

(2004) 10 MAD CK 0038

In the Madras High Court

Case No : Suo Motu Contempt Petition No. 634 of 2003

In Re: Devan, Formerly the Inspector of Police

Date of Decision : 08-10-2004

Acts Referred:

Contempt of Courts Act, 1971 — Section 13, 2

Citation : (2004) 5 CTC 612

Hon'ble Judges : S.R. Singharavelu, J;M. Karpagavinayagam, J

Bench : Division Bench

Advocate : B. Kumar, N.R. Chandran, General for Assisting the Court, for the Appellant;

Judgement

M. Karpagavinayagam, J.—V.Devan, formerly Inspector of Police, Needamangalam Police Station is facing suo motu contempt

proceedings before this Court for having filed a false affidavit.

2. Relating to the detention of one Tamarvan, a habeas corpus petition had been filed in H.C.P.No.656 of 2003 for the production of the said

Tamarvan. V. Devan, the Inspector of Police, the contemner herein filed a counter affidavit dated 23.6.2003 stating that the said Tamarvan was

arrested on 26.2.2003 at 4.30 p.m. in pursuance of the detention order dated 24.2.2003 issued by the District Collector and after service of the

detention order, he was taken to the Police Jeep. However, the said Tamarvan escaped from the custody of the Police at 5.00 p.m. and a case

was registered in Crime No. 37/2003 u/s 224, I.P.C.

3. On perusal of this counter affidavit, the Division Bench wondered as to how the detenu was allowed to be escaped even though the said

Tamarvan was standing in front of the Guru Hotel for half-an-hour. Unable to appreciate the statement of the Inspector of Police that immediately

after service of the detention order, the detenu escaped when he was taken to the Police Jeep after allowing him to stand for half-an-hour in front

of the Guru Hotel, Needamangalam, the Division Bench by the order dated 2.7.2003 directed the Superintendent of Police to cause an enquiry to

be conducted into the alleged escape of the detenu in the broad day light.

4. In pursuance of the said order, the Superintendent of Police, Tiruvarur District conducted enquiry and filed an affidavit on 16.7.2003 stating that

the said Tamarivan was arrested by the Inspector of Police V. Devan and other Constables at 4.30 p.m. on 26.2.2003 at Needamangalam and he

was taken in the Jeep and left for Trichy. When the Jeep came near to the front entrance of the Central Prison at about 7.30 p.m., the said

Tamarivan made a request to attend call of nature and accordingly, the said Tamarivan was allowed to go nearby to pass urine and at that point of

time, the said Tamarivan taking advantage of the darkness of night hours under the guise of passing urine, ran away from that place and escaped

from the lawful custody.

5. In the light of the affidavit filed by the Superintendent of Police giving the details relating to the time and place of arrest and the place from where

Tamarivan escaped custody, which are contrary to the details given by V.Devan, the Inspector of Police, the contemner herein, he filed an

additional counter affidavit in H.C.P.No.656 of 2003 on 28.7.2003 admitting that his first statement contained in his counter affidavit dated

23.6.2003 to the effect that the arrested person Tamarivan was escaped from the custody of the police at 5.00 p.m. on 26.2.2003 in front of

Guru Hotel, was false and the said accused was escaped only in front of the Central Prison, Trichy at 7.30 p.m. and the said wrong statement

made on 23.6.2003 was purely because of fear for his superior officers.

6. The Division Bench on perusal of the affidavit of the Superintendent of Police as well as the additional counter affidavit of the Inspector of Police

who admitted that what he had stated in his earlier counter affidavit was false, felt that there is a prima facie case for contempt. Therefore, the said

Bench initiated suo motu contempt proceedings and issued show cause notice by the order dated 4.8.2003.

7. On receipt of the notice, the contemner filed an affidavit dated 29.8.2003 before this Division Bench again admitting having made a false

statement in his first affidavit on 23.6.2003 and submitting that the same was made without any bad intention and only out of fear for a stringent departmental action. Through his affidavit, he tendered his unconditional apology and requested this Court to discharge him from the contempt proceedings.

8. Again on 12.7.2004, he filed an additional affidavit in the contempt proceedings stating that in respect of the charges for having shown negligence in allowing the detenu to escape from the custody and also for having filed a false F.I.R. containing incorrect details, separate departmental action was taken against him and after the enquiry, the authority passed an order by way of punishment for stoppage of increment for one year without cumulative effect and since he was punished departmentally, his apology may be accepted and he may not be further punished.

9. While initiating suo motu contempt proceedings, the Division Bench since felt that the trend of filing of false affidavits before the Courts by the police officials is on the increase, requested the Advocate General to assist the Court in this matter having regard to the nature of the charge and also for the purpose of suggesting guidelines to enable this Court to give appropriate directions to the Government in order to curb the said trend.

Accordingly, the Advocate General assisted this Court and filed a memo giving the various guidelines.

10. Mr.B.Kumar, learned Senior Counsel appearing for the contemner, would mainly contend that though the said statement was false, it cannot be said that the said statement was deliberate and the same was made in order to get a favourable order in consequence of the statement. He would cite the decision in *Naraindas Vs. The Government of Madhya Pradesh and Others*, .

11. This contention has to be rejected even at the outset in view of the fact that the other Division Bench which issued show cause notice would observe in the order dated 4.8.2003 that there is material to show that a false affidavit has been filed by the contemner and filing of the said false affidavit is prima facie contempt of Court. The Division Bench would quote even the show cause notice orders *Hiralal Chawla and Another Vs.*

State of U.P. and Others, and U.P.Resi. Emp. Co-op. House B. Society v. N.O.I.D.A., AIR 2003 SCW 3304.

12. As conceded by the contemner himself through his affidavits dated 29.8.2003 and 12.7.2004, the statement made by him in his first counter

affidavit dated 23.6.2003 giving the particulars about the place and time of arrest and the place from where the detenu escaped, was false.

13. The tendency to file false affidavit or to fabricate documents and place them as part of the records before the Court are matters of grave and serious concern.

14. It is contended that the version of the contemner which is false, did not have any impact on the Court in consideration of the main habeas

corpus petition and as such, it cannot be said that it was wantonly made to interfere with the administration of justice.

15. As pointed out by the Supreme Court in *Murray and Co. Vs. Ashok Kr. Newatia and Another*, cited by the counsel for the contemner

himself, whether the contemner has obtained a definite advantage or not by making false statement is wholly immaterial in the matter of commission

of contempt under the Act, though the same would be a relevant factor in the quantum of punishment to be imposed against a contemner.

16. Of course, substantial inference with the course of justice is the requirement of the statute for imposition of punishment. But, there is no manner

of doubt that the words "due course of justice" used in Section 13 is wider in scope than the words "due course of any judicial proceeding or

administration of justice" used in sub-clause (ii) or (iii) of Section 2.

17. The contemner who committed contempt cannot escape by saying that there is no attempt on his part to gain any advantage through the

statement. Positive assertion of a fact in an affidavit known to be false, that too before the High Court, cannot just be ignored. It is a deliberate act.

This practice of having a false statement incorporated in an affidavit filed before a Court should always be deprecated.

18. As a matter of fact, in this case, the contemner himself has admitted in all his subsequent affidavits that he made a false statement. The reason

given for the false statement before the Court is to avoid the departmental action likely to be taken against him. This shows that it is a wanton and

deliberate act.

19. Mere tendering of unconditional apology to this Court would not exonerate the contemner automatically in the context of the present facts of

the case. Similarly, the mere fact that he was proceeded with departmental action by which he was already given some punishment for having

allowed the accused to escape from his custody and for having filed a false F.I.R., would not be taken as a relevant factor to discharge him from

the contempt proceedings. Of course, this would be taken into consideration for the purpose of fixing the quantum of punishment while imposing.

20. Having regard to the fact that within a month from the date of the false affidavit, he filed a fresh affidavit admitting his act of having filed a false

affidavit and also through the other affidavits dated 29.8.2003 and 12.7.2004 admitting his guilt and also the fact that he was dealt with

departmentally, it would be proper to impose a punishment of fine instead of imprisonment. Accordingly, he is found guilty u/s 12 read with Section

15 of the Contempt of Courts Act and sentenced to pay a fine of Rs. 2,000, in default to undergo S.I. for two months. Time for payment is one

month from today.

21. Before parting with this case, this Court would consider the necessity of giving the appropriate directions to the Government to avoid the

recurrence of filing a false affidavit in Court.

22. As indicated above, the trend of filing a false affidavit even in the High Court is on the increase. The filing of false affidavit is not only an offence

under the Contempt of Courts Act, but also an offence under Sections 177 and 181 of I.P.C. Since this Court has been noticing that the instances

of filing false affidavit before the Courts is on the increase, it has become necessary for the Government to warn the public servants, especially the

police officers intimating about the consequences of filing of a false affidavit, so that the recurrence of such instances could be restrained.

23. As requested by this Court, the Advocate General has formulated various guidelines and filed the same before this Court. Out of those

guidelines, some of the guidelines could be considered and on that basis, suitable directions could be issued to the Government. Accordingly, the

following directions are being issued to the Chief Secretary, Government of Tamil Nadu:

The following are the steps to be adopted by the public servants in particular police officials while filing an affidavit in Court:

(i) The public servant swearing to an affidavit must go through the affidavit and

the documents on the basis of which the affidavit is sworn.

(ii) While giving instructions to the Law Officers or Additional Public Prosecutor to prepare the affidavit when is necessary, the parawar remarks

should be supplied by the public servant and the same must be based on the basis of the facts emerging from records.

(iii) The concerned Law Officer should be instructed to prepare the counter affidavit on the basis of the parawar remarks and he should not include

any averment for which there is no written instruction.

(iv) The affidavit should be filed only after the approval by the Law Officer.

(v) Whenever Law Officer represents on oral instructions in times of urgency, the Law Officer must ensure that the information placed before the

Court by him are based on written instructions duly signed.

(vi) It should be made clear through a circular that if a false affidavit is filed in Court, then it would have serious consequences including disciplinary

proceedings which may result in major punishments besides by the Court under the Contempt of Courts Act.

(vii) The affidavit should not be filed mechanically to get a disposal of the case and the deponent of the affidavit should be made responsible for the

contents of the affidavit filed in Court.

24. If the above directions are implemented by the public servants, particularly police officers and the Law Officers who represent them before the

Court, then any unpleasant situation would not arise for initiating contempt proceedings against the officials concerned. Therefore, the Chief

Secretary, Government of Tamil Nadu is directed to circulate these instructions to all the public servants including the police officers and Law

Officers so that further recurrence of filing of false affidavits before the Court and facing of the contempt proceedings could be averted. The service

rendered by the Advocate General is placed on record with appreciation.

25. With the above observations, the contempt petition is ordered.