

(2006) 11 MAD CK 0096

In the Madras High Court

Case No : Contempt Petition No. 885 of 2006

Elephant G. Rajendran President, Madras High Court
Practicing Advocate Association

APPELLANT

Vs

Mr. K. Veeramani President, Dravida Kalagam and Mrs.
Lathika Charan, IPS Commissioner of Police

RESPONDENT

Date of Decision : 30-11-2006

Acts Referred:

Contempt of Courts Act, 1971 — Section 14, 15(1)

Citation : (2007) CriLJ 1406 : (2007) 3 LW 39

Hon'ble Judges : P.P.S. Janarthana Raja, J;P.D. Dinakaran, J

Bench : Division Bench

Advocate : G. Rajendran, Party in Person, for the Appellant; K. Veeramani, Party-in-Person, for the Respondent

Judgement

P.D. Dinakaran, J.—The petitioner, in his capacity as a practicing advocate and the President of the Madras High Court Practicing Advocates Association, invoking Section 15(1) of the Contempt of Courts Act, 1971 (for brevity, "the Act") has preferred this contempt petition to (a) punish the first respondent for his deliberate, willful, false allegations made against a Hon'ble Judge of this Court, thereby interfering with the proceedings of this Court and for threatening the Judiciary; and (b) direct the second respondent to submit a report about the aforesaid incidence happened on 1.11.2006.

2.1. According to the petitioner, the first respondent with reference to the judicial proceedings which had taken place on 17.10.2006 before the Division Bench of this Court presided over by S.J. Mukhopadhaya and F.M. Ibrahim Kalifulla, JJ., required S.J. Mukhopadhaya, J. to tender regret for the remarks made during the course of the judicial proceedings, failing which, threatened to lead an agitation on 1.11.2006 before the High Court of Madras, and also made a written representation to that effect to the Hon'ble Chief Justice and the Hon'ble Judges concerned. Pursuant to the said representation, it is stated, the first respondent

has also led an agitation on 1.11.2006 at NSC Bose Road, Chennai.

2.2. It is stated that such conduct of the first respondent, the contemptuous remarks and the demand for regret from the learned Judge concerned with a threat to lead an agitation on 1.11.2006, would amount to contempt of Court as the same is nothing but a serious threat to the independence of the Judiciary and therefore, amounts to a contempt of Court. Hence, the above contempt petition.

3. When the above contempt petition was filed, the Registry took an objection as to the very maintainability of the above contempt petition, but the same was represented stating that the said contempt petition is maintainable in view of the ratio laid down by this Court in Video Movies Vs. D. Ramanujam, Madras and Others, . Thereafter, the Registry numbered the contempt petition and the same was posted before us today (30.11.2006).

4. Before, going into the facts and circumstances of the case, we question the maintainability of the above contempt petition filed u/s 15(1) of the Act, which reads as under:

Section 15. Cognizance of criminal contempt in other cases. -

(1) In the case of a criminal contempt, other than a contempt referred to in (Sic) 14, the Supreme Court or the High Court may take action on its own motion or on a motion made by-

(a) the Advocate General, or

(b) any other person, with the consent in writing of the Advocate General, or

(c) in relation to the High Court for the Union territory of Delhi, such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf, or any other person, with the consent in writing of such Law Officer.

(emphasis supplied)

5. Placing reliance on the decision of this Court in Haji Rasheed Mohammed v. D. Ramanujam, referred supra, which also arises u/s 15(1) of the Act, Mr. G. Rajendran, learned Counsel contends that the above contempt petition is maintainable in law. In the said case of Haji Rasheed Mohammed v. D. Ramanujam, referred supra, it was contended that the respondents/contemners therein made a direct reference to the pending writ proceedings and the nature of the orders passed by the Court and gave their comments on the merits of the cases before the Court and therefore, they were guilty of gross contempt of Court and hence, liable to be punished for criminal contempt and thus, brought to the notice of the Court about the conduct of the respondents therein, and requested the Court to take action suo motu. It was, under such circumstances, the Court, interpreting Section 15(1)(b) of the Act, held as follows:

? 7. We shall first dispose of the objections regarding the maintainability of the contempt application raised by the first respondent. On behalf of the first

respondent a faint argument was put forward that the contempt application is not maintainable as the consent of the Advocate General has not been obtained as contemplated in Section 15(1)(b) and reliance is placed on the decision of the Orissa High Court in B.K. Misra Vs. Chief Justice, Orissa H.C., . It is no doubt true in that case the Court held that no cognizance of a case of criminal contempt can be taken by the Supreme Court or of High Court, at the instance of any person unless the consent in writing of the Advocate General has been obtained. However, Section 15 enables the High Court or the Supreme Court to take action under that section on its own motion or on a motion made by the Advocate General or any person with the consent in writing of the Advocate General. The consent in writing of the Advocate General is a requisite only for a person moving the motion for contempt. But there is no such restriction or requirement when the Court wants to initiate action on its own motion u/s 15. In this case the petitioner has brought to the notice of the Court the conduct of the respondents which (Sic) to the petitioner amounts to criminal contempt and it is for the Court to take action suo motu. Therefore, for exercise of the suo motu power vested in this Court u/s 15, no consent in writing of the Advocate General is necessary. Thus, the objection regarding the maintainability of the contempt application is rejected.

(emphasis supplied)

6. But, in the instant case, the petitioner has moved a motion for contempt praying to punish the first respondent for his deliberate, willful, false allegations made against a Hon'ble Judge of this Court, thereby interfering with the proceedings of this Court and for threatening the Judiciary. Therefore, we are clear that the decision in Video Movies Vs. D. Ramanujam, Madras and Others, , is not applicable to the facts of this case, as Section 15(1)(b) of the Act clearly contemplates a prior consent in writing of the Advocate General, or otherwise a petition for criminal contempt u/s 15 of the Act is not maintainable in law.

7. We are fortified in this view by a catena of decisions referred to hereunder.

7.1. A Full Bench of the Orissa High Court in B.K. Misra Vs. Chief Justice, Orissa H.C., , interpreting the contempt jurisdiction conferred on the Court u/s 15(1) of the Act held as follows:

¶14. The learned Advocate General has brought to our notice to-day the provision of Section 15 of the Contempt of Courts Act, 1971. Sub-section (1) whereof provides.

In the case of a criminal contempt, other than a contempt referred to in Section 14, the Supreme Court or the High Court may take action on its own motion or on a motion made by-

(a) the Advocate General, or

(b) any other person, with the consent in writing of the Advocate General, or

The learned Advocate General contends that there are three modes only of initiating a proceeding for criminal contempt-

- (i) by the Court on its own motion,
- (ii) on a motion by the Advocate General, and
- (iii) on a motion by any other person with the consent in writing of the Advocate General.

The petitioner has asked for initiating a proceeding for criminal contempt. Such a motion at the instance of the petitioner without the consent of the Advocate General is not in accordance with the requirement of Section 15(1) of the Act and hence not maintainable.

(emphasis supplied)

7.2. Again a Full Bench of the Patna High Court in *Shri Harish Chandra Mishra and Others Vs. The Hon"ble Mr. Justice S. Ali Ahmed*, , observing that the initiation of contempt proceedings u/s 15(1)(b) of the Act by a private individual without the consent of the Advocate General is not maintainable, held as, under:

Requirement of written consent in application for initiating proceeding for criminal contempt by private individual is a must. The framers of the Act consciously wanted to put a bar on the power of private individuals while charging any person for having committed criminal contempt of a Court with an object to curtail vexatious petitions for setting personal scores, being filed by persons who are purporting to uphold the majesty and dignity of Court. A criminal contempt is primarily a matter between the Court and the contemner and not a matter between a citizen and the contemner. Every citizen, has no unfettered right in this respect because in some cases he may set more out of personal prestige and vendetta than out of motive to uphold the dignity of court. In order to safeguard such a situation the framers of the Act thought it that a restriction should be imposed on such applications being filed directly and required them to be filed with the written consent of the Advocate General who holds a constitutional position and can scrutinise any such application before coming to Court. The application filed on behalf of the petitioners without the consent in writing of the Advocate General cannot be entertained, and as such, is not maintainable.

(emphasis supplied)

7.3. In *Conscientious Group Vs. Mohammed Yunus and Others*, , the Apex Court held that petition filed u/s 15(1) of the Act, without the consent of the Advocate General is not only maintainable in law, but permitting withdrawal of petition with liberty to review petition on obtaining consent is also not permitted.

7.4. In *P.N. Dua Vs. P. Shiv Shanker and Others*, , the Apex Court held that there cannot be any doubt that a contempt petition filed by a private person without the consent of the Advocate General is not maintainable. In the said decision it

was held as under:

The petitioner could not move in accordance with law without the consent of the Attorney-General and the Solicitor-General though he has a right to move and he third is the court taking notice suo motu. But irrespective of that there was right granted to the citizen of the country to move a motion with the consent.

7.5. Following the abovesaid decision of the Apex Court in P.N. Duda v. P. Shiv Shanker, the Bombay High Court in Vishwanath Vs. E.S. Venkatramaih and others, held that a petition alleging criminal contempt u/s 15(1) of the Act is not maintainable without the written consent of the Advocate General.

7.6. In State of Kerala v. M.S. Mani (2001) 8 SCC 32, the Apex Court has reiterated the same principle of requirement of obtaining prior consent in writing of the Advocate General is mandatory and that a motion u/s 15 of the Act not in conformity with the provisions of Section 15 of the Act is not maintainable.

7.7. A Full Bench of the Apex Court in Bal Thackrey Vs. Harish Pimpalkhute and Others, , interpreting the jurisdiction of the Court in the matter of criminal contempt punishable u/s 15(1) of the Act held that requirement of obtaining consent in writing of the Advocate General for making motion by any person is mandatory. A motion u/s 15 is not in conformity with the requirements of that section is not maintainable.

8. Even though the above contempt petition is not even admitted, the first respondent himself has voluntarily chosen to appear before us taking notice of the news published in the media and submits that he has not made anything, either in his representation or in the press report nor during the course of the agitation on 1.11.2006, which would scandalise or lower the authority of any court or prejudice or interfere or tend to interfere with the due course of any judicial proceeding or tend to interfere or obstruct or tend to obstruct the administration of justice in any manner. His representation, the press report and the agitation, are all intended to uphold the human dignity and self-respect of every individual, which is protected under the Constitution of India.

9. Without going into the merits and referring to the facts and circumstances of the case placed by Mr. G. Rajendran, we are clear that undoubtedly, it is the fundamental obligation of every citizen of this Country to keep the streams of justice to flow clearly, purely and uninterruptedly. When the remarks made on the judicial proceedings are being complained of, the test should be whether such remarks/complaints create a serious risk that the course of justice may be interfered with.

10. We are aware that the Judge's Bench is a seat of power, only to make binding decision using such power, bearing in mind, the general principle of the highest importance to the proper administration of justice with a duty to restraint, because judicial restraint and discipline are necessary to the orderly administration of justice, as they are to the effectiveness of the army, that

maintains the Rule of Law.

11. We are also conscious that the judicial restraint might better be called as judicial respect, that is, respect by the judiciary, respect to those who come before the Court as well as to other co-ordinate branches of the State, the executive and the legislature, that there must be mutual respect, or otherwise it will be neither good for the judiciary nor for the judicial process. Therefore, the inherent power of the Bench in dispensation of justice lies to act freely upon its own conviction with equal judicial restraint referred to above.

12. With this spirit, apart from holding that the above contempt petition is not maintainable in law, we also make it clear that there is no need to have much ado about the issue said to have been taken place on 17.10.2006 as published in the media, as there cannot be any second opinion that human dignity and self-respect of every individual has to be upheld and the spirit of democracy should be maintained by mutual respect between all three wings of the State, viz., the legislature, the executive and the judiciary, and therefore, a quietus can be given to the entire episode leaving the matter buried.

With the above observations, the contempt petition is closed.