
(1993) 11 AP CK 0010

In the Andhra Pradesh High Court

Case No : Contempt Case No. 734 of 1990

Advocate General, Andhra Pradesh, Hyderabad

APPELLANT

Vs

Ashok Kumar

RESPONDENT

Date of Decision : 19-11-1993

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 421, 97

Citation : (1994) 1 ALT 52 : (1994) CriLJ 1333

Hon'ble Judges : V. Sivaraman Nair, J;S.V. Maruthi, J

Bench : Division Bench

Advocate : Advocate General, for the Appellant; K. Vinay Kumar, for the Respondent

Judgement

V. Sivaraman Nair, J.—Suo motu proceedings under Contempt of Courts Act were initiated against the respondent-contemner on the allegation that the contemner forced an Advocate-Commissioner appointed by the V Metropolitan Magistrate, Hyderabad, to make an entry in the General Diary of the Police Station to the effect that he did not find Mohammed Ayub who was arrested on 9-3-1990 in the police lock-up.

2. One Sri. Ahamad Hussain had filed Criminal M.P. No. 395/90 under S. 97 of the Code of Criminal Procedure in the Court of the V Metropolitan Magistrate, Hyderabad. By order dated 12-3-1990, the Magistrate appointed Sri. V. Balraj, Advocate as Commissioner to search the premises of Sanjeeva reddy Nagar Police Station or any other Police Station in the twin cities, and if he found Mohammed Ayub, to produce him before the Court on 16-3-1990. On 13-3-1990, the petitioner Ahammed Hussain filed a memo in Criminal M.P. No. 396/90 alleging that the Inspector of Police, Mirchowk Police Station - Mr. Ashok Kumar, respondent herein, had obstructed the Commissioner - Sri Balraj from entering the lock-up of that Station and in the meantime, the Police Constable had shifted Mohammed Ayub to some other place and that the respondent herein forced the Advocate-Commissioner under threat and coercion to make an entry in the

General Diary of the Police Station that the Commissioner did not find Mohammed Ayub in the lock-up of the police station.

3. The V Metropolitan Magistrate issued a notice to the respondent on 13-3-1990 on the basis of the memo filed by the petitioner - Ahammed Hussain. The respondent filed a counter affidavit controverting the allegations contained in the memo. The Magistrate sent up a report to this Court on the basis of the material on record proposing proceedings against the respondent under the Contempt of Court Act. The Advocate General, to whom the matter was referred, filed this Contempt Case seeking action to punish the respondent for criminal contempt of Court. We issued notice to the respondent. Respondent appeared through counsel and filed a counter affidavit denying the allegations in the petition and asserting that the Advocate Commissioner had made the entries in the General Diary voluntarily and not under any compulsion. When the matter came up before us, we directed the Chief Metropolitan Magistrate, Hyderabad, to record evidence that may be produced by either side and submit a report to this Court. The Chief Metropolitan Magistrate, Hyderabad examined P.Ws. 1 to 4. P.W. 1 being the Advocate Commissioner and marked Exs. C1 to C15 on behalf of the Advocate Commissioner. The contemner examined himself as D.W. 1. In a report which contained a summary of the entire evidence before him and which the Chief Metropolitan Magistrate sent to this Court on 4-3-1993, he opined that "I have no hesitation to hold that the allegations levelled in Ex. C-2 report by Sri V. Balraj, Advocate Commissioner are true." The above report was made available to the respondent. He has filed a further counter affidavit, asserting that the Advocate Commissioner requested for the General Diary and made endorsement therein voluntarily to the effect that he did not find Mohammed Ayub in custody.

4. The Chief Metropolitan Magistrate had sent up his report after due examination of witnesses in the presence of the contemner who was represented by counsel.

5. We have examined the evidence recorded by the Chief Metropolitan Magistrate and the counter affidavits filed by the respondent as also the submission made by counsel on both sides. The contemner has tendered unconditional apology subject to his assertion that the Advocate Commissioner made the entries in the General Diary voluntarily.

6. In his report the V Metropolitan Magistrate had stated that Criminal M.P. No. 396/90 was filed under S. 97 of the Code of Criminal Procedure by one Ahmed Hussain alleging that on 9-3-1990 at 3 p.m. himself and his brother Mohammed Ayub were proceeding from Yerragadda and that two police constable caught hold of Mohammed Ayub and took him to police station, Sanjeeva reddy Nagar and that the petitioner (Ahmed Hussain) followed them. When he met the Inspector of Police, Sanjeeva reddy Nagar, he was told that Mohammed Ayub was required for interrogation and he would be set free within two days. He waited till 12-3-1990 and filed an application in Court. On the same day, the Court issued a warrant requiring production of Mohammed Ayub by the Station House Officer,

Sanjeeva reddy Nagar Police Station or any other police station in twin cities. Sri. V. Balraj, Advocate was appointed as Advocate Commissioner to execute the warrant. On 13-3-1990 the Advocate Commissioner filed Ex. C2 report alleging that when he and Ahmed Hussain, the petitioner went to the police station on 12-3-1990 at 5.45 p.m. and showed the search warrant to the Inspector of Police, the latter obstructed the Commissioner from entering the lock-up room and pushed him aside. At that time, the petitioner Ahmed Hussain found and identified his brother Mohammed Ayub in the police lock-up. The Inspector, Sri. Ashok Kumar, on being aware of the identification by the petitioner, directed the police constables to remove Mohammed Ayub from the lock-up. When the Commissioner questioned the obstruction caused by Sri. Ashok Kumar, he forced the Commissioner Sri. V. Balraj, to write in the General Diary that he had searched the premises and did not find Mohammed Ayub, and when the Commissioner refused to do so, the Inspector forced him under threat to make such an entry in the General Diary. On perusing the report of the Commissioner, the Court issued a show-cause notice on 13-3-1990 to the respondent Sri. Ashok Kumar, to show-cause why he should not be proceeded against for contempt of Court for having obstructed the Commissioner and for wilful and wanton disobedience of the search warrant. In his letter dated 16-3-1990 the respondent sought further time for filing his explanation. On 19-3-1990 to which date the Magistrate adjourned the matter, the respondent asserted that on 12-3-1990 at about 6 p.m., the Commissioner came to the Police Station, Mir Chowk without any witnesses with him as required by S. 94(c) of the Code of Criminal Procedure, that he received the Commissioner well and rendered all possible assistance for facilitating the search and he requested the Commissioner to get two witnesses to be present at the time of search. He asserted further that after search the Commissioner was satisfied that Mohammed Ayub was not present in the police station and he voluntarily made an entry in the General Diary over his signature. He enclosed a copy of the General Diary entry also along with his explanation. The Magistrate then directed the petitioner Ahmed Hussain and the Advocate Commissioner to file affidavits. They filed their affidavit reiterating their previous position. Sri Mohammed Ayub, for searching whom in the police station, the Commission was issued on 12-3-1990 also filed affidavit stating that the respondent had detained him in the Police Station on 12-3-1990, that when the Commissioner came with the warrant, he was physically prevented from carrying out the search, that he was shifted from the police station Mir Chowk to different police stations. At last on 2-4-1990 he was produced before the XI Metropolitan Magistrate in Crime No. 66/90 of Charminar Police Station for offences under sections 41 and 102 of the Code of Criminal Procedure. He asserted that he was in illegal detention for 23 days in all. Sri Ahmed Hussain had in the meantime filed Criminal M.P. No. 431/90 for issue of a search warrant on 19-3-1990 alleging that Shri Mohammed Ayub had been removed from one police station to another and sought issue of a fresh warrant. On 19-3-1990 the Magistrate issued another warrant and appointed Sri Y. Subash, Advocate, as Commissioner to execute the same. Sri Mohammed Ayub filed an affidavit on 9-4-1990 as stated

above. It was on the basis of the above facts that the V Metropolitan Magistrate sent a report to this Court requesting for initiation of action. He had also enclosed affidavit and explanation to which reference has been made.

7. Pursuant to our directions, the Chief Metropolitan Magistrate had examined the Commissioner Sri V. Balraj as P.W. 1, the V Metropolitan Magistrate as P.W. 2, Sri Ahmed Hussain, the petitioner in Criminal M.P. No. 396/90 as P.W. 3 and Sri Mohammed Ayub the detenu as P.W. 4. The respondent Sri Ashok Kumar, Inspector of Police was examined as D.W. 1. We have perused the evidence including the depositions of witnesses, the affidavits and the exhibits which were marked by the Chief Metropolitan Magistrate. We find on a perusal of the same that there was sufficient evidence justifying the conclusion that the respondent Inspector of Police, had abused his power and jurisdiction to prevent the Advocate Commissioner from executing the warrant and had forced him to make an entry in the General Diary of the Police Station. The witnesses were cross-examined in detail by counsel appearing for the respondent. Cross-examination by the respondent did not succeed in whittling down the evidence of P.Ws. 1 to 4.

8. On a consideration of the entire matter, we are of the opinion that the respondent had committed contempt of Court by preventing the Advocate-Commissioner from discharging his duties as ordained by the Court and by forcing the Advocate Commissioner to make entries in the General Diary contrary to what the Commissioner had observed at the time when he went to the police station and visited the police lock-up, pursuant to the orders of Court. He was prevented from proceeding to the lock-up even though the petitioner, Ahamed Hussain who accompanied him had found and identified Mohammed Ayub, brother of the petitioner before the Magistrate, in custody. After preventing the Advocate Commissioner from proceeding to the lock-up, the contemner caused Mohammed Ayub to be shifted away to some other destination. These acts of any Officer of the Police Force who is expected to administer law is all the more reprehensible. The increasing tendency on the part of the protectors of law to violate orders of Court and to spend their ire on counsel who represent their clients or discharge functions as Officers of Courts, is on the increase. It is essential that in the interests of effective administration of law and justice, these tendencies are effectively curbed as soon as they manifest themselves. It is also in the interests of those who, by reason of arrogance of office and authority, behave as if they are law unto themselves. We have often seen tyrants and titans of yesteryears languishing in the corridors of Courts seeking justice from Courts, whose orders they had deliberately violated with impunity. Courts do not discriminate against them on the basis of their post. They give them just desserts which are due to them. This must be a sobering thought to the wielders of power when they are tempted to show off their authority.

9. We hold the respondent to have committed contempt of Court by his contumacious conduct in preventing the Advocate Commissioner from inspecting the lock-up room in Mir Chowk Police Station and search for Mohammed Ayub as

directed by the V Metropolitan Magistrate in Ex. C-1 search warrant dated 12-3-1990 and in compelling the Advocate Commissioner to make Ex. C-5 entry in the General Diary of Mir Chowk Police Station. However, in view of the apology tendered by the contemner-respondent, we are inclined to impose a lighter punishment on him. The contemner respondent shall pay a fine of Rs. 1,000/- (Rupees one thousand only) within a week from today. In default, provisions of S. 421 of the Code of Criminal Procedure will operate and appropriate directions will be issued.

10. Order accordingly.