

(2004) 06 MAD CK 0110

In the Madras High Court

Case No : Contempt Petition No. 777 of 2003 and Sub-Application No. 453 of 2003

J. Dhinesh Babu

APPELLANT

Vs

S. JE. Ramesh Babhu

RESPONDENT

Date of Decision : 18-06-2004

Acts Referred:

Citation : (2004) 06 MAD CK 0110

Hon'ble Judges : V. Kanagaraj, J

Bench : Single Bench

Advocate : K. Doraiswami, S.C. for M/s. Muthumani Doraisami, for the Appellant; S. Nagarajan, for the Respondent

Judgement

V. Kanagaraj, J.—The Contempt Petition has been filed to punish the contemner for violating the order dated 25.8.2003 made in CrI. O.P. No. 28404 of 2003 on the file of this Court.

2. When the matter was taken up for hearing on perusal of the materials placed on record what comes to be known is that the petitioner herein is the second respondent in the Criminal Original Petition No. 2404 of 2003; that the "C" form licences relating to two theatres viz., Jagan & Mini Jagan at Ramanathapuram were originally standing in the name of the father of the petitioner and respondent, the "C" from licence in respect of Jagan Theatre was issued by the District Collector, Ramanathapuram, who is the licence issuing authority in favour of 1. J. Sukumar; 2. J. Ramesh Babu; 3. J. Dhinesh Babu; 4. S. Jeyaraj and 5. M. Vijayarani and in respect of Mini Jagan the "C" from licence was issued in favour of 1. J. Sukumar; 2. J. Ramesh Babhu; 3. J. Dhinesh Babu; that there was a family partition between the family members of late S. Jaganathan and partition list was prepared on 2.8.1999; that as per the partition list the aforementioned two theatres have to be administered and maintained by 1. J. Sukumar, 2. J. Ramesh Babhu, and 3. J. Dhinesh Babu for one year each by rotation and the petitioner's turn for administration of these two theatres commence from

1.7.2003 for one year. Though the respondent handed over the charge in respect of the two theatres on 1.7.2003, he took possession forcibly by engaging unruly elements on the same day when the petitioner and his brother were performing Pooja. Hence, the petitioner has approached the Executive Magistrate-cum-Revenue Divisional Officer, Ramanathapuram, the first respondent in Crl. O.P. No. 28404 of 2003 u/s 145 of the Cr.P.C. for restoring possession in respect of the two theatres;

3. On receipt of the said complaint, the first respondent in Crl. O.P. issued notice on 28.7.2003 directing the petitioner as well as the contemner to appear on 31.7.2003 with relevant records for enquiry; that the contemner/respondent appeared on that day and took time for filing reply; that a second notice dated 6.8.2003 was issued by the first respondent in Crl. O.P. to the petitioner and contemner by fixing 8.8.2003 as the hearing date; that having received the notice dated 6.8.2003 the contemner suppressing the notice dated 28.7.2003, filed the aforesaid Crl. O.P. for quashing the proceedings in M.C. No. 33/2003 and filed an affidavit before the first respondent on 29.8.2003 stating that this Court quashed the entire proceedings in M.C. No. 33 of 2003 further stating that filing of any counter by him will amount to contempt of Court and prayed time only to file the order copy; that the above-referred order was passed at the admission stage without notice to him and in such circumstance he was not in a position to know the order and on receipt of the order copy and perusing the same, he came to understand that this Court set aside the notice dated 6.8.2003 only and not the entire proceeding; that after verification it came to be known that the contemner has not only suppressed the notice dated 28.7.2003 issued by the first respondent in Crl. O.P. but also filed an affidavit with misleading facts to appear as if the suit in O.S. No. 69/2003 on the file of Sub-Court, Ramanathapuram is connected to the issue involved in the proceeding pending before the Executive Magistrate cum Revenue Divisional Officer, Ramanathapuram; that suppressing the material facts and filing a false affidavit before the first respondent in Crl. O.P. amounts to violating the order dated 25.8.2003 made in Crl. O.P. No. 28404 of 2003 on the file of this Court. Hence, the petitioner has come forward with this contempt Petition seeking to punish the respondent.

4. In reply to the affidavit filed in the support of the petition, the respondent has filed counter affidavit stating that on 6.8.2003, the Revenue Divisional Officer issued a notice to him stating that there is likelihood of breach of peace in the premises of our theatres; that aggrieved, he preferred Cr. O.P. No. 28404 of 2003 to quash the entire proceeding; that when the matter came up for admission, this Court set aside the notice dated 6.8.2003 holding that the impugned notice was not in accordance with law and gave liberty to the Revenue Divisional Officer to pass fresh order in the manner required u/s 145(1) of Cr. P.C.; that on 29.8.2003 the Revenue Divisional Officer posted the case for filing his counter; that he gave instruction to his counsel to file an affidavit stating the order passed by this Court and to seek time for producing the certified copy of

the above order; that accordingly his counsel prepared an affidavit on the lines of the fax message which he received from the counsel at High Court; that the fax message from his counsel at High Court stated that "our Honourable High Court has set aside the notice having issued by the learned R.D.O. in M.C. No. 33 of 2003 and quashed further proceedings on it"; that in the above lines the word "it" mentioned in the fax message dated 27.8.2003 only means the notice of the R.D.O., but it was communicated to his counsel that the notice dated 6.8.2003 was set aside and all further proceedings on that notice was quashed; that therefore at no point of time an attempt was made to mislead the R.D.O. or commit contempt of order dated 25.8.2003 passed by this Court.

5. The further submissions of the respondent are that subsequent to the order dated 25.8.2003, the petitioner filed O.S. NO. 87 of 2003 in the Court of Subordinate Judge, Ramanathapuram seeking delivery of Possession and for damages from him till he delivered possession of the said two theatres; that this fact was wilfully suppressed in this contempt petition filed by the petitioner; that since the petitioner has admitted in O.S. No. 87 of 2003 pending on the file of the Sub-Court, Ramanathapuram, that he is in possession of the theatres, the very proceeding u/s 145 of Cr. P.C. would not lie as the limited powers of the Executive Magistrate is only to find out who is in possession of the property in question; that also parallel proceedings should not be allowed to continue when a competent Civil Court is seized of the matter and on such grounds, the respondent would pray to dismiss this Contempt petition.

6. During arguments learned senior counsel appearing on behalf of the petitioner in the contempt petition besides reiterating the facts pleaded would exhort that a distorted version of the order of this Court, which had been given to the Revenue Divisional Officer stating that the entire proceeding initiated by the Revenue Divisional Officer had been quashed, while only the notice dated 6.8.2003 had been quashed, that too giving liberty to the authority to issue fresh notice following the procedures and in accordance with law which has not been brought forth in the affidavit filed by the contemner before the Revenue Divisional Officer.

7. Learned senior counsel would point out that contempt has been committed relating to the order of this Court knowingly and willfully and therefore, the respondent should be punished under the provisions of the Contempt of Courts Act. He also further cited a judgment reported in U.P. Resi. Emp. Co-op. House B. Society and Others Vs. New Okhla Indus. Deve. Authority and Another, wherein the Honourable Apex Court has held that under the Contempt of Courts Act, filing a false affidavit in Court amounts to contempt of Court and citing an earlier judgment of its own reported in AIR 1990 (2) SCC 149 wherein it has been clearly held that filing of false affidavit also amounts to contempt of Court, directed the Registry to issue show cause notice to the concerned as to why action for contempt should not be taken against him for having filed a false affidavit in the Apex Court. Citing the said judgment, learned senior counsel would clarify that pendency of the Civil suit has nothing to do with the contempt

committed on the part of the contemner and therefore, would seek to punish him for filing false affidavit before the Court.

8. In reply to the above submissions, Learned Counsel appearing on behalf of the respondent would also dwell on the facts of the case and what has been transpired by the lawyer from Madras in his facts, the respondent put in black and white in the form of an affidavit and nothing else. He further pointed out that in no manner the petitioner is prejudiced against by the respondent filing the affidavit before the Executive Magistrate-cum-Revenue Divisional Officer. He would also cite a decision reported in B.K. Kar Vs. The Chief Justice and His Companion Judges of The High Court of Orissa and Another, wherein the full bench of the Honourable Apex Court has categorically held that

...It is necessary to show that the disobedience was intentional...the appellant in a lengthy statement explained all the facts and also stated that he had not the slightest intention to disobey or go beyond the orders and directions of the High Court...nor had he have intention to prejudice or affect the course of justice in the disposal of the matter pending before the High Court...that it cannot be said that disobedience of the order by the Subordinate Court was contempt of the superior Court. There may possibly be a case where disobedience is accidental. If that is so, there would be no contempt.

9. Quoting the above judgment, the Learned Counsel would point out that there was neither intention nor disobedience or violation of the order passed by this Court dated 25.8.2003 made in Crl. O.P. No. 28404 of 2003 and that no contempt has been committed on the part of the respondent and therefore, would pray to dismiss the above contempt petition.

10. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned senior counsel appearing on behalf of the petitioner and the Learned Counsel appearing for the respondent as well, the facts could be put in a nutshell, that the petitioner and the respondent are brothers; that the father, the original owner of two cinema theatres, namely, Jagannathan had passed away, as a result of which the "C" form licenses in respect of those theatres have been transferred to the names of the four brothers and sister so far as it is concerned with one theatre and three brothers so far as it is concerned with the other theatre and since consensus was reached among the family members of late Jagannathan, partition list was prepared according to which the petitioner's turn for administration of both the theatres commenced on 1.7.2003 which would continue for a period of one year. But, the respondent though appeared to handover the administration of possession of the properties, while the petitioner and others were performing the pooja, engaging unruly elements he took forcible possession of both the theatres on the same day itself not only acting against the letter and spirit of list of partition prepared on 2.8.1999, but also against the law.

11. The further case of the petitioner is that on a complaint lodged by him before

the Executive Magistrate-cum-Revenue Divisional Officer, Ramanathapuram, the Revenue Divisional Officer issued a notice dated 28.7.2003 requiring the parties to appear before him on 31.7.2003, on receipt of which both the parties are said to have appeared before the said authority on 31.7.2003 and the respondent took time for filing counter. Hence, second notice dated 6.8.2003 was issued requiring the parties to appear before him on 8.8.2003, whereas the respondent has filed Crl. O.P. No. 28404 of 2003 before this Court and sought to quash the proceeding initiated by the Executive Magistrate-cum-Revenue Divisional Officer, Ramanathapuram and this Court by its order dated 25.8.2003, analyzing the facts and situation of the case and finding that the notice dated 6.8.2003 was inconsistent for a preliminary order to be passed as contemplated u/s 145(1) of the Criminal Procedure Code and under the impression that the impugned notice therein dated 6.8.2003 was the only notice sent instead of a preliminary order passed and hence remarking that it was an improper one, had set aside the said notice issued by the Executive Magistrate-cum-Revenue Divisional Officer Ramanathapuram. this Court has also given liberty to the Revenue Divisional Officer to issue fresh notice in the manner required u/s 145(1) of Cr. P.C.

12. While such being the fact, the case of the petitioner in the above contempt petition is that the respondent has misrepresented the facts and circumstances encircling the whole affair before this Court while he came up with the Criminal Original Petition mentioned above seeking to quash the proceeding pending before the Revenue Divisional Officer. According to the petitioner, the respondent has completely suppressed the fact of the earlier notice issued by the same Executive Magistrate-cum-Revenue Divisional Officer on the same subject dated 28.7.2003 requiring the petitioner and the respondent to appear before him on 31.7.2003 with relevant records and the parties having appeared on that date, the respondent herein also took time for filing his reply and the impugned notice dated 6.8.2003 sought to be quashed was only a later communication and an intimation of next date of hearing.

13. If the fact of the earlier notice or preliminary order passed by the Executive Magistrate-cum-Revenue Divisional Officer had been brought to the notice of this Court, this Court would not have gone into such remarks made in its order and there was even a possibility for not quashing the notice dated 6.8.2003. But since facts were not fully disclosed and placed before the Court and what was submitted before this Court was only a distorted version in a truncated form and therefore, no order was able to be passed by this Court in an integrated manner and therefore, even at this stage itself, it could be mentioned that the respondent has not acted fairly and with clean hands while seeking the remedy of quashing the Revenue Divisional Officer's proceeding from this Court.

14. A careful perusal of the order of this Court would reveal that the notice issued to the petitioner dated 6.8.2003 by the Revenue Divisional Officer has been set aside allowing the Criminal Original Petition in part and not granting the entire relief of quashing the entire proceeding initiated by the Revenue Divisional

Officer, Ramanathapuram u/s 145(1) Cr.P.C. Even regarding the said notice, liberty was given to the authority concerned to issue fresh notice in the manner required u/s 145(1) Cr.P.C, that too particularly in consideration of only distorted version made before this Court without disclosing the whole affair. While so, the respondent in paragraphs 3 and 4 of his affidavit filed before the said authority dated 29.8.2003, has put it in black and white that the entire proceeding pending before the Revenue Divisional Officer, Ramanathapuram in M.C. No. 33 of 2003 had been quashed by this Court and rejected as not valid and therefore, there was no need to file any counter, further requiring 15 days time to cause production of the copy of the order. Whatever has been stated in paragraph 3 of the said affidavit is totally wrong and incorrect and no such order has been passed by this Court dated 25.8.2003 made in Crl. O.P. No. 24808 of 2003 and in fact it is nothing short of a false affidavit sworn before the Court, which, as per the parameters of the Honourable Apex Court, is definitely contempt of this Court and, therefore, it is held that the respondent has committed contempt of this Court in the manner above mentioned within the meaning of the Contempt of Courts Act and the proposition of the Supreme Court and hence the respondent becomes liable to be punished in accordance with the Contempt of Courts Act.

15. Even now, the respondent has not admitted that he has given completely different version in his affidavit, but only maintains the false version of this Court's order, which is deliberately false and, therefore, it could not be held that the respondent did not have the intention to commit contempt of this Court. He is simply trying to ward off his responsibility saying that what he received from his lawyer, he reflected in his affidavit and escape.

16. The respondent while filing the affidavit before the authority, that too depicting the High Court's order, should have exercised abundant caution and only after thorough scrutiny should have filed the affidavit. A reading of the affidavit dated 29.8.2003 particularly paragraph 3 is quite contrary to the order passed by this Court and orchestrated to his advantage that Section 145 proceeding had been quashed, while it was not. Only the notice dated 6.8.2003 had been set aside that too giving liberty to the authority to issue fresh notice in accordance with law. It is relevant to mention that had this Court been apprised of the earlier notice dated 28.7.2003 issued by the authority concerned, even it is very much in doubt whether the respondent would have become entitled to get the order that had been passed setting aside the notice dated 6.8.2003.

In result, in these circumstances the only conclusion that this Court could arrive at in the above Contempt Petition is to hold the respondent guilty of contempt of the order passed by this Court dated 25.8.2003 made in Crl. O.P. No. 24808 of 2003 within the meaning of the relevant provisions of the Contempt of Courts Act and the respondent is sentenced to undergo imprisonment for a term of 6 months and to pay a fine of Rs. 2,000/- (Rupees Two Thousand Only) in default to undergo further imprisonment for a term of two months.

The above Contempt Petition is ordered accordingly.

Consequently, Sub-Application No. 453 of 2003 is closed.

At the request of the Learned Counsel appearing on behalf of the respondent on the ground that the respondent intends to prefer an appeal against the order made today, the above conviction and sentence are suspended for a period of three weeks.