

(2002) 08 AP CK 0057

In the Andhra Pradesh High Court

Case No : SCC No. 684 of 2002 and WP No. 15479 of 2001

J. Papa Rao

APPELLANT

Vs

Government of A.P. and Others

RESPONDENT

Date of Decision : 27-08-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 2

Citation : (2002) 5 ALD 748 : (2003) 1 ALT 357

Hon'ble Judges : D.S.R. Varma, J; Bilal Nazki, J

Bench : Division Bench

Advocate : Advocate General, for the Appellant; Government Pleader for Services-III, for the Respondent

Judgement

Bilal Nazki, J.—This case came up for hearing before us on 17-6-2002. The petitioner appeared in person. We heard him for some time but somehow he was not able to assist the Court. Therefore, he was asked to appoint a Counsel. The petitioner stated that he was not financially in a position to appoint a Counsel. We offered him the services of a Counsel sitting in the Court. The Counsel also agreed to appear for him without charging any fee, but, for reasons best known to the petitioner he did not accept the offer and made remarks about the Court stating that, "This is a colonial attitude of this Court and he is not being allowed to argue." We found the conduct and the assertions of the petitioner, prima facie, contemptuous and issued a notice to him. After this notice he filed an affidavit. Thereafter the case came up on 19-6-2002. On 19th June, 2002 the Court passed the following order:

"Counter has been filed. Let the office provide a copy of the counter-affidavit filed by the respondent to the learned Advocate-General who is requested to assist this Court. Let a notice also go to the President of High Court Bar Association, Hyderabad and President of A.P. State Bar Council, Hyderabad with a request to assist this Court in this matter because this is a regular feature where parties in person come and want to argue their own cases. Invariably we have

found that the parties in person are not able to assist the Court properly as they are not trained. Therefore, parameters will have to be fixed as to what are the rights of the parties in person and if the party in person comes to the Court and is not able to assist, whether the Court is bound to hear him or make him to appear through a Counsel provided by the Court. Copies of the counter-affidavit shall also be furnished to the President of High Court Bar Association and President of A.P. State Bar Council, Hyderabad. Brazen attacks have been made in the counter affidavit which are contemptuous in itself. Let the writ petition pending till disposal of contempt. List on 3-7-2002.

Thereafter, the case came up on 3rd July, 2002. The petitioner filed an additional affidavit. The additional affidavit made us to believe that he was bent upon to undermine the dignity and prestige of the Court and he was not interested in getting his case settled but it appeared that his purpose is to denigrate and scandalise not only the Judges of the Court but the judiciary as a whole. Therefore, he was remanded to judicial custody for one week.

2. Now, there are two questions before this Court one relating to the charge of contempt committed by the writ petitioner and the second whether the parties in person should be allowed to argue the matters in the Court and if so whether any parameters can be laid down.

3. Coming to the contempt first, the comments made by the petitioner when it was suggested to him that a Counsel would be appointed on his behalf have been narrated herein above. Thereafter he filed an affidavit. In this affidavit, after giving his account as to what had happened in the Court and stating that he could handle this case better, in para (f) of the affidavit he stated;

"(f) It is submitted that to the direction of the Hon"ble Court, I expressed my inability and I cannot afford to the Counsel since one year, I am living without salary. Then the Court had entertained some "extra judiciary" discussion on this aspect and ultimately suo motu appointed Counsel by name Miss. Uma Devi to appear for me. All this exercise was done at the instance of this Hon"ble Court and I did not make any request to tills Hon"ble Court for such appointment of the Counsel since I am confident that I could lead my case better.

From this behaviour of this Court, the following million dollar questions will crop up:

(i) What made this Hon"ble Court to put end to my argument and why the fair hearing was denied?

(ii) Was this Court acted as such in good faith?

(iii) Was this act of the Court is to provide substantial justice? If it is really so, why this Court failed exhibit such patience and hear the common man to provide substantial justice?

(iv) Does the denial of fair hearing constitute contempt by itself?

(v) Does this Court is suffering from any influencing factors such as allergic and apathetic factors towards the party-in-persons?

In para (h) he stated :

(h) It is further submitted that, this Hon"ble Court by denying me fair hearing and arguing the cause had totally denied me justice which I did not expect from this Bench which consisted of High Standards of outlook and Conduct. Judges.

In para (i) he stated :

(i) It is respectfully submitted that this Hon"ble Court by not allowing me to argue my cause, it has sent a message to the common man like me that the Courts are meant for the "Bar and Bench" but not to the common man and exhibited its "allergic and apathetic attitudes" towards the party-in-persons.

In para (k) he stated:

(k) It is submitted that now it is for this Hon"ble Court to conduct soul-search whether the suo motu initiation of contempt proceedings against me are justified or not. It is also for this Hon"ble Court to question itself - by initiating this arbitrary and wrong proceedings, denying fair hearing it has brought disrepute to the administration of justice and in the eyes of the common man, whose faith in the fountain of justice was considerably shaken.

He filed an additional affidavit also. This additional affidavit is reproduced in full.

"In continuation of my affidavit tiled on 19-6-2002, "the following additional affidavit is filed herein in the light of die observations of the Hon"ble Judge in the matter and the consequent orders passed in this regard.

It is submitted that the Hon"ble Judge during the hearing on 19-6-2002 the following observations were made in the open Court:

(a) "When you have health problem, where do you go? You must go to the doctor. Can you do the self medication? Etc.... This comment clearly exposes the mind of the Hon"ble Judge that the common man should approach the "Advocate" only when he has a problem and the common man should not approach the Court " as party-in-person".

This clearly substantiates and strengthens the fact mat the Hon"ble Judge with the "apathetic attitude" towards the party-in-person did not allow me to argue my ease.

(b) "you have no right to hear.. .."

The above observation supports the "undermining the party-in-person" attitude of the Hon"ble Judge. This is the violation of the principles of natural justice.

(c) "The Court is not a public place"

The above comment of the Hon"ble Judge made crystal clear the intention of the

Hon"ble Judge that party-in-persons should not be allowed to file their cases to the Courts. Further, the consequent order passed in the matter by the Hon"ble Judge directing the President of the High Court Bar Association and the President of the A.P. State Bar Council, Hyderabad also substantiates the "apathetic attitude" of the Hon"ble Court.

In the light of the above, it is submitted that this trivial issue has opened me "mind of the judiciary" towards the common man and the consequent denial under the garb of the party-in-persons are not able to assist the Court.

It is submitted that the object of contempt proceedings is not to afford protection to the Judges personally from imputations to which they may be exposed as individuals,

It is respectfully submitted that the contempt proceedings were initiated out of anger and irritation without giving proper regard to the whether the utterance amounts to libel on the judge and what really amounts to contempt, since the "utterance" "attitude" relates to persons.

It is respectfully submitted that the "influencing factor" of "Apathetic attitude" of the individual Judge towards the party-in-persons or common man in the instant case has raised so many substantial questions of law such as:

- (a) Whether violation of principles of natural justice taken place or not;
- (b) What is the role of the common man in the eyes of the judiciary and vis-a-vis;
- (c) Whether the fact that the party-in-person" has no right to hear is a "challenge to the constitution" or not;
- (d) Whether such denial of hearing involves the judicial tyranny or not;
- (e) Whether the apathetic attitude adopted by the Hon"ble Judge is shocking to the judicial conscience or not;
- (f) Whether this influencing factor is opposed to the principles of "judicial approach" or not:

In the light of the above, I pray this Hon"ble Court, in order to uphold the dignity and honour or status of the judiciary, this matter may please be heard by some other Bench specialty constituted, duly giving regard to the principles of natural justice under the maxim "NEMO DEBET ESSE JUDEX IN PROPRIA CAUSA" as I do not want to be victim of the judiciary tyranny."

Going by these two affidavits we have no doubt in our mind that the petitioner was not interested in getting his case decided on merits because in that case he would have readily accepted the offer of the Court for appointing the Counsel, or, at best he would have suggested a lawyer to whom we could have made a request to appear on his behalf.

4. We have no doubt in our mind that, in the system of judiciary working in this

Country an Advocate is the most important pillar. The Courts are doing justice on the basis of laws and in interpretation of these laws Courts need assistance of trained Advocates. The system had accepted that Bar is one of the most important pillars of the Indian Judicial system. After all we are neither holding panchayats nor Lok Adalats. These are Constitutional Courts which require the assistance of trained legal practitioners. Every field has its experts. We had put a very important question to the writ petitioner that when he is unwell does he treat himself. It is not possible for all of us to be masters of every subject. This has been recognised and therefore we have the Advocates Act. Whether a party in person is able to assist the Court properly or not would be one question and the other question would be whether the party in person conducts himself in the Court hall as Advocates conduct themselves. After all the dignity of the Court hall is paramount. We cannot compromise on the dignity of the Court at any cost. Exactly the same issue was considered by the Supreme Court in *Dr. D.C. Saxena, Contemnor Vs. Hon''ble the Chief Justice of India, . Justice K. Ramaswamy as His Lordship* then was narrated the same principles which we have mentioned herein above. Para-35 of the judgment is reproduced.

"Advocacy touches and asserts the primary value of freedom of expression. It is a practical manifestation of the principle of freedom of speech, which holds so dear in a democracy of ability to express freely. Freedom of expression produces the benefit of the truth to emerge. It aids the revelation of the mistakes or bias or at times even corruption. It assists stability by tempered articulation of grievances and by promoting peaceful resolution of conflicts. 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. As stated hereinbefore, 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."

Therefore, we have no doubt in our mind that the petitioner has committed contempt of this Court and we convict him and sentence him to one week''s imprisonment. Since, during the pendency of these proceedings, we had sent him to judicial custody for one week therefore there is no need to send him to prison again. The contempt is accordingly disposed of.

5. We have discussed the facts hereinabove while deciding petition for contempt.

There are two aspects of the matter one is that the Judges need the assistance of trained Advocates in order to decide the controversy correctly, second aspect of the matter is preservation of the dignity of the Courts. If a party in person fails in both it would be a tragedy for the Court as well as the litigant. May be a litigant loses his case only because he was not able to project the case correctly before the Court and may be because he is not aware as to what conduct is expected of him in a Court hall. He suffers contempt and the dignity of the Court gets diminished by his conduct. Some times such a conduct can be voluntary and some times it can be innocent but the danger of getting the system of justice dilapidated is always there. In our legal system Judges would have always the assistance of Advocates. Since we are dealing with an adversarial system of litigation therefore the importance of Advocates is much more. Secondly our system presumes that the Advocates are the officers of the Court and they will not necessarily tell the Courts only those things which go in favour of their clients but they will also let the Court know about the factors which would go against their clients. Advocates are not expected to only plead for their clients but as a matter of fact they are expected to assist the Court in reaching to the correct conclusions. This may not be possible when a party in person appears. A party in person is not expected to argue against himself whereas this is expected from an Advocate who is supposed to assist the Court. For these reasons, the Advocates Act has recognised and accepted the importance of the Bar. Advocates as a matter of right can address the Courts whereas there is no such right available to the party in person. A person has a right to approach the Court but we believe that he has not a right for personal hearing. These matters are considered by a learned single Judge of this Court in Hari Om Rajender Kumar v. Chief Rationing Officer 1990 (1) ALT 645. The matter even came up before the Supreme Court in Harishankar Rastogi Vs. Girdhari Sharma and Another, . Though the Supreme Court was not considering in that case the rights of the party in person but it was considering the right of a party to appoint a non-Advocate for pleading his case. This was a case in which a particular person wanted his case to be pleaded by one of his friends who was not an Advocate. The Supreme Court stated. "A pleader, by definition, includes any person other than one authorised by law to practise in a Court if he is appointed with the permission of the Court, to act in a particular proceeding. The Supreme Court's power may well be exercised in regulating audience before it in tune with the spirit of Section 2(q) of the Criminal Procedure Code". Then in para-4 the Supreme Court laid down :

"Having regard to this conspectus of considerations I hold that a private person who is not an advocate, has no right to barge into Court and claim to argue for a party. He must get the prior permission of the Court, for which the motion must come from the party himself. It is open to the Court to grant or withhold permission in its discretion. In fact, the Court may, even after grant of permission, withdraw it half way through if the representative proves himself reprehensible. The antecedents, the relationship, the reasons for requisitioning the services of the private person and a variety of other circumstances must be

gathered before grant or refusal of permission."

Going by this judgment, a party cannot without the leave of the Court, appoint a third person who is not an Advocate, as a pleader. We feel that the parameters laid down for a third party non-advocate to appear should also be applicable to parties in person if they are not trained Advocates. In the words of the Supreme Court an Advocate is, "He is master of an expertise but more than that accountable to the Court and governed by a high ethic. The success of the judicial process often depends on the services of the legal profession." Therefore, we hold that, if a party in person wants to appear he must necessarily get leave of the Court and if the Court feels that he can assist the Court, and also maintain the decorum of the Court properly, leave may be granted, but, on the other hand an unscrupulous litigant comes to the Court by filing a writ petition after paying a Court Fee of Rs. 100/- only with a motive of denigrating the Court, such a person should not be allowed to appear in person. On the other hand the Court should make an endeavor to see that a proper Counsel is appointed on his behalf and if he is not in a position to pay the Counsel there is Legal Services Authority to take care of him. We are also convinced by our experience as members of the Bar and as members of the Bench that whenever a request is made by Judges to any of the Advocate to appear for a party there are no instances of declining such a request but the question still remains, what will happen if the party insists that he will appear in person and he will not accept an advocate appointed on his behalf by the Court. In such a situation, we feel, it will be lawful for the Court to refuse audience to the party in person and ask a suitable Counsel to appear as *amicus curiae*.

6. In the present case we decline permission to the petitioner to appear in person in his own case.

7. Since this Bench is not hearing now the service writ petitions the writ petition be listed before the appropriate Bench after obtaining orders from the Hon"ble Chief Justice. The Bench which would hear the writ petition may appoint an *amicus curiae*.