

(2011) 01 AP CK 0064

In the Andhra Pradesh High Court

Case No : Contempt case no. 797 of 2009

Dr. Madina Balakrishna

APPELLANT

Vs

B. Suryam Court Amien (Field Assistant) and Malla Krishna
Rao

RESPONDENT

Date of Decision : 28-01-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 35
Contempt of Courts Act, 1971 — Section 2
Contempt of Courts Rules, 1980 — Rule 33

Citation : (2011) 2 ALT 492

Hon'ble Judges : Sanjay Kumar, J

Bench : Single Bench

Advocate : K. Bheema Rao, for the Appellant; R.N. Hemendranath Reddy and S.R. Ashok for K. Manik Prabhu, for the Respondent

Judgement

Sanjay Kumar, J.—Cause for concern in this contempt case is that a minion of the justice delivery system, the Amin of the Junior Civil Judge's Court, Palasa, the first Respondent, is alleged to have willfully disobeyed the order of this Court along with a litigant, the second Respondent.

2. The second Respondent and three others, having purchased the suit scheduled property in O.S. No. 9 of 1997 on the file of the Senior Civil Judge, Sompeta, from the decree holders/Plaintiffs, instituted E.P. No. 7 of 2009 before the said Court seeking execution of the eviction decree dated 02.02.2000 passed therein. On 30.04.2009, the executing Court issued a warrant of execution by delivery of the scheduled property and posted the matter on 10.06.2009 for further consideration. Aggrieved by this order, the Petitioner herein, being the judgment Debtor in O.S. No. 9 of 1997, filed CRP No. 2235 of 2009 before this Court on 20.05.2009. This Court, taking note of the fact that the E.P. had been adjourned to 10.06.2009, posted the matter on 01.06.2009 for further hearing. The second Respondent was aware of this development, having filed a caveat before this Court.

3. While so, the second Respondent and the other Petitioners in E.P. No. 7 of 2009 moved two applications before the Vacation Judge, Sompeta, on 25.05.2009 - one, to advance the date of hearing of the matter from 10.06.2009 to 25.05.2009 and two, to provide police aid to the Amin to execute the warrant. E.A. No. 59 of 2009 in E.P. No. 7 of 2009 was the petition filed seeking police aid for execution of the warrant. Both the applications were ordered by the vacation Bench on the same day.

4. Aggrieved thereby, the Petitioner herein filed CRP No. 2295 of 2009 before this Court. By way of interim relief he sought stay of all further proceedings pursuant to the order dated 25.05.2009 passed by the Senior Civil Judge, Sompeta, (Vacation Judge) in E.A. No. 59 of 2009 in E.P. No. 7 of 2009. By order dated 28.05.2009, this Court granted stay of all further proceedings as sought pending further orders.

5. It is this order that is said to have been disobeyed by the Respondents.

6. According to the Petitioner, as a copy of the order dated 28.05.2009 was not immediately available, his counsel furnished him a letter informing him of the passing of the order. He stated that on 30.05.2009 at about 8.30 A.M., his counsel, Y. Hema Kumar, filed a memo before the first Respondent-Amin informing him of the stay order granted by this Court. He alleged that the Amin refused to acknowledge this memo on the ground that Y. Hema Kumar was not the Petitioner's counsel. It is stated that thereupon, D. Joga Rao, the counsel on record for the Petitioner, filed a memo at 10.00 A.M. but again, the Amin refused to acknowledge the same. The letter addressed by the Petitioner's counsel at Hyderabad was said to have been shown to him, but to no avail. He stated that he got issued a telegram to the Senior Civil Judge, Sompeta, in this regard. He claimed to have received the copy of the stay order dated 28.05.2009 by way of fax at 11.57 A.M. and that the same was shown to the Amin. He further stated that his counsel informed the Sheri stadar of the Senior Civil Judge's Court, Sompeta, who, in turn, advised the Amin to abide by the said order, but the Amin refused to do so and proceeded with the breaking of the door lock of the scheduled property. The Petitioner stated that at 01.01 P.M., D. Joga Rao filed a memo before the Senior Civil Judge, Sompeta, along with a copy of the stay order and a special messenger, dispatched by the Court, served the copy upon the Amin at around 03.30 P.M. He alleged that the Amin, having been made aware of the stay order passed by this Court, went about throwing the Petitioner's hospital equipment on the road. The second Respondent, being the first Petitioner in the E.P. was present all through and in spite of being informed about the Court order, he along with his supporters assisted the Amin. It is his specific case that even at the time of production of the fax copy of the order, the lock on the door was not broken. These allegations form the basis of this contempt case.

7. The official memo dated 30.05.2009 issued by the Senior Civil Judge, Sompeta, which was directed to be handed over to the first Respondent Amin, is

placed on record and indicates that upon receipt of the stay order passed by this Court, the Senior Civil Judge, Sompeta, recalled the delivery warrant with immediate effect. The memo, however, does not mention the time at which it originated. The telegram addressed by D. Joga Rao, counsel for the Petitioner, to the Senior Civil Judge, Sompeta, also forms part of the record and reflects that it was booked at 11.17 A.M. on 30.05.2009. The memos said to have been furnished to the first Respondent Amin by Y. Hema Kumar and D. Joga Rao, learned Counsel for the Petitioner, also form part of the record. These memos are supported by the affidavits of the said counsel.

8. In his counter, the Amin stated that he had not violated any orders of this Court, much less the order dated 28.05.2009 passed in CRPMP No. 3203 of 2009 in CRP No. 2295 of 2009. He altogether denied the allegations made by the Petitioner as regards communication of the factum of the stay order by Y. Hema Kumar and D. Joga Rao. He also denied being shown the fax copy of the stay order by the Petitioner or his counsel. He stated that the special messenger deputed by the Senior Civil Judge, Sompeta, served a copy of the memo and the order only at 03.30 P.M. According to him, the delivery had already been effected by that time and he therefore endorsed the same on the warrant and submitted a report on 05.06.2009.

9. He stated that on 30.05.2009 he went to Kasibugga Police Station at about 10.30 A.M. and in the company of the S.I. of Police, ASI, two lady Constables and four male Constables deputed by the Inspector of Police, he went to the scheduled property at about 10.40 A.M. As the premises were locked, he broke open the lock as per the warrant and entered the premises and removed the things/articles found therein, handed over the vacant possession of the scheduled property to the decree holders at about 12.00 Noon and obtained acknowledgment of receipt of possession of the property from them. This receipt indicates the time at which the delivery was effected as 12.00 Noon.

10. He stated that it was only thereafter, at about 03.30 P.M., that the special messenger from the Court of the Senior Civil Judge, Sompeta, served upon him a memo along with the stay order and as by that time, the delivery had already been effected, he endorsed the same and submitted reports to the Senior Civil Judge, Sompeta, and the Junior Civil Judge, Palasa, on 05.06.2009, narrating the above facts and returned the warrant along with the receipt issued by the Petitioner acknowledging receipt of his belongings removed from the scheduled property and also the receipt of the decree holders evidencing delivery of possession of the scheduled property. He therefore prayed for dismissal of the contempt case on the ground that the same was devoid of merit. Relevant to note, the Petitioner's receipt for delivery of the hospital equipment indicates the time of such receipt as 08.00 P.M. on 30.05.2009. It is also pertinent to note that the Amin did not choose to tender an apology at this stage.

11. As the Petitioner thereafter filed a list of items said to have been removed from the scheduled property along with third party affidavits in support of his

claim as to what had happened on the fateful day, the Amin filed an additional counter affidavit. He denied the particulars of the list of items furnished by the Petitioner and also the contents of the third party affidavits. He alleged that both the persons who had filed these affidavits were close relations of the Petitioner and that he had no occasion to see them while effecting execution of the delivery warrant. He further alleged that they had made false averments in their affidavits only to help the Petitioner. He denied the Petitioner's claim that some of the articles/things removed from the scheduled property were not returned to him.

12. According to him, the scheduled property is a building consisting of four rooms in the first floor and two rooms in the ground floor. One room in the ground floor was used as an outpatient room with some small tables and chairs, while the other contained 53 rosewood logs. The first floor, comprising four rooms with balcony, was used for residential purpose. He denied that there was an operation theatre in the first floor and disputed the articles mentioned at items 1 to 18 of the list furnished by the Petitioner. He stated that he got removed all the movables from the scheduled property with the help of the labour who were hired by the decree holders and kept the removed articles in the vacant place on the road margin. He again claimed to have delivered vacant possession of the property to the second Respondent and the other decree holders by 12.00 Noon on 30.05.2009 and obtained a receipt from them. According to him, when the rosewood logs were being loaded and transported, the same were seized by the forest officials at about 02.00 P.M. and a case was registered. He pointed out that the Petitioner had signed a receipt acknowledging delivery of all his movables and contended that it was not open to him to concoct the plea that some of the items had not been received. He concluded by stating that being a Court employee, he had highest respect towards the orders of the Court and had not violated or disobeyed such orders even unknowingly. He however added the caveat that if this Court found that he had violated the order, he may be pardoned and tendered an unconditional apology.

13. The Petitioner filed a reply to the Amin's additional counter stating that the scheduled property consists of a building with ground floor, first floor and terrace. According to him, both the floors and the terrace were put to use for hospital purposes, residential purposes and as a gym. He stated that photographs had been taken during the execution proceedings with a digital camera with timing, which would demonstrate that the execution proceedings continued beyond 12.00 Noon, belying the Amin's claim of having concluded the same by that time. He denied the other averments made by the Amin both with regard to the third party affidavits as well as the details of the items removed from the scheduled property. According to him, the ground floor consisted of eight rooms while the first floor comprised four rooms. The rosewood logs, as per his case, belonged to the owner and he had nothing to do with them.

14. The second Respondent filed a counter denying that he had committed contempt. He claimed that he had no knowledge of the stay order passed by this

Court till he received the notice in this contempt case. He echoed the Amin's version that the delivery of the vacant possession of the scheduled property was completed by 12.00 Noon on 30.05.2009. He denied having provided any assistance to the Amin in the process of execution. He specifically stated that he along with the other three Petitioners in the E.P. were the only persons who accompanied the Amin and were present at the place of execution.

15. Heard Sri K. Bheema Rao, learned Counsel for the Petitioner, Sri R.N. Hemendranath Reddy, learned Counsel for the first Respondent Amin, and Sri S.R. Ashok, learned Senior Counsel, representing Sri K. Manik Prabhu, learned Counsel for the second Respondent.

16. Before turning to the case on hand, it would be apposite to notice the legal environment in which this case has to be considered.

17. The Contempt of Courts Act, 1971, was introduced in the statute book for the purpose of securing a feeling of confidence of the people in general for due and proper administration of justice in the country. Undoubtedly, a very powerful weapon rests in the hands of the law courts through this statute, which must use the same with due care and caution and for larger interests. Contemptuous conduct and obstruction to the majesty of law is the basic reason for which the law-makers thought it prudent to engraft in the statute-book this particular legislation Prem Surana Vs. Additional Munsif and Judicial Magistrate and Another,

18. Section 2(b) of the Contempt of Courts Act, 1971 (for brevity, "the Act of 1971") defines "civil contempt" to mean wilful disobedience to any judgment, decree, direction, order, writ or other process of Court or wilful breach of an undertaking given to a Court. The Supreme Court observed that disobedience of orders of the Court in order to amount to "civil contempt" under the above provision must be "wilful". Therefore, proof of mere disobedience is not sufficient. Indian Airport Employees Union Vs. Ranjan Chatterjee and another, The disobedience must be willful, which would exclude casual, accidental, bona fide or unintentional acts or genuine inability to comply with the terms of the order Kapildeo Prasad Sah and Others Vs. State of Bihar and Others,

19. As pointed out by the Supreme Court in the foretasted Judgment, disobedience of Court orders would strike at the very root of the rule of law on which our system of governance is based. A proceeding under the Act of 1971 is quasi-criminal in nature and the standard of proof required is that of a criminal proceeding - the breach has to be established beyond all reasonable doubt Chhotu Ram Vs. Urvashi Gulati and Another, It would therefore be hazardous to impose sentence for contempt in exercise of this jurisdiction on mere probabilities V.G. Nigam and others Vs. Kedar Nath Gupta and another,

20. The observations in Niaz Mohammad and others, etc. etc. Vs. State of Haryana and others, are of guidance:

9... The person or persons in whose favour such order or direction has been

made can move the court for initiating proceeding for contempt against the alleged contemner, with a view to enforce the right flowing from the order or direction in question. But such a proceeding is not like an execution proceeding under Code of Civil Procedure. The party in whose favour an order has been passed, is entitled to the benefit of such order. The court while considering the issue as to whether the alleged contemner should be punished for not having complied with and carried out the direction of the court, has to take into consideration all facts and circumstances of a particular case. That is why the framers of the Act while defining civil contempt, have said that it must be wilful disobedience to any judgment, decree, direction, order, writ or other process of a court. Before a contemner is punished for non-compliance of the direction of a court, the court must not only be satisfied about the disobedience of any judgment, decree, direction or writ but should also be satisfied that such disobedience was wilful and intentional. The civil court while executing a decree against the judgment-debtor is not concerned and bothered whether the disobedience to any judgment, or decree, was wilful. Once a decree has been passed it is the duty of the court to execute the decree whatever may be consequence thereof. But while examining the grievance of the person who has invoked the jurisdiction of the court to initiate the proceeding for contempt for disobedience of its order, before any such contemner is held guilty and punished, the court has to record a finding that such disobedience was wilful and intentional. If from the circumstances of a particular case, brought to the notice of the court, the court is satisfied that although there has been a disobedience but such disobedience is the result of some compelling circumstances under which it was not possible for the contemner to comply with the order, the court may not punish the alleged contemner.

21. Official communication of the order is however not necessary to impute knowledge of the same to the contemnors. *G.J. Joseph Vs. T.S. Babu Rao and Others*, The observations of a learned Judge of this Court in *B. Suguna Devi Vs. Sri C.B.S. Venkata Ramana, IAS and Others*, are of relevance:

9. If a party who is fully in the know of the order of the Court, or is conscious and aware of the consequences and implications of the Court's order, ignores it or acts in violation thereof, it must be held that the disobedience is wilful. It may not be possible to prove the actual intention behind the act or omission. A Court can approach the question only objectively and it may presume the intention from the act done as every man is presumed to intend the probable consequence of his act. [*Court on its own Court on its Own Motion Vs. Sh. N.S. Kanwar, (P and H HC DB)*]. To establish that disobedience was wilful it is not necessary to show that it was contumacious in the sense that there was a direct intention to disobey the order. Effective administration of justice would require some penalty for disobedience to the order of the Court if disobedience is more than casual, accidental or unintentional. [*Heatons Transport Ltd. v. Transport and General Workers Union, 1972 (3) All ER 101 (House of Lords; N.S. Kanwar's case (supra))*].

22. In the present case, controversy and dispute shroud every aspect. So much so that the parties are not even at consensus as to the number of rooms in the scheduled property. The decree schedule shows that two rooms in the ground floor were in the possession of the original Plaintiff herself. There is however no dispute as to the fact that the Petitioner herein was running a hospital and also residing in the said building. As regards the communication of the stay order of this Court, two Advocates have filed their affidavits stating that the same was brought to the notice of the Amin by them. The Amin however denies this. As pointed out supra, adjudication in a contempt case cannot rest on probabilities. Though this Court is disinclined to disbelieve the version put forth by members of the legal fraternity, it may not be necessary to rest this judgment on the strength of these affidavits or the photographs. The conduct of the Amin by itself is sufficient to infer certain definite and irresistible conclusions.

23. In *Suresh v. Imran Khan*, 1995 Supp (3) SCC 306 where there was no material to show that the order had been communicated to the litigant, the Court was of the opinion that he could not be held guilty of committing contempt of the said order. However, in the present case, having obtained the stay order on 28.05.2009, it is hardly believable that the Petitioner/his local Advocates would not have brought it to the notice of the Amin during the process of execution of the delivery warrant. The denial by the Amin of such intimation therefore does not commend acceptance.

24. As pointed out in *I.B. Suguna Devi*, every man is presumed to know the consequences of his actions. Being a Court employee, the Amin is therefore deemed to be fully conscious and aware of the consequences of his actions on that day and the implications of the stay order of this Court. As per the Amin's version, the door lock of the scheduled property was broken open at 10.40 A.M., on 30.05.2009 and the evacuation of the Petitioner's belongings from the scheduled property concluded by 12.00 Noon. There is a dispute as to the details of the items so removed. Order XXI, Rule 35 of the Code of Civil Procedure, 1908, as applicable in the State of Andhra Pradesh, does not require the Amin at the time of delivering possession of immovable property to make an inventory of the articles removed from the scheduled property in the presence of witnesses.

25. Be that as it may, the Amin admits that items of hospital equipment and of residential use, along with 53 rosewood logs, were removed from the building. There is also a dispute as to how many people participated in this process of evacuation. The second Respondent altogether denies that he provided any assistance in this regard but his delivery receipt dated 30.05.2009 speaks to the contrary. The Petitioner himself states that the second Respondent provided the help of 40 persons. Leaving this aspect aside, it is difficult to believe that all these items, including 53 rosewood logs, could have been removed from the confines of the building within one hour and twenty minutes. All the more so, when the Amin in his reports dated 05.06.2009 admitted that the process of loading these items into the Petitioner's conveyances went on well into the

evening hours. In fact, the receipt of delivery signed by the Petitioner in this regard reflects the time as 08.00 P.M.

26. Even as per the Amin, he was informed of the stay order by the special messenger at 03.30 P.M. The normal course of conduct for a Court employee, who was only discharging the functions assigned to him, would be to immediately contact the concerned Judicial Officer or some other superior as to what further action he should take. In the present case, the Amin states that he endorsed on the copy of the order supplied to him at 03.30 P.M. that he received it at the said hour. The record of the lower court which was called for reflects that except for the bald statement that the order was received at 03.30 P.M., there is not even a signature to show that the Amin had received the same at that hour and endorsed so on the face of the order. Further, he did not choose to apprise his superiors or the concerned Judicial Officer of these facts till 05.06.2009. These actions on the part of the Amin clearly indicate his bend of mind at the relevant point of time and inevitably support the Petitioner's allegation that the Amin was adamant on carrying through with the delivery of the scheduled property irrespective of intervention. The chain of events leave no room to doubt this and place the conclusion beyond mere probability.

27. An officer of the Court entrusted with execution of a judicial order is expected to act with responsibility and is beholden to uphold the majesty of the rule of law. The present case reflects that be it for whatever consideration, the Amin willfully chose to disobey the order of this Court. His conduct leaves no room for doubt that he was made aware of the stay order passed by this Court but continued with the execution of the delivery warrant. This uncaring and wanton disregard by a Court employee towards a superior Court's order cannot be condoned or dealt with leniently.

28. The judicial hierarchy is a measure of checks and balances and a litigant must necessarily go through the process before reaping the benefits of a decree obtained by him. Armed with a decree which is yet to become final, it is not open to a litigant to thwart the judicial process by getting it executed, thereby presenting a *fait accompli* to the superior Court.

29. In the present case the second Respondent, being on caveat in CRP No. 2235 of 2009, was well aware that this Court was already seized of the issue of execution of the decree in O.S. No. 9 of 1997. Though the subject application in E.A. No. 59 of 2007 in E.P. No. 7 of 2009 was filed before this Court passed orders in CRP No. 2235 of 2009 adjourning the same to 01.06.2009, there is no explanation forthcoming as to why the second Respondent pressed the said application before the Vacation Judge, and at that, without disclosing the pendency of the CRP before this Court. Having obtained positive orders therein, the second Respondent went about getting the delivery warrant executed.

30. There is however nothing on record to indicate as to when the second Respondent was informed of the stay order passed by this Court on 28.05.2009.

31. No caveat was filed by him in the second Civil Revision Petition and no material is placed on record by the Petitioner herein to demonstrate as to when the order was communicated to the second Respondent. Further, as the Amin was himself steadfast in ignoring the order of this Court and continued with the execution process, it is not surprising that the second Respondent remained mute. As the case against the second Respondent rests on mere probabilities and there is no evidence of "wilful" disobedience, this Court is inclined to give him the benefit of doubt.

32. The same however cannot be said of the Amin, the first Respondent.

33. Being a cog in the machinery of the justice delivery system, the Amin knew the implication of the stay order passed by this Court. His conduct puts it beyond doubt that he was made aware of the stay order while still in the process of executing the delivery warrant. In spite of the same, his disregard and lack of respect towards the said order, as is evident from the fact that he did not even choose to seek the advice of the Judicial Officers or his superiors as to what his future course of action should be, clearly indicates that he was bent upon completing the process of execution. This wilful disobedience to the order of this Court cannot be viewed lightly.

34. It is also relevant to note that the Amin did not choose to tender an apology in the first instance when he filed his counter affidavit. It was only by way of an additional counter, which was occasioned by the new material placed on record by the Petitioner, that the Amin chose to tender an apology in the event this Court found that he had violated the order. This casual approach, when charged with serious allegations of disobeying a Court order, is a further indication of the Amin's mindset.

35. As pointed out in *M.Y. Shareef and Another Vs. The Hon'ble Judges of The High Court of Nagpur and Others*, an apology is not intended to operate as a universal panacea. It is not a weapon of defiance to purge the guilt of the offence but is intended to be evidence of real contrition, the manly consciousness of a wrong done, of an injury inflicted, and the earnest desire to make such reparation as lies in the wrongdoer's power *Delhi Development Authority Vs. Skipper Construction and Another*,

36. Therefore, the Amin's apology has to be a product of genuine regret and remorse to commend itself to this Court. The actions of the Amin however compel this Court to the conclusion that his apology is neither a product of remorse nor is it evidence of any regret or contrition. It is resorted to only as a means of last resort to avoid being committed for contempt. This Court therefore sees no reason to accept such apology.

37. Exercise of jurisdiction under the Act of 1971 is intended to uphold the majesty of the rule of law and to safeguard the faith and trust of the people in the justice delivery system. It would therefore be necessary to impose suitable and proper punishment upon those who fall foul of maintaining the standards

required for upholding the dignity of the legal system. The case on hand presents a rarity in as much as one within the justice delivery system has failed it. The first Respondent willfully disobeyed the order of this Court and is therefore guilty of committing civil contempt. He shall accordingly suffer the punishment of payment of fine with necessary consequential entries in his service record. The first Respondent shall pay a fine of Rs. 2,000/- (Rupees two thousand) within one month from today failing which the Registrar (Judicial) of this Court shall take action as per Rule 33 of the Contempt of Courts Rules, 1980.

38. The Contempt Case is accordingly ordered. No order as to costs.