
(1996) 06 AP CK 0005

In the Andhra Pradesh High Court

Case No : Contempt Case No. 407 of 1996

B. Radhakrishna

APPELLANT

Vs

Mohd. Abdul Ghani and Others

RESPONDENT

Date of Decision : 10-06-1996

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 24, 24(3)

Citation : (1996) 3 ALT 442 : (1996) CriLJ 4417

Hon'ble Judges : Prabha Shankar Mishra, C.J.; Syed Saadatulla Hussaini, J

Bench : Division Bench

Advocate : V.V.S. Rao, for the Appellant; A. Ramanarayana, Govt. Pleader for Home, for the Respondent

Judgement

P.S. Mishra, C.J.—The Court's misplaced sympathy with a professional's career thinking that in the ends of justice stigma of removal from the post of Public Prosecutor which would get attached to the professional career to the 1st respondent herein should be replaced by acceptance of his resignation from the post which has culminated into a proceeding at the instance of the petitioner herein, an advocate, who has brought to the notice of this Court how the 1st respondent has used the opportunity of delay in acceptance of his resignation for promoting his professional career. The 1st respondent was appointed as Public Prosecutor for the Court of the District and Sessions Judge, Khammam under S. 24(3) of the Code of Criminal Procedure, 1973 in G.O.Ms. No. 752, Home (Courts. C) Department dated 5-11-1994. The appointment was for a period of three years from the date of taking charge which could be terminated with one month's notice on either side. His (the 1st respondent) appointment was terminated on certain allegations vide G.O.Rt. No. 2873 dated 30-10-1995.

2. 1st respondent filed in this Court W.P. No. 25562 of 1995. A learned single Judge of this Court dismissed the said petition. Aggrieved by the said order of dismissal of his petition under Art. 226 of the Constitution, the 1st respondent invoked jurisdiction of this Court under Cl.15 of the Letters Patent in W.A. No.

1702 of 1995. The Court, in appeal, took notice of the fact that termination of the appointment of the 1st respondent as Public Prosecutor would attach a stigma; accepted his (1st respondent) undertaking to submit his resignation from the office of the Public Prosecutor within two weeks by the order dated 28-12-1995 which is as follows :

"Appellant herein is present in person. He has made a personal statement and explained his conduct. He has undertaken to submit his resignation from the office of the Public Prosecutor, Khammam, within two weeks from today.

Learned counsel for the respondents has stated that the respondents shall have no difficulty in accepting the resignation of the appellant and proceeding strictly in accordance with S. 24 of the Code of Criminal Procedure to fill in the vacancy so created in the office of the Public Prosecutor within the shortest possible time.

We have gone through the record. We have good reasons to hold that situations as created in the instant case by either party should better be avoided by all concerned. We see good reasons to hold particularly because the appellant has chosen to tender resignation from the office, that allegations against him are not sustainable and they are all, thus cancelled and rejected subject to the resignation and acceptance as we are assured on behalf of the respondent, of the same.

The appeal and the writ petition are disposed of accordingly."

Petitioner herein has stated that the 1st respondent did not submit the resignation and for this he has relied upon the contents of a letter by the 3rd respondent herein, i.e., the District Magistrate and Collector, Khammam to the 2nd respondent herein, i.e., the Secretary to Government, Home (Courts. C) Department which is as follows :

"It is now seen that Sri Ghani has not tendered his resignation within two weeks time which expired by 11-1-1996 and the Incharge Public Prosecutor has submitted a report to this extent. A copy of the said report is submitted herewith and I request the Government kindly to issue necessary instructions to the Government Pleader for Home Department to initiate the appropriate action before the Hon"ble High Court for the failure of the individual to keep up his promise to tender resignation as promised before the Hon"ble High Court".

3. In response to the notice of the Court, the 1st respondent has shown cause and chosen to give his own version and interpretation of the order in appeal passed by this Court. While he has stated that he complied with the order of the Court by sending a letter of resignation to the 2nd respondent herein without informing however the 3rd respondent (which fact is asserted by the 3rd respondent in his counter-affidavit) and that until his resignation was accepted by the 2nd respondent, he continued to function as the Public Prosecutor. It appears he (the 1st respondent) successfully defeated the order passed by the 2nd respondent and the 3rd respondent to remove him from the office of the

Public Prosecutor and took advantage of the delay in the Government's action upon the letter of resignation that he purportedly sent on 9-1-1996.

4. What has happened is unfortunate. There is, however, a more unfortunate incident in the instant proceeding in the shape of a written argument filed on behalf of the 1st respondent. The expression of an innocent hurt to a person dedicated to his profession in the written argument is sought to be justified by an attempt to say that (1) the order of this Court in appeal dated 28-12-1995 was one that he (the 1st respondent) should tender his resignation from the post of Public Prosecutor, Khammam within two weeks, i.e., on or before 11-1-1996; (2) the resignation so tendered by him was to be accepted and the vacancy so created to be strictly filled up in accordance with S. 24 of Cr.P.C., within the shortest possible time; and (3) the order to continue him as Public Prosecutor until his resignation was accepted was writ large in the order in the appeal. How the 1st respondent has worded his submissions and commented upon the order of this Court in appeal, however, is another aspect of the matter. It is clear, however, that according to him his sending the letter of resignation on 9-1-1996 amounted to full compliance by him of the order of the Court in W.A. No. 1702 of 1995 dated 28-12-1995. No one thus, according to him, could interfere with his right to function as the Public Prosecutor until the resignation allegedly submitted by him on 9-1-1996 was accepted by the competent authority.

5. As the order in appeal shows the Court gave an instant relief to the 1st respondent against the order of removal from the office of the Public Prosecutor mainly because he agreed to tender his resignation. The Court accordingly ordered for cancellation of the allegations which had given rise to the action of removal from the office of the Public Prosecutor. The 1st respondent, however, always intended to continue his work as the Public Prosecutor and could wait not even for a day as no sooner he got the order in appeal he reported to assume duty, assumed duty and started functioning as the Public Prosecutor and postponed tendering resignation until 9-1-1996. Why he did not inform the controller authority, i.e., the Collector of the District (the 3rd respondent) of the alleged resignation, however, is any body's guess. Not only that he assumed duty and frustrated the action of removal by the respondents 2 and 3, but continued functioning by asserting in the Court of the District Judge that until his resignation was accepted he was entitled to function. It is yet another unfortunate incident that the District Judge on 13-2-1996 passed an order that till the acceptance of resignation by the competent authority, i.e., Government, the 1st respondent would continue to be the Public Prosecutor of the Court. Armed with the above, the 1st respondent continued to function until the matter reached this Court at the instance of the petitioner herein and the Court while issuing notice passed the following on 26-4-1996 :

"Issue notice. Pending disposal, respondent No. 1 is restrained from functioning as the Public Prosecutor in the Court of District and Sessions Judge, Khammam. Until further orders, the respondent No. 3 is directed to nominate any Additional

Public Prosecutor in consultation with the District Judge to act as the Public Prosecutor".

The 2nd respondent, however, has since passed an order and notified vide G.O.Rt. No. 188 dated 23-5-1996 as follows :

"Under para (5) of the Executive Instructions issued in G.O.Ms. No. 57, Law Department, dated 16-3-1990, the Government of Andhra Pradesh hereby accepts the resignation of Sri Mohd. Abdul Ghani, Public Prosecutor for the Court of District and Sessions Judge, Khammam with effect from 9-1-1996".

6. If only the 2nd respondent would have acted promptly and accepted the resignation within a reasonable time, the present unpleasantness would have been avoided. The 1st respondent, however, could have done service to all concerned and shown his regard for the law of the land by honouring his statement before this Court that he would resign by accepting as a rule that he was not expected to resume duty and to function even for a day and the only purpose for the order in the appeal was to remove the stigma which the order of removal from office had attached to him and if at all he resumed office, he would have abstained from discharging any duty at least from the day he submitted his resignation. It seems to us that the 1st respondent has only feigned hurt to escape the consequences of the violation of the undertaking that he gave to the Court in person upon which alone the order in appeal on 28-12-1995 was passed as above.

7. We have no manner of doubt that the 1st respondent has violated the undertaking wilfully and has clearly misconducted himself in resuming duty after undertaking before this Court that he would resign and pressing that he was entitled to continue to function until his resignation was accepted.

8. We have no way but to regret the sympathy which we had for the 1st respondent when the appeal was brought before us and that we thought at some stage of the proceeding that the 1st respondent would show regard to the professional ethics and abide by the undertaking that was given to us. As to what may be the appropriate order in the instant proceeding has caused some concern to us. The normal course, since we have found the 1st respondent guilty of violating the undertaking, is to punish him and award a reasonable sentence. The Court's power, however, under Art. 215 of the Constitution of India is not limited to punishing for the contempt of Court only. As a Court of record it has to see that no order by it is abused and is taken advantage of by any person against the interest of another, more so when the public interest is involved. The 1st respondent has been found to have not only affected the interest of the State in general but has grossly abused his position by misinterpreting the order of the Court and showing complete defiance to the spirit of the undertaking. He has acted against the public interest in all respects by appearing in the proceedings against the desire of the State and the desire of the Court which gave indulgence in his favour by cancelling the accusations in the order of removal from the post

of the Public Prosecutor. It is a fit case in our opinion to recall the order in appeal for the reason of the violation of the undertaking by the 1st respondent and also because there are good reasons to hold that action against the 1st respondent in G.O.Rt. No. 2873 was justified and affirm the order of the learned single Judge in W.P. No. 25562 of 1995. That in our opinion will meet the ends of justice. We accordingly recall the order in W.A. No. 1702/95 and affirm the order of the learned single Judge in W.P. No. 25562 of 1995.

9. With the observations as above, the contempt case is allowed.

10. Let a copy of this order be forward to the Bar Council of the State of Andhra Pradesh for its record.

11. Petition allowed.