

(2011) 06 BOM CK 0036

In the Bombay High Court

Case No : Criminal Suo Motu Contempt Petition No. 9 of 2007

High Court on its own motion

APPELLANT

Vs

Shri Dattatray Narayan Samant and Shri C.S. Joshi, Advocate

RESPONDENT

Date of Decision : 03-06-2011

Acts Referred:

Contempt of Courts Act, 1971 — Section 13, 2

Citation : (2011) 113 BOMLR 2272

Hon'ble Judges : P.D. Kode, J;A.M. Khanwilkar, J

Bench : Division Bench

Advocate : Ujwal Agandsurve, Amicus Curiae, for the Appellant; C.S. Joshi and Party-in-Person, for the Respondent

Judgement

P.D. Kode, J.—The suo motu contempt action against the Respondents/ contemnors emerges out of show cause notice issued on 17.8.2007 and, thereafter, matter being admitted on 20.11.2007. For the sake of convenience, the order dated 17th August, 2007 is reproduced thus:

1. During the course of hearing of this Civil Application, learned Counsel for the Respondents - Central Bank of India pointed out certain improper words used by the applicant in relation to a learned Judge of this Court. The said words occur in the main paragraph No. 14 and also in some paragraph Nos. 2 and 3 of the C.A. No. 1936 of 2007.

2. The learned Counsel for the applicant further stated that the "false statement" referred to in sub-paragraph No. 3 is attributable to the learned Judge who decided the matter. Prima facie, the use of such language by the applicant and his advocate who has drafted the application constitutes criminal contempt of Court. (vide M.Y. Shareef and Another Vs. The Hon'ble Judges of The High Court of Nagpur and Others,).

3. Hence, issue notice to the applicant and Advocate Mr. C.S. Joshi who states that he has drafted the petition, to show cause why action for criminal contempt

of Court should not be initiated against them. Notice made returnable after two weeks before the appropriate Division Bench taking up contempt matters.

4. Civil Application No. 1936 of 2007 adjourned for four weeks.

2. The Court was constrained to issue said show cause notice while considering Civil Application No. 1936 of 2007 taken out in Writ Petition No. 7445 of 2005 by/ for Respondents therein i.e. contemner No. 1 and drafted by his Advocate i.e. contemner No. 2; after the counsel for the Petitioner in said writ petition invited the offending averments in paragraph No. 14 and also in some part of paragraphs 2 and 3 of the civil application. Paragraph 14 of the said application is to the following effect:

The advocate for the applicants complained to the Chief Justice of Bombay High Court, on 5.5.2006 to the Chief Justice of Bombay High Court, on 5.5.2006 for malpractices of J. Kakade i.e.

(i) without assignment, how circulation granted in the matter ?

(ii) Even during the course of argument J. Kakade failed to understand this matter not pertains to him, is total non application of mind or deliberate act.

(iii) False statement that advocate was not present on 25.4.2006 and 26.4.2006. On 25.4.2006, the advocate was personally present and on 26.4.2006 junior Shri Garge Advocate requested to keep back the matter.

(iv) As per the Appellate Side Rules, assignments are important. It was incumbent on the Court to recall the said order and to direct the office to place the matter before proper forum.

(v) If matter is admitted on merit and stay is granted why J. Kakade not referred order of Ms. Nishita Mhatre dated 25.10.2006, raised query of order of Small Cause Court and compliance of admission/ under-taking given by the Respondent herein.

(Emphasis supplied)

The said matters from paragraph No. 14 recited hereinabove are hereinafter termed as "impugned or offending matters/averments" for the sake of brevity.

3. It will be useful to advert to paragraph 11 of the decision in M.Y. Shariff's case. The same reads thus:

The fact, however, remains, as found by the High Court that there was at the time these events happened considerable misconception amongst a section of the Nagpur Bar about advocates' responsibilities in matters of signing transfer application containing allegations of this character. It cannot be denied that a section of the Bar is under an erroneous impression that when a counsel is acting in the interests of his client, or in accordance with his instructions he is discharging his legitimate duty to his client even when he signs an application or a pleading which contains matter scandalizing the Court. They think that when

there is conflict between their obligations to the Court and their duty to the client, the latter prevails.

This misconception has to be rooted out by a clear and emphatic pronouncement, and we think it should be widely made known that counsel who sign applications or pleadings containing matter scandalizing the court without reasonably satisfying themselves about the prima facie existence of adequate grounds therefor, with a view to prevent or delay the course of justice, are themselves guilty of contempt of court, and that it is no duty of a counsel to his client to take any interest in such applications; on the other hand, his duty is to advise his client for refraining from making allegations of this nature in such applications. Once the fact is recognized as was done by the High Court here, that the members of the Bar have not fully realized the implications of their signing such applications and are firmly under the belief that their conduct in doing so is in accordance with professional ethics, it has to be held that the act of the two Appellants in this case was done under a mistaken view of their rights and duties, and in such cases even a qualified apology may well be considered by a Court. In border line cases where a question of principle about the rights of counsel and their duties has to be settled, an alternative plea of apology merits consideration; for it is possible for a judge who hears the case to hold that there is no contempt in which case a defence of unqualified apology is meaningless, because that would amount to the admission of the commission of an offence. In this case the learned judges themselves had to wade through a large volume of English and Indian case-law before they could hold that the act of the Appellants constituted contempt and thus it could not be said that the matter was so patent that on the fact of it, their act amounted to contempt.

(Emphasis supplied)

4. During the course of hearing before the Bench presided by S/Shri Bilal Nazki and A.A. Kumbhakoni, JJ., on 22.8.2008, in spite of the contemner No. 2 was heard for both the Respondents for a long time, still he wanted to read affidavits filed by him and his client, contemner No. 1, which were scandalous. Therefore, he was not allowed to proceed further in the matter and, instead, the Court allowed him to file written arguments. Inasmuch as, allowing him to continue oral arguments in the open Court may have resulted in denigrating the majesty of the Court itself. However, in order to be fair to the contemner No. 2, it was recorded that after considering the written arguments filed by him, Court may give him a chance of hearing orally. The contemnors in the written arguments however, submitted that they desire to argue the matter in chamber for ventilating the factual position. Accordingly, the contemnors were given a chance to make the oral submissions before us after the matter was assigned to our bench.

5. It is the thrust of the submission of contemner No. 2 for the contemnors that show cause notice is liable to be dismissed as:

(i) matters stated in impugned part of paragraph 14 relate to a complaint made by him to the Chief Justice regarding the manner in which the matter had proceeded on 25.4.2006, 26.4.2006 and 2.5.2006 before the learned Judge; and the said complaint was ordered to be listed by the Chief Justice before another bench;

(ii) the said matters are true, fair and correct reproduction of events occurred on the said date, required to be stated/pleaded in the application taken out;

(iii) there being truth in the said matters stated, it is a defence available u/s 13 of the Contempt of Courts Act.

6. Having regard to the defence advanced by the contemners for defending themselves; and the proceeding being initiated due to the impugned matters recited in paragraph No. 14 of the Civil Application filed before the Court, makes it necessary to consider the background and the purpose for which said Civil Application was taken out and the matters stated therein. The same is necessary for determining whether stating of said impugned matters was necessary and/or whether there was any justification for pleading such matters in the application and/or whether stating such matters constitute criminal contempt.

7. The said Civil Application was taken out by/for contemner No. 1 - landlord and original Plaintiff in T.E. Suit No. 4653 of 2003 initiated against the tenant in the Court of Small Causes at Bombay for recovery of possession and the arrears of rent. Contemner No. 1 had mainly prayed in the said Civil Application for;

(a) vacating the stay granted by J. Kakade on 26.4.2006 in terms of prayer Clause (b) of Writ Petition No. 7445 of 2005.

(b) peremptorily fixing the matter for final hearing as per order of Chief Justice at Exh. 6.

(c) providing cost of the application.

8. The main case set out in the said application is to the effect that said T.E. Suit No. 4653 of 2003 was decreed in favour of contemner No. 1 on 14.3.2005 by Additional Chief Judge, Small Causes Court, Bombay; and Appeal No. 454/2005 preferred by tenant Central Bank of India was dismissed by the Appellate Bench of the said Court on 15.9.2005 in the morning session. Upon application then made by the advocate for Bank for staying execution of decree the appellate court directed to deposit the arrears with effect from October 1991 after subtracting Rs. 3,00,000/- loan amount, as a condition precedent for grant of stay. Upon the request of advocate for the tenant-Bank, matter was kept back in the noon session. Advocate Nathani for Bank appeared along with officer of Bank and made a statement that Bank-Respondent was ready and willing to deposit the arrears and thereon, the appellate court granted conditional stay to the execution of decree till 18.11.2005 subject to Appellant - Bank complying the statement made of clearing dues from 1991 after deducting Rs. 3,00,000/- loan amount within 15 days. At the end of expiry of the said period, Appellant/tenant

Bank instead filed a Writ Petition No. 6552 of 2005 with the contention that no instructions were given to the advocate to make such a statement and as such the same was not binding upon the bank. Accordingly, vide order passed on 19.10.2005, said Writ Petition was disposed with a direction to approach the appellate court within a week for clarification of the order. As within a week no orders could be obtained, the Bank filed another Writ Petition No. 7445 of 2005 in which vide order dated 25.10.2005, the execution of a decree passed was stayed till the application made by the Respondents/Bank before appellate court in pursuance to order dated 19.10.2005 passed in Writ Petition No. 6552 of 2005 with a rider that in the event of adverse order being passed against the Bank, then not to act upon the said decree for a period of one week thereafter.

9. It is further averred that the notice/application taken by Bank for modification of conditional order before appellate court was decided and rejected by judgment and order passed on 7th to 10th April 2006. The contemner No. 1 is said to have received the copy of the same on 21.4.2006. Thereafter, the said Writ Petition No. 7445 of 2005 appeared before the Bench presided over by Shri Kakade, J.

10. It is significant to note that in paragraph Nos. 9,10 and 11, the contemnners aver that advocate of contemner No. 1 (i.e. contemner No. 2) attended the said matter on 25.4.2006 but prayed for adjournment as he did not have the papers with him as he had come to the Court directly after arriving from Delhi on the same day by train. At his request, the matter was adjourned to 26.4.2006. On 26.4.2006, the said matter i.e. Writ Petition was shown at Sr. No. 1, but, due to the traffic problem advocate for applicant (contemner No. 1) i.e. contemner No. 2 requested the Court through his colleague Shri Garge Advocate to keep back the matter. Instead of keeping back the matter, the learned Judge admitted the matter and granted blanket stay to the execution. It was also the case of the applicant that Respondent-bank had played fraud on court and upon contemner No. 1 without disclosing the order of the Appeal Court (i.e. order dated 7/10 April, 2006 rejecting modification of conditional order) and without disclosing the fact of non-payment of arrears of rent and undertaking given by the Bank, obtained the order of stay to the execution of decree.

11. It is further averred in paragraph Nos. 12 and 13 of the said Civil Application that being aggrieved by the said order, contemner No. 1 on the very day mentioned at 11.25 a.m. before the same learned Judge who passed the order in the earlier part of the day to point out that the matter was not assigned to his bench because his assignment was only of the Rent Act and the M.E.P.S. Act matters, whereas the matter under reference was of Transfer of Property Act. But, it is asserted that the learned Judge refused to consider that objection and stated that whatever breach committed is committed. Admittedly, contemner No. 1 preferred review petition under stamp No. 10577 of 2006 in the said Writ Petition, even the said review petition was also dismissed by the learned Judge on 2.5.2006 stating as not maintainable.

12. Thereafter averring the impugned matters in paragraph No. 14, it is further

stated in paragraph Nos. 15 & 16 of the Civil Application that since July 2006 the matter was at the stage of final hearing but had not reached. Thereafter, the matter disappeared from the final hearing board. The contemner No. 1 then took out Civil Application No. 971 of 2007 in August 2006 with a prayer to direct the Bank to comply the order dated 15.9.2005 passed by the Small Causes Court in Appeal No. 454 of 2005. However, the said Civil Application was withdrawn by contemner No. 2 as the prayer therein was not proper. Ultimately, contending that the Bank is retaining possession without honouring the orders of the appellate bench of Court of Small Causes; as per the provisions of law for retaining the possession party must clear all the dues due to him; adopting evasive strategy by claiming that no advocate was instructed, the admission of advocate being not binding upon them in spite of the fact in the noon session (before Small Causes Court) advocate had made a statement on due instruction; the Bank had not disclosed before the High Court on 26.4.2006 about the order passed by Small Causes Court on 7/10 April, 2006 dismissing the notice No. 281, the contemner No. 1 had prayed for relief as stated earlier.

13. The exhaustive narration about the matters stated in the said Civil Application makes it abundantly clear that the same was primarily taken out for vacating stay granted by the learned Single Judge of this Court on 26.4.2006 and for peremptorily fixing of matter for final hearing.

14. Though in present proceedings we are neither concerned nor required to consider the merits of the rival claims in the said Civil Application and/or even the background of taking out of such application at such a stage even after the main matter was admitted and review petition rejected, the whole exercise of narrating the events has been made for the limited purpose to ascertain whether narration of impugned matters in paragraph 14 of the Civil Application was essential for taking out such application and/or for justifying prayers made therein.

15. We may agree with the submission of the contemnors that making a written complaint to the higher authority i.e. in the instant case, the Chief Justice, about the events as unfolded during the hearing of the case before the learned Single Judge, by itself, would not amount to a criminal contempt, so long as it is not a publication. However, we are unable to accept the further submission that, for the same reason, reproduction of the contents of that communication sent to the learned Chief Justice concerning the events occurred on 25.4.2006 and 26.4.2006 before the learned Single Judge, in a formal application moved before the Court, would not amount to criminal contempt. We may add that making a complaint to the learned Chief Justice of this Court regarding the matters pertaining to the administration of justice though by itself may not constitute a criminal contempt, still, reiteration of the fact of making such a complaint by reproducing the contents thereof in a formal application moved before the Court would not necessarily fall outside the ambit of criminal contempt if the same is covered within four corners of the definition of criminal contempt under the

Contempt of Courts Act, 1971.

16. Reverting to the contents of paragraph 14 of the Civil Application, on the face of it, the same is suggestive of intentional impropriety committed by the learned Judge of this Court. In that, it mentions that complaint was made to the learned Chief Justice on 5th May, 2005 about the "malpractices" committed by the learned Judge. The justification for such allegation, amongst others, was that circulation of the matter was granted by the learned Judge without assignment. Admittedly, the matter was pertaining to dispute between landlord and tenant, albeit under the provisions of the Transfer of Property Act. Indeed, the assignment of the learned Judge, at the relevant time, was pertaining to the disputes covered by the Rent Act and MEPS Act matters. It is, however, too much to assert that the learned Judge was responsible for the mentioning made by the advocate for the writ Petitioner pointing out that his client, who was tenant in the disputed premises, was to shortly lose possession. The blame, if at all, lies on the advocate for the writ Petitioner for not ascertaining as to whether the matter pertained to the assignment of the concerned Judge, before whom, it was circulated.

17. The matter does not rest at that. The second circumstance alleged in paragraph 14 of the civil application is that, during the course of argument, the learned Judge failed to understand that the matter did not pertain to his assignment. It would be a different matter if the contemners had restricted themselves to such allegation; but they went on to further assert that it was a case of total non-application of mind or "deliberate act of the learned Judge". This is nothing short of attributing motives to the learned Judge of this Court, without any basis at all. It is not as if the contemners would be rendered remedyless because of the stay granted on 26th April, 2006. They could have applied for vacating the said order, which they did attempt unsuccessfully. By no standard, the litigant, much less the advocate, can be permitted to allege motives and insinuations to the Judges of this Court, without substantiating such serious allegation. The litigants and advocates cannot be allowed to make such allegation merely on the basis of the inference deduced by them. It is not unknown that, during the hearing, the arguments become heated exchange between the advocates appearing for the opposite parties, and, in a given case, even the Judge may make some strong observation, which, by itself, cannot be the basis to attribute motives. Notably, in the present case, the contemners have gone to the extent of reiterating the complaint made to the learned Chief Justice that the learned "Judge recorded false statement" in the proceedings that advocate was not present on 25th and 26th April, 2006. Once again, this is strongly worded criticism of the proceedings as recorded. The expression "false" pre-supposes that such record was intentionally created by the Judge with ulterior purpose. It would have been a different matter, if the contemners were to allege that the proceedings as recorded were incorrect, without attributing any motives to the learned Judge.

18. As aforesaid, it would be one thing to make a confidential complaint to the learned Chief Justice, including about the unfairness in the hearing of the case. Unless the party making such grievance is backed by firm evidence, the question of allowing such party to make unscrupulous and untenable personal allegation against the Judges of this Court even in the communication to the learned Chief Justice cannot be countenanced. At any rate, the party cannot be permitted to take shelter on the basis of argument that he/she has merely reproduced the contents of the complaint made to the learned Chief Justice containing such serious allegation. As a matter of fact, reproducing the unsubstantiated allegation in the formal Civil Application filed before the Court on affidavit, against the Judge of the Court, as stated in the complaint made to the learned Chief Justice, in itself is publication thereof and is nothing short of reiterating the said allegation, without producing any positive evidence to substantiate the said allegation of personal motives attributed to the learned Judge. Considered from any angle, reproduction of such allegation in the application has the inevitable effect of influencing the Court, which would hear the Civil Application. Ordinarily, the Civil Application of this nature is placed before the same Judge, who had occasion to pass the earlier order. Such allegation against the Judge concerned is bound to result in a piquant situation that the Judge may have to recuse from the matter, as a result of which, if the proceedings were to be placed before another Court, there would be no opportunity for the concerned Judge to dispel the falsity of the allegations concerning the events unfolded on the given date in the matter. Suffice it to observe that allowing the party to make such allegation in the application merely because the party assumes the existence of such fact, without any supporting evidence to substantiate the same would be disastrous and affecting the majesty of the Court itself. We are conscious of the fact that, in view of the amended provisions of the Contempt of Courts Act, the party is entitled to take a defence that the fact so alleged by him is truthful. However, at the same time, it is not possible for the Court to accept such defence of the contemners, which is founded on mere surmises and conjectures, and not on the basis of real existing facts. Allowing the party to tread upon such a dangerous path is bound to result in scandalising and lowering the dignity and authority of the Court. As observed in M.Y. Sharif's case, even the advocate, who signs an application containing such pleadings which would scandalise the Court, would be vicariously responsible along with his client. As a matter of fact, it is the duty of the counsel to his client to advise his client to refrain from making allegation of this nature in the application moved before the Court.

19. We would now examine the matter from another perspective. In the Civil Application, primarily, two reliefs were claimed: The first relief was to vacate the stay order granted on 26th April, 2006 by the concerned Judge of this Court. The second relief was to peremptorily fix the main petition for final hearing. In the context of the said prayers, there was absolutely no need to reproduce the allegation contained in the complaint sent to the learned Chief Justice as reproduced in paragraph 14 of the Civil Application. The contemners were plainly

ill-advised to also reproduce the communication received from the office of the learned Chief Justice, which reads thus:

I am directed by His Lordship to inform you that Writ Petition No. 7445 of 2005 Central Bank of India v. D.N. Samant has been ordered to be listed for hearing before the Bench taking similar matters in the next assignment commencing from 19th July, 2006. For further particulars, you may contact Registrar (Judicial), High Court, Bombay.

That communication does not take the matter any further for the contemners. That, by itself, does not substantiate the allegation made by the contemners in paragraph 14 of the Civil Application against the concerned Judge of this Court. In other words, acceding to the request of the contemners to fix the main matter for hearing before the concerned Bench taking up the assignment does not mean that the learned Chief Justice was impressed, in any manner, by the allegations contained in the communication received by him. Relying on the said communication, the contemners made grievance in paragraph 15 of the Civil Application that the Writ Petition was not taken up for hearing, in spite of the peremptory observation in the communication received by the contemners from the office of the learned Chief Justice. For that, the learned Judge cannot be held responsible, nor it is open to attribute any motives to the said Judge.

20. Be that as it may, what is significant to notice is that, in the first place, the contemners resorted to remedy of Review Petition against the order dated 26th April, 2006, which, however, was dismissed on 2nd May, 2006 by the learned Judge on the ground that it was not maintainable. The said order dated 2nd May, 2006 deals with the grievance made by the contemners in the said Review Petition. It reads thus:

1. Heard both sides. Perused the record.

2. This review petition is filed against the order passed by this Court in Writ Petition No. 7445 of 2005, dated 26.4.2006 which reads thus

1. Heard learned Counsel for the Petitioner. Advocate for Respondent not present.

2. Rule.

3. Pending the petition interim relief is granted in terms of prayer Clause (b).

3. Now, this review petition is sought against the said order on two points. Firstly, it was submitted that this Court is assigned with the Rent Act matters and in fact it is a matter under Transfer of Property Act and, therefore, this Court should not have taken up the matter. In this regard, it must be noted that this matter is assigned by the office to this Court under the caption of Bombay Rent Act. Moreover, this matter came up for admission on 25.4.2006 at which time the advocate for the present review Petitioner was not present and, therefore, the matter was adjourned to 26.4.2006. On 26.4.2006 when the matter was again called out, the advocate for the present Petitioner was also not present and,

therefore, the advocate for the Respondents was heard at length and on the basis of the facts and circumstances involved in the petition, the petition came to be admitted and Rule was issued on merits. After the order was passed, the advocate for the present review Petitioner rushed in the Court and sought review of the order orally. However, it was not allowed. Hence, the present review petition is filed.

4. In this regard, it is to be noted that even assuming that the matter is not under Bombay Rent Act but any other Act, however, it is needless to mention that the assignments are for the administrative convenience and that cannot take away the jurisdiction of the Single Judge in entertaining the writ petitions under any other Act. Moreover, the matter was assigned to this Court by the office under the caption of Rent Act and, therefore, this Court had no reason to go into other aspects.

5. Therefore, on both counts the review petition is not maintainable and stands dismissed with no order as to costs.

(Emphasis supplied)

21. As a matter of fact, the two points agitated by the contemnors have been squarely addressed by the learned Judge in the above order and negated. That finding has been allowed to attain finality. If so, it was not open to the contemnors to agitate the same points in successive proceedings. Further, in the said Review Petition, it appears that no grievance was made, much less of attributing motives to the learned Judge for having taken up the case for hearing before him "deliberately" and of "creating false record" against the contemnors to the effect that the advocate was not present on the concerned dates. Be that as it may, the contemnors took out Civil Application No. 971 of 2007 in August, 2006, which, however, was withdrawn ostensibly on the ground that the prayer clause therein was not proper. The contemnors then thought of taking out the offending Civil Application, No. 1936 of 2007, in which they made reckless, scurrilous and untenable allegations and insinuations against the learned Judge in the garb of reproducing the contents of the communication sent by them to the learned Chief Justice. The fact remains that the motive attributed to the learned Judge by the contemnors in their communication sent to the learned Chief Justice as reproduced in the Civil Application, is purely on the basis of conjectures and surmises. In the present proceedings, it is not relevant for us to consider the grievance of the contemnors that the order passed by the learned Judge was not warranted in the fact situation of the present case, as the Bank had failed to comply with the assurance given by it through its counsel before the Appellate Bench of the Small Causes Court. That, however, is a matter relevant to the proceedings pending between the landlord and tenant. Even if the stay granted by the learned Judge was improper, considering the fact situation of the case before him, by no stretch of imagination, the litigant can be allowed to assert in formal proceedings that the stay order was passed deliberately by the concerned Judge, unless he is in a position to bring positive evidence/material to

substantiate such allegation. Merely on the basis of some ipse dixit, neither the litigant nor the advocate signing the application is justified in placing such allegation on record.

22. The justification given by the contemnors for making written complaint to the learned Chief Justice containing the offending allegation against the learned Judge is that contemner No. 1, who was Respondent in the Writ Petition, could not have afforded the remedy of Special Leave Petition, and, thus, chose to opt for inexpensive remedy by way of complaint before the learned Chief Justice, and then to take out the Civil Application No. 1936 of 2007. It is one thing to say that the litigant chose to opt for inexpensive remedy before the learned Chief Justice, so that, at least, final hearing of his Writ Petition would be expedited. But, that does not give him licence to make insinuations and allegations of attributing personal motives to the learned Judge of this Court. Suffice it to observe that the defence taken by the contemnors that it was open to them to reproduce the contents of the complaint made by them to the learned Chief Justice of this Court of the matters stated by them, will have to be stated to be rejected for the reasons alluded to hereinbefore. In any case, as held by us, the allegations made against the learned Judge, which have been reproduced in paragraph 14 of the Civil Application, are founded on conjectures and surmises of the contemnors. Those allegations cannot be allowed to pass off as bona fide on the specious plea that the facts as alleged by them were on the basis of their impression gathered from the emerging circumstances. Whereas, if the allegations made by the contemnors against the learned Judge are personal; the onus is on the contemnors to produce positive evidence to substantiate the same and not justify it merely because they could infer those facts from some emerging circumstances, more so the ones referred to by them in the representation made to the learned Chief Justice. The argument of the contemnors that the averments in the Civil Application were only a summary of events warranting vacation of the stay order passed by the learned Judge is a too simplistic approach. Even the argument of the contemnors that the averments in the Civil Application are not in public domain, and more so because the same have not been published by them also deserves to be stated to be rejected. When the litigant files formal application in Court, although the dispute may pertain to him personally, it is not unknown that, in certain situation, besides the opposite party, even third party, as per rules and/or order of the Court, is entitled to get copy of the petition/application. In any case, once a formal application/petition is filed in Court by a party, that would constitute publication, more so when it is taken up for hearing in open Court as in this case.

23. The contemnors would vehemently argue that whatever has been stated by them in the complaint sent to the learned Chief Justice and the contents whereof have been reproduced verbatim in paragraph 14 of the Civil Application was done in public interest and bona fide. Taking the first aspect, we fail to understand as to how an allegation, which unambiguously attributes motives to the Judge, who heard the matter in the past, without substantiating the same, can be said to be

in public interest. Even the plea taken by the contemnors that the said allegations have been made bona fide does not commend to us. In our opinion, it was a calculated attempt of the contemnors to bring the reputation of the learned Judge to disrepute, and, in the process, impact the majesty of the Court itself. Further, we are also persuaded to reject the plea of allegation made by the contemnors being bona fide, because, during the hearing on more than one occasion, the contemnors were counselled by us to unconditionally withdraw the allegations so made. However, the contemnors were steadfast on their stand that they had done no wrong, and were prepared to face all consequences, since they firmly believed that the facts stated by them were truthful. In our opinion, the contemnors have deduced such inference on the basis of circumstances unfolding after the order passed by the Small Causes Court until the stay order granted by the learned Single Judge on 26th April, 2006. Taking each of those circumstances or, for that matter, all the developments unfolding after the order passed by the Small Causes Court till the order dated 26th April, 2006 together, it is only in the realm of surmises and conjectures. The contemnors have not produced any positive evidence to substantiate their stand that "malpractices" were committed by the learned Judge or that he "deliberately" passed the order so as to prejudice the contemnors/Respondents in the Writ Petition as is alleged. In our opinion, neither the fact that ex parte ad-interim relief was granted by the learned Judge, which operated against the contemnors/Respondents in Writ Petition or, for that matter, the recording of proceedings on 25th and 26th April, 2006, per se, can be the basis to infer that the learned Judge indulged in some malpractices or had done it deliberately to favour the writ Petitioners. Thus, by no standard, the allegation as made and motives attributed to the learned Judge can be countenanced on the basis of inference deduced by the contemnors on flimsy circumstances, which are nothing short of conjectures and surmises. Even the fact that the writ Petitioners suppressed certain material from the Court can be no basis to attribute motives to the learned Judge. On the contrary, if the contemnors are right that the writ Petitioners were at fault in not disclosing the relevant facts, that pre-supposes that the learned Judge passed the order in favour of the writ Petitioners in ignorance of those facts. On this finding, the allegation of the contemnors that the learned Judge passed the order deliberately or indulged in malpractices is devoid of any substance.

24. Reliance placed on the affidavit of Satyanarayan Samant for the contemnors also does not take the matter any further. The argument of the contemnors of non-disclosure of relevant facts or, for that matter, the Court should have passed the order in favour of the writ Petitioners by applying the principle expounded by the Apex Court in *S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others*, is completely misplaced. For, assuming that a wrong order is passed by the Court, that cannot be the basis to assume that the same has been passed by the learned Judge deliberately or has indulged in malpractice. Notably, the affidavit filed by the contemnors in response to the show-cause notice is not in the form prescribed by the Appellate Side Rules. It is

not duly verified. In that view, the affidavit filed by the contemnors will have to be discarded in toto. Nevertheless, considering the fact that one of the contemnors is an advocate, coupled with the fact that the defect in the affidavit is a curable defect, we have dealt with the merits of the contentions and defence taken by the contemnors.

25. To sum up, we have no hesitation in taking the view that the offending portion of Civil Application No. 1936 of 2007 has the effect of scandalising and lowering the dignity of not only of the learned Judge but of this Court itself. The show-cause notice, therefore, has been justly issued against the contemnors vide order dated 17th August, 2007.

26. We, accordingly, hold that the contemnors have committed criminal contempt within the meaning of Section 2(c)(i) and are liable to be punished in that behalf.

27. The next question is about the quantum of punishment to be imposed on the contemnors. It is stated that contemner No. 1 is a senior citizen and is almost 84 years" old. Besides, he is presently not keeping good health. Insofar as contemner No. 2, he is the practising advocate of this Court, having standing of almost 23 years. When called upon to address us on the quantum of sentence, contemner No. 2 for himself and also on behalf of contemner No. 1 submitted that they had done no wrong and were willing to face the consequences. In spite of repeated counselling, contemner No. 2 appearing for himself and for contemner No. 1 submitted that there was no question of withdrawing the offending averments in the subject Civil Application, much less unconditional withdrawal thereof. As a result, we have to do the unpleasant task of imposing suitable punishment. Considering the severity of the unfounded allegations, coupled with the fact that the contemnors are unwilling to express remorse or reticence, they would deserve punishment of at least four months of simple imprisonment and fine to the extent of Rs. 2,000/- each. However, taking into account the fact that contemner No. 1 is already 84 years of age, and is presently not keeping good health, and that some time has been taken in pronouncing this judgment after the arguments were concluded, we would be more than willing to grant one more opportunity to the contemnors to purge the contempt by filing affidavit of apology and stating that they are unconditionally withdrawing all the allegations against the learned Judge and undertaking to observe restraint in future. That affidavit be filed within four weeks from today. On failure to file the said affidavit, the punishment awarded by us would get activated.

28. While parting, we would like to place on record that, since quite some time had elapsed after the arguments were concluded and as the judgment could not be pronounced due to unavoidable reasons, the contemnors, through contemner No. 2, were told to remain present in chambers of one of us. Contemner No. 2, accordingly, remained present in chamber on 3rd May, 2011 at around 2.45 p.m. along with the learned Amicus Curiae and the Court staff. He was informed that, if the contemnors so desire, the matter can be released for being re-heard.

However, contemner No. 2, for himself and on behalf of his client, Contemner No. 1, stated that, since he has already made elaborate arguments, and has also filed Written Submissions, the Court may pronounce the judgment. Hence, we are pronouncing this judgment.

29. We place on record word of appreciation for the able assistance given by Mr. Ujwal Agandsurve as *amicus curiae*.

30. Accordingly, we proceed to pass the following order:

(1) We hold that Respondents/contemnors are guilty of having committed criminal contempt within the meaning of Section 2(c)(i) of the Contempt of Courts Act, 1971;

(2) We impose punishment of four months of simple imprisonment with a fine of Rs. 2,000/- to each of the contemnors. The order of punishment and fine, however, shall remain in abeyance initially for a period of four weeks from today to enable the contemnors to file affidavit of apology and to unconditionally withdraw the offending allegations made by them against the learned Judge and to undertake to observe restraint in future. If such affidavit is filed, no effect will be given to the punishment awarded to the contemnors in terms of this order; and, instead, they would stand discharged by remitting the punishment awarded to them on accepting their affidavit of apology. Failure to file such affidavit of apology-cum-unconditional withdrawal of the offending allegations, the contemnors be taken into custody to suffer the order of punishment and fine as awarded above.

(3) In the event the contemnors have to suffer the punishment imposed under this order, Contemner No. 2, who is an Advocate, shall not be allowed to appear in any proceeding as an Advocate for a party in this Court or any Court subordinate to this Court until he purges the contempt.

(4) The show-cause notice is made absolute in the above terms. Resultantly, Contempt Petition is also disposed of on the same terms.