

(1980) 01 AP CK 0001

In the Andhra Pradesh High Court

Case No : Contempt Case No. 6 of 1980

Hakeem Rahimullah Khan

APPELLANT

Vs

Syed Sabir alias Syed Makhdeem and Others

RESPONDENT

Date of Decision : 29-01-1980

Acts Referred:

Constitution of India, 1950 — Article 145, 225

Citation : (1981) CriLJ 395

Hon'ble Judges : Madhava Reddy, J;K. Amareswari, J

Bench : Division Bench

Advocate : B.N. Chobe, for the Appellant;

Judgement

Madhava Reddy, J.—Upon the presentation of a petition under Sections 2, 12, and 18 of the Contempt of Courts Act, 1971 to this Court, the Registry has raised among others, the following objections.

1. Material papers containing all documents referred to in the petition or affidavit should be filed in triplicate duly stitched in book form, paged indexed and authenticated.
2. Batta should be paid for notice to the respondent.
2. The first of these objections is more of form rather than of substance but nonetheless a matter requiring consideration of the Courts for it emphasises the necessity for framing appropriate rules of procedure to govern proceedings under the Contempt of Courts Act, 1971. The first objection is really composed of two parts. The first part is that all documents referred to in the petition should be filed as material papers along with the petition and secondly that it should be filed in triplicate, stitched in book form, paged, indexed and authenticated.
3. A petition under Sections 2, 12 and 18 of the Contempt of Courts Act, 1971 is an original petitions. No rules have been framed under the Contempt of Courts Act, 1971 to govern such petitions. However, in respect of proceedings for

Contempt of Subordinate Courts and of the High Court, in Chapter XXI of the Original Side Rules of the Madras High Court which are applicable to the proceedings on the original side of this Court there are certain Rules governing contempt proceedings. But there is no rule therein prescribing either the form of the petition or regarding the filing of material papers referred to in the petition. In exercise of the powers conferred on the High Court by Clauses 37 and 38 of the Letters patent, S. 129 of the Code of Civil Procedure, Article 225 of the Constitution and S. 32 of the Andhra State Act and all other powers enabling the High Court of Andhra Pradesh to make rules to regulate proceedings for contempts of Subordinate Courts and of the High Court other than proceedings under Order XXI and the Rules of High Court (Madras) 1927, the High Court has framed rules. Even these rules are silent in this behalf. There are no other rules under which the Registry could insist upon the petitioner to file all the orders or documents referred to in the petition. In fact, there is not even a rule requiring the petitioner to file an affidavit in support of the petition. In the absence of any specific rule in this behalf, it is not open for the Registry to return the petition for non-filing of papers referred to in the petition much less can it insist upon filing these material papers in triplicate duly stitched in book form, paged, indexed and authenticated. The High Court Registry can return the petitions only when they are filed not in conformity with the rules governing the filing of such petitions but not on any ground of convenience or inconvenience to the Court. It must, however, be pointed out that if an application for initiating the proceedings in contempt of Subordinate Courts or of the High Court is not supported by the necessary material papers, it would not be possible for the Court to consider whether a prima facie case has been made out so as to direct notice to the respondents. If a party seeks in all seriousness that the Court; more so when the petition itself is not required to be supported by an affidavit of the party. However, in the absence of such a rule requiring filing of such material papers while the office would not be competent to return the papers, the Court may find that there is no sufficient material before it to warrant initiation of proceedings. The registration of such a petition would be inappropriate.

4. This only emphasises the necessity for framing rules in this behalf at the earliest to govern petitions under Contempt of Courts Act, 1971, requiring the petitioners to file affidavits and copies of all material papers referred to in the petition. Rules have been framed by the Supreme Court in this behalf under S. 23 of the Contempt of Courts Act, 1971 read with Article 145 of the Constitution of India. The relevant rules in this behalf are Rules 3 and 4 which read as follows :

"3. In case of contempt other than the contempt referred to in Rule 2, the Court may take action :-

(a) suo motu, or (b) on a petition made by Attorney General, or Solicitor General, or (c) on a petition made by any person, and in the case of a criminal contempt with the consent in writing of the Attorney General or the Solicitor

General.

4. (a) Every petition under Rule 3 (b) or (c) shall contain :-

(i) the name, description and place of residence of the petitioner or petitioners and of the person charged;

(ii) nature of the contempt alleged, and such material facts, including the date or dates of commission of the alleged contempt, as may be necessary for the proper determination of the case;

(iii) if a petition has previously been made by him on the same facts the petitioner shall give the details of the petition previously made and shall also indicate the result thereof.

(b) The petition shall be supported by an affidavit;

(c) Where the petitioner relies upon a document or documents in his possession or power, he shall file such document or documents or true copies thereof with the petition.

(d) no Court-fee shall be payable on the petition and on any document filed in the proceedings". It is necessary to frame appropriate rules in this behalf at the earliest on similar lines.

5. The first objection raised by the Registry is, therefore, unsustainable and accordingly overruled.

6. The other objection raised by the Registry is that Batta should be paid by the petitioner for purpose of serving notice on the respondents. Of course, unless Batta is paid, notice cannot issue. The question, however, is whether a person who moves a petition in contempt is bound to pay Batta and on failure to pay the same, that petition could be returned. The Supreme Court in *Baradakanta Mishra Vs. Justice Gatikrushna Misra*, Chief Justice of the Orissa High Court, has laid down that proceedings in contempt are between the Court and the contemner. The petition merely brings the facts to the notice of the Court which in his view constitute Contempt of Courts and he is not a petitioner in the usual sense of the term. The Supreme Court further observed thus :

"The motion or reference is only for the purpose of drawing the attention of the court to the contempt alleged to have been committed and it is for the Court, on a consideration of such motion reference, to decide, in exercise of its discretion, whether or not to initiate a proceeding for contempt. The Court may decline to take cognizance and to initiate a proceeding for contempt either because in its opinion no contempt prima facie appears to have been committed or because, even if there is prima facie contempt, it is not a fit case in which action should be taken against the alleged contemner. The exercise of contempt jurisdiction being a matter entirely between the Court and the alleged contemner, the Court, though moved by motion or reference, may in its discretion, decline to exercise its jurisdiction for contempt. It is only when the Court decides to take action and

initiates a proceeding for contempt that it assumes jurisdiction to punish for contempt ..."

7. The Supreme Court referred with approval the observations of Rangnekar, J., in Narendrabhai Sarabhai Hatheesing Vs. Chinubhai Manibhai Seth, which are as follows :

"Proceedings for contempt are matters entirely between the Court and person alleged to have been guilty of contempt. No party has any statutory right to say that he is entitled as a matter of course to an order for committal because his opponent is guilty of contempt. All that he can do is to come to the Court and complaint that the authority of the Court has been flouted, and if the Court thinks that it was so, then the Court in its discretion takes action to vindicate its authority. It is, therefore, difficult to see how an application for contempt raises any question between the parties, so that any order made on such an application by which the court in its discretion refuses to take any action against the party alleged to be in the wrong can be said to raise any question between the parties."

8. In view of the above, it upon the facts brought before the Court, in the manner prescribed by the rules that may be framed in this behalf, the Court feels that respondent should be called upon to show cause why they should not be held guilty of contempt, it is for the Court to issue notice at its cost and supply the necessary papers to the respondents and direct the office to make necessary number of copies for the use of the Court and the Advocate General and all others concerned. It is no part of the duty of the petitioner to pay the Batta for notice to the respondents. The second objection raised by the Registry is also therefore overruled.

9. The petition may, therefore, be registered and placed before the Court.

10. Order accordingly.