

(2009) 02 KAR CK 0082
In the Karnataka High Court
Case No : CCC (Criminal) No. 11 of 2008

High Court of Karnataka

APPELLANT

Vs

Sri. Rangappa Bhovi

RESPONDENT

Date of Decision : 18-02-2009

Acts Referred:

Contempt of Courts Act, 1971 — Section 12, 15, 2 (c)

Citation : (2009) 3 KCCR 1812 : (2011) 7 RCR(Criminal) 1440

Hon'ble Judges : S.R. Bannurmath, J;A.N. Venugopala Gowda, J

Bench : Division Bench

Advocate : S.B. Pavin, SPP, for the Appellant; Party-in-Person, for the Respondent

Judgement

S.R. Bannurmath, J.—This is a suo motu contempt initiated under Article 215 of the Constitution of India read with Section 15 of the Contempt of Courts Act.

2. The respondent/accused Rangappa Bhovi has filed a police complaint against a Sitting Hon'ble Judge of the High Court of Karnataka on 13.2.2008 before the Deputy Commissioner Which has been forwarded to jurisdictional police at Vidhana Soudha Police Station, Bangalore, alleging that in the Writ Petition No. 18203/2006 filed by him and Writ Petition No. I0825/2006 filed by the Management, the learned Single Judge in collusion With the Management, in order to cause injustice to a dalit like the petitioner (accused herein), by misusing his power and adopting corrupt method illegally, dismissed his writ petition thereby causing irreparable loss and injury to him. As the said criminal complaint was against a Sitting judge of the High Court in respect of offences alleged to have been committed, the police intimated the filing of this complaint to the Registry of this Court and on going through the complaint, as allegations were not only derogatory, but, scandalising the learned Single Judge in his capacity as a sitting Judge of the High Court of Karnataka, which would lower or tend to lower the authority of Court, this suo motu contempt petition came to be registered.

3. After issuance of notice, respondent / accused appeared in person and filed his detailed objections. In the objections filed, he has reiterated his allegations and has further made allegations against the Labour Court and two other Hon''ble Judges of this Court who had considered his writ appeal arising from W.P. No. 18203/2006. In this regard, he has, in detail stated about the Doctrine propagated by Dr. Ambedkar and contend that, as injustice has been caused by the judges by rejecting his writ petition, that too, in collusion with the Management and to help them and by using corrupt method and he being a dalit and free citizen of this country entitled to file a criminal case.

4. After going through the statement of objections, suo motu contempt proceedings and hearing the appellant who appeared as party-In-person, this Court found there is a prima facie case to proceed against the accused for the criminal contempt and accordingly charges came to be framed on 16.9.2008. The charges are as follows:

That you had filed a complaint dated 13.2.2008 with the Vidhana Soudha Police Station, Bangalore, a copy of which has been forwarded to the Registrar, High Court of Karnataka. You have filed the said complaint against the Hon''ble Mr. Justice Shri Subhash B. Adi, Judge, High Court of Karnataka, showing him as an accused. In the said complaint at para-5 you have alleged as follows:

With these allegations, you have further stated that:

Your act of filing the criminal complaint against the Hon''ble Judge of the High Court of Karnataka and the aforesaid allegations made against him are not only scandalous allegations but also lowers the dignity and authority, not only of the Hon''ble Judge named as accused in your complaint but also tends to lower the dignity of the High Court of Karnataka, thereby you have committed criminal contempt of the Court as defined u/s 2(c) of the Contempt of Courts Act punishable u/s 12 of the Contempt of Court Act 1971.

5. Thereafter the case was set in for trial. On behalf of the prosecution, C Ws.1 to 3 were examined and Exs.C1 to C6 have been got marked. The accused got himself examined as RW.1 and got marked Exs.D1 to D33. Thereafter the matter was heard for final disposal.

6. Sri Pavin, learned SPP has been directed to prosecute the case, who argued at length and the party-Inperson/accused replied to the same. Before going Into the merits of the case, it is necessary to reiterate the principles in respect of Contempt of Court action.

7. Considering the freedom of speech guaranteed under Article 19 of Constitution of India vis-a-vis the scandalisation of the Courts, the Apex Court in the case of Dr. D.C. Saxena, Contemnor Vs. Hon''ble the Chief Justice of India, observed thus:

Freedom of speech and expression, would be subject to Articles 19(2), 129 and 215 of the Constitution, in relation to contempt of Court, defamation or

incitement to an offence etc. Article 3 read With Article 19 of the Universal Declaration of Human Rights grants to everyone liberty and right to freedom of opinion and expression. Article 19 of the International Convent on Civil and Political Rights, 1966 to which India is a signatory and had ratified, provides that everyone shall have the right to freedom of expression, to receive and impart information and ideas of all kinds but Clause (3) thereof imposes corresponding duty on the exercise of the right and responsibilities. It may, therefore, be subject to certain restrictions but these shall only be such as are provided by law and are necessary for the respect of life and reputations of others for the protection of national security or public order or for public health or moral. It Would thus be seen that liberty of speech and expression guaranteed by Article 19(1)(a) brings within its ambit, the correspondings duty and responsibility and puts limitations on the exercise of that liberty.

It is further observed-

Freedom of expression in arguments encourages the development of judicial dignity, forensic skills of advocacy and enables protection of fraternity, equality and justice. It plays its part in helping to secure the protection of other fundamental human rights. Legal procedure illuminates how free speech of expression constitutes one of the most essential foundations of democratic society. Freedom of expression, therefore, is one of the basic conditions for the progress of advocacy and for the development of every man including legal fraternity practising the profession of law. Freedom of expression, therefore, is vital to the maintenance of free society. It is essential to the rule of law and liberty of the citizens. The advocate or the party appearing In person, therefore, is given liberty of expression. They equally owe countervailing duty to maintain dignity, decorum and order In the Court proceedings or judicial process. The liberty of free expression is not to be confounded or confused with licence to make unfounded allegations against any institution, much less the judiciary.

Fair criticism of the judicial proceedings outside the pleadings of the Court is democratic feature so as to enable the Court to look inward into the correctness of the proceedings and the legality of the orders of the Court by the Court itself for introspection. But a party has a duty and responsibility to plead a part of the averments or the prayer in the relevant portion with language befitting with the dignity of the Court and the judicial process and not in self-abuse of the freedom of expression given under Article 19(1)(a). Abuse of the process of the Court is a self-evidence. As such Article 19(2) creates an embargo on the freedom of expression and excludes from its operation the power of contempt of Court under the Act. Supreme Court being Court of record, power of Supreme Court under Article 129 is independent and is not subject to Article 19(1)(a). Ex abundanti cautela Article 19(2) excludes the operation of Article 19(1) when speech or expression is trapped in contempt of Court or tends to trench into it. When the contempt of Court is committed by a litigant, the freedom of expression being contemptuous becomes punishable under Article 129 of the Constitution dehors

the power u/s 12 of the Contempt of Courts Act.

When an advocate or a party appearing before the court requires to conduct himself in a manner befitting to the dignity and decorum of the Court, he cannot have a free licence to indulge in writing in the pleadings the scurrilous accusations or scandalisation against the judge or the Court. If the reputation and dignity of the Judge, who decides the case are allowed to be prescribed in the pleadings, the respect for the Court would quickly disappear and independence of the judiciary would be a thing of the past.

In the case of Shri C.K. Daphtary and Others Vs. Shri O.P. Gupta and Others, it is held that, a scurrilous attack on a judge in respect of a judgment or past conduct has adverse effect on the due administration of justice. This sort of attack in a country like ours has the inevitable effect of undermining the confidence of the public in the judiciary. If confidence in the judiciary goes, the due administration of justice definitely suffers. There can be no justification of contempt of Court.

In the case of Rustom Cowasjee Cooper Vs. Union of India (UOI), , giving a word of caution to those who embark on the path of criticising the judgment of the court, it was observed: (SCC p.301, para 6)-

There is no doubt that the court like any other institution does not enjoy immunity from fair criticism. This Court does not claim to be always right although It does not spare any effort to be right according to the best of the ability, knowledge and judgment of the judges.

In S. Mulgaokar's case AIR 1978 SC 727, it is held that the judiciary is not immune from criticism but when the criticism is based on obvious distortion or gross misstatement and made in a manner which is designed to lower the respect of the judiciary and destroy public confidence in it, it cannot be ignored.

In the case of In Re: Ajay Kumar Pandey, , it has been held that - "any threat of filing a complaint against the judge in respect of the judicial proceedings conducted by him in his own Court is a positive attempt to interfere with the due course of administration of justice. In order that the judges may fearlessly and independently act in discharge of their judicial functions, it is necessary that they should have full liberty to act within the sphere of their activity. If, however, litigants and their counsel start threatening the judge or launch prosecution against him for what he has honestly and bona fide done in his court, the judicial independence would vanish eroding the very edifice on which the institution of justice stands.

While dealing with the meaning of the word "scandalising", In the aforesaid mentioned case of D.C. Sexana, it Is held that "it is an expression of scurrilous attack on the majesty of justice which is calculated to undermine the authority of the courts and public confidence in the administration- of justice. The malicious or slanderous publication inculcates in the mind of the people a general dissatisfaction and dissatisfaction on the judicial determination and indisposes

their mind to obey them. If the people's allegiance to the law is so fundamentally shaken it is most vital and most dangerous obstruction of justice calling urgent action.

In the case of J.R. Parashar, Advocate and Others Vs. Prasant Bhushan, Advocate and Others, , the Court observed -

To ascribe motives to a judge is to sow the seed of distrust in the minds of the public about the administration of justice as a whole and nothing is more pernicious in its consequences than to prejudice the mind of the public against judges of the court who are responsible for implementing the law. Judges do not defend their decisions in public and if citizens disrespect the persons laying down the law, they cannot be expected to respect the law laid down by them. The only way the judge can defend a decision is by the reasoning in the decision itself and it is certainly open to being criticised by anyone who thinks that it is erroneous.

(Emphasis supplied by us)

In the case of In Re: Arundhati Roy, the Apex Court observed that "fair criticism of the conduct of a judge the institution of the judiciary and its functioning may not amount to contempt if it is made In good faith and in public interest. To ascertain the good faith on the public interest, the Courts have to see all surrounding circumstances including the person responsible for comments, his knowledge in the field regarding which the comments are made and the intended purpose sought to be achieved. All citizens cannot be permitted to comment upon the conduct of the Courts In the name of fair criticism which, if not, checked, would destroy the institution itself. Litigant losing in the Court would be the first to impute motives to the judges and the institution in the name of fair criticism, which cannot be allowed for preserving the public faith in an important pillar of democratic set-up i.e., judiciary.

8. We have also got in mind the broad principles laid down by the Apex Court as to the appreciation of evidence, proof required, in respect of considering the offence of contempt of Court. It is useful to note that in the case of Mrityunjoy Das and Another Vs. Sayed Hasibur Rahaman and Others, the Apex Court held that, "an extraordinary jurisdiction of the Court in terms of the provisions of the Contempt of Courts Act is quasi-criminal, and as such, the standard of proof required is that of a criminal proceeding and the breach shall have to be established beyond reasonable doubt. Contempt of Court is an offence of a criminal character."

9. With this factual and legal background, we proceed to consider the conduct of the accused to find out whether there is criminal contempt committed by him or not.

10. It is to be noted that, both in the statement of objections filed by the accused and arguments advanced by him before us as party in person, he has not only admitted the writing of the complaint Ex.C4 but also reiterated the

allegations made therein. As already noted, the writ petition of the accused which was decided by the learned Single Judge as per Ex. D10 came to be rejected and the writ appeal filed was also dismissed. In this background, the accused has filed the present criminal complaint with the jurisdictional police. The contemptuous allegations are:

11. On these allegations, as already noted he has filed the criminal case to take case against the learned Single Judge under the provisions of Schedule Caste / Schedule Tribes (Prevention of Atrocities) Act and IPC. In his defence, in the statement before the Court, he has stated thus:

In conclusion he states thus:

12. Thus both in the written statement and in evidence before the Court, the accused has reiterated the allegations made by him against the learned Single Judge.

13. The very reading of these allegations prima facie indicates that, according to the accused, the learned Single Judge has colluded with the respondent/ Management in the writ petition and only to suppress the accused as he belongs the Dalith Community, throwing the morality in the winds and accepting bribe and adopting corrupt practice, dismissed the case of the petitioner. As already noted, from the various pronouncements, there is no doubt that the Court like any other institution does not enjoy immunity from criticism. This Court does not claim to be always right, although it does not spare any effort to be right according to the best of the ability, knowledge and judgment of the judges. The judges do not think themselves in possession of all truth or hold that, whenever others differ from him, it is so far error. No one is free from conscious than a judge of his limitation and fallibility and as such according to his fair and temperate criticism of the Court may not be actionable but where improper motives or corrupt practice is alleged against the judges, the Court cannot keep quite but to take suo motu action as provided under Article 215 of the Constitution of India. It is to be noted that, there is absolutely no material evidence produced by the accused to even substantiate his allegation against the learned Single Judge viz., in order to help the Management, adopting corrupt practice, the learned Single Judge has decided the case against the accused. It is already noted, even if there was any error any error committed in the judgment, the matter has been again considered by a Division Bench of this Court and the Division Bench has not found any error of law in deciding the case against the accused in Writ Appeal No. 418/2008.

14. Having seen the entire records, hearing the accused and his arguments both oral and written, we are fully satisfied that the contemnor by questioning the conduct of the Judge and making scandalising attacks on the Judge in his capacity as a Judge, had lodged a police complaint alleging atrocities committed by the learned Single Judge as defined under the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act noting especially, the

language employed by him in his complaint filed before the police as well as reiterated before this Court by way of statement of objections and evidence, we find his guilty of criminal contempt and is liable to be punished.

15. At this stage it is to be noted that, after the evidence was recorded and arguments were heard, on 3.2.2009 the accused has filed an application tendering his apology. In our view, this apology tendered is at a belated stage and only with an object to escape from punishment he is liable to get in this contempt petition. As we do not find any bona fides or real remorse on the part of the accused, we decline to accept the apology which smacks of bona fides.

16. In the result, the accused is held guilty of Contempt of Court and finding that the accused has wantonly and deliberately scandalized the learned sitting Judge of this Court for writing a judgment, which has been affirmed by the Division Bench, to uphold the majesty and dignity of the judiciary, we proceed to sentence him to the maximum punishment i.e., S.I. for six months and a fine of Rs. 2,000/-.

The accused has also filed an application to suspend the sentence u/s 19 of the Contempt of Courts Act on the ground that he intends to file an appeal against this order. In perusal of Section 19(3) of the said Act, we find that the suspension of sentence is a discretionary power and in the peculiar facts of the present case, we refuse to exercise the discretion.

We direct the Registrar Judicial to take the accused into custody for serving the sentence imposed.