps better served, by the strong sentiment expressed in words of censure by the court or by the acceptance of an apology, sincerely offered to Court.

11. We must remember that the court has a duty of protecting public interest in the administration of justice. Punishing a contemner is not any act of retribution, but is only an attempt to uphold the majesty of law by protecting the public interest. In this context it may be appropriate to quote the words of Chinnappa Reddi, J, in the decision in Advocate-general, State of Bihar Vs. Madhya Pradesh Khair Industries and Another,

But, on the other hand, it may be necessary to punish as a contempt, a course of conduct which abuses and makes a mockery of the judicial process and which thus extends its pernicious influence beyond the parties to the action and affects the interest of the public in the administration of justice. The public have an interest, an abiding and a real interest, and a vital stake in the effective and

orderly administration of justice, because, unless justice is so administered, there is the peril of all rights and liberties perishing. The court has the duty of protecting the interest of the public in the due administration of justice and, so, it is entrusted with the power to commit for contempt of court, not in order to protect the dignity of the court against insult or injury as the expression "contempt of Court'" may seem to suggest, but, to protect and to vindicate the right of the public that the administration of justice shall not be prevented, prejudiced, obstructed or interfered with. "It is a mode of vindicating the majesty of law, in its active manifestation against obstruction and outrage." "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.

(Emphasis supplied)

12. It will be of interest in this context to refer to Thomas Martian's case which arose as early as in 1747. One Thomas Martin sent a bank-note for £20 to the Lord Chancellor making reference to certain proposed Chancery proceedings. Upon this Lord Hardwick L. C. ordered him to show cause why he should not be committed for contempt. Pardon was sought by the offender. He held the public office as Mayor of Great Yarmouth.. The court refrained from committing him not merely because he sought pardon. He expressed his willingness to have the bank-note sent by him to the Lord Chancellor to be appropriated to a public cause, to be sent by the Registrar to the Warden of the Fleet for the relief of poor prisoners. This is an early instance where a Court recognised the relevance of public interest in dealing with a contemner. The case is reported in Revised Reports Vol. 34 Page 177 and is referred to at page 21 of R. E. Megarry's "Miscellany-at-Law. A Diversion for Lawyers and others."

13. We shall very briefly advert here once again to the nature of the contempt committed in this case. The order of this court was passed on 28-1-1983. It was passed after hearing counsel for the respondents. The order directed reconnection of the telephone forthwith. In view of the peremptory nature of the order it ought to have been complied with immediately. There is no explanation as to why despite counsel having appeared the party had to wait for a copy of the order to be served on him to act as directed. The party is said to have made representation to the 3rd respondent even prior to the service of the copy of the order that such order had been passed. At any rate copy of the order was handed over on 4-2-1983. Even then no action was taken thereon. On 10-2-1983 the petitioner in the Original Petition moved the contempt petition to take action against the 3rd respondent. Even before the issue of the notice we directed notice of the petition to be given to respondents' counsel. Notice was given and it is thereafter that notice on the contempt petition was ordered by this court. It is after such notice was ordered that on 13-2-1983 the telephone reconnection was given. If there was some circumstance which stood in the way of reconnection being given forthwith it was for the 3rd respondent to explain. In fact one would expect explanation for every day of the delay. There is none. Even

when he appeared before us he had no further explanation to offer though we gave him an opportunity. There is a case for the petitioner that third respondent openly challenged the order of the High Court, We are not going into that question. Suffice to say that we were satisfied that an order which required to be complied with immediately on its receipt was not complied with and the disobedience of the order was willful. That was what we found in our judgment dated 18th February, 1983.

14. Civil contempt just as criminal contempt is punishable with simple imprisonment for a term which may extend to six months or with fine which may extend to two thousand rupees or with both. But in the case of civil contempt the court, if it does not consider that there are circumstances which call for imposition of a sentence of imprisonment, will normally impose a sentence of fine only. But if a court considers that fine will not meet the ends of justice and sentence of imprisonment is necessary, it shall, instead of sentencing the contemner for simple imprisonment, direct that he be detained in civil prison for such period not exceeding six months as it may, think fit. At one time it was understood that detaining a prisoner in civil prison when he has committed civil contempt is to compel him to comply with the order and therefore where an order has already been complied with there is no scope for using the coercive machinery of imprisonment against the contemner. Evidently it is the observation of Lindley L.J. in *Seaward v. Paterson* (1897) 1 CHN 545 that apparently justified such a stand. Lindley L.J. said in that case thus.

...the party who is bound by the injunction is proceeded against (for contempt) for the purpose of enforcing the order of the Court for the benefit of the person who got it.

15. In this context we may refer to an interesting passage in the decision in *Jenison v. Baker* (1972) 1 All ER 99 . That reads thus:

Let us suppose that an elderly spinster plaintiff had a cat to which she was so attached, that, to her, its value was beyond price. The defendant who hated the plaintiff and her cat injured the cat and threatened to kill it. The plaintiff brought an action in the county court claiming damages and an injunction to restrain the defendant from killing or injuring the cat. The plaintiff applied for, and was granted, an interim injunction. In granting that injunction, the county court Judge said to the defendant "I am ordering you not to kill or injure the plaintiff's cat. Remember, if you disobey this order I shall enforce it against you by sending you to prison". Without the built-in sanction the order would be useless as a remedy. With it, however, in 99 cases out of 100, the order would afford the plaintiff a "full and ample" remedy. Nevertheless, the particular defendant in the case I have supposed, in contumacious disregard of the order, brutally kills the cat before the plaintiff's eyes. The plaintiff then applies for an order of attachment. The judge says to the defendant I warned you that I should enforce my order by sending you to prison if you disregarded it. I now commit you to prison." Could the defendant plausibly reply Look at what Lindley L.J. said in

1897. You have no power to enforce the order, in this way, unless you can "first bring the cat back to life; and this is impossible." I think that Lindley L.J. would have been surprised and perturbed had it been suggested to him that what he said in Seaward's case would be successfully used in support of such an argument.

16. While the purpose of punishment for contempt is, to a great extent, deterrence which is meant to uphold the prestige of the court and consequently the interest of the public in the proper judicial administration in this country, we, alert ourselves on every occasion w& have to deal with a case that we must exercise considerable judicial restraint. Whether a sentence of fine alone would be sufficient or whether we should impose a term in the civil prison must be decided quite objectively. More so in this case because the withdrawal of the offer of a public apology should not in any way influence in the matter of sentence or create any bias on our part on that account.

We heard the 3rd respondent in person as to the sentence. He had nothing to say. His counsel Sri p. C. Chacko wanted us to deal with his client sympathetically. Counsel urged that the circumstances of the case do not at any rate warrant a sentence of imprisonment as there are no special reasons to consider the case as warranting heavy punishment. He also pointed out that the wide publicity the offer of public apology received was sufficient humiliation for the petitioner and therefore we should consider the contemner as sufficiently punished. We are not persuaded to agree. We must remember that just as the concept of public apology aroused considerable interest in the public mind the withdrawal of the offer of public apology by the third respondent purportedly on account of the humiliation for himself and his associates--evidently Junior Engineers as a class seem to have made common cause with him--received similar public attention.

In the circumstances any course which this Court takes in the matter of sentencing the contemner should leave no room for the public to doubt the efficacy of our sentencing process. We find no reason for any sympathetic or compassionate treatment. The contemner must get his due. AH the same we think a sentence of fine would meet the ends of justice. Hence we impose a fine of Rs. 1000/- on the 3rd respondent. In default of payment of fine he will be detained in civil prison for a period of 15 days. Time for payment up to 14-3-1983.