
(1991) 09 MAD CK 0051

In the Madras High Court

Case No : Contempt Application No. 81 of 1991

John Victor and two others

APPELLANT

Vs

Rev.Noel Jason

RESPONDENT

Date of Decision : 20-09-1991

Acts Referred:

Constitution of India, 1950 — Article 57, 58, 59

Contempt of Courts Act, 1971 — Section 2(c), 2(c)(iii), 2(e)

Citation : (1991) 09 MAD CK 0051

Hon'ble Judges : A.S. Anand, C.J;Raju, J

Bench : Division Bench

Advocate : U.N.R. Rao for Mr. C. Daniel, for the Appellant; R. Krishnamoorthy for Mr. P. Peppin Fernando, for the Respondent

Judgement

Raju, J.—Contempt Application No. 81 of 1991 has been filed by the plaintiffs in C.S. No. 10 of 1990 on the file of the Original Side of this Court in a representative capacity against the Church of South India and five others praying for the following reliefs: 1. Declaration that the election of Rev. M. Azariah as Bishop of Madras (1990) is void and opposed to the Constitution of Church of South India as at the time of his election he held Office of General Secretary, Synod entrusted with electoral duties for the election of Bishop and further his election is vitiated for bias.

2. Declaration that election of Rev. Dr. Victor Premasagar as Bishop of Medak (1981) and subsequently Moderator is void for the same reasons.

3. Injunction restraining both of them from functioning in their respective role.

4. For a declaration that Articles 57, 58 and 59 of the Constitution of Madras Diocese prohibiting members from approaching Courts of law on pain of ex-communication, to redress their grievances, is opposed to the law of the land.

By an order dated 14-12-1990, in Application No. 6665 of 1990 notice was issued making it known to others about the institution of the suit to enable such

of those who wish to get themselves impleaded as parties to the suit. The notice is said to have been published in "Indian Express" and "The Hindu" on 19.12.1990 and "Thina Thanthi" and "Dinamalar" on 17.12.1990.

The applicants claim that in response to the said notice, the respondent herein published in the "Indian Express" dated 30-12-1990 a notice with the heading "Notice to all concerned", filed as Annexure B. The cost of the said advertisement is said to have come out of the funds of the Diocese of Madras under the control of Rev. M. Azariah. According to the applicants, the above notice constitutes criminal contempt, in that it scandalises and lowers the authority of this Court, prejudices and interferes with due process of the judicial proceedings and also interferes and obstructs the administration of justice. The principle of "res ipsa loquitur" is said to apply to the facts and the applicants appear to have caused the issuance of a notice to the respondent to reconsider the matter and express sincere apology and publish the same in the "Indian Express", on threat of institution of proceedings before this Court for contempt and in spite of the same the respondent did not issue any reply or take any steps towards that direction.

2. According to the applicants the publication dated 30-12-1990 propounds the following propositions:

(i) The suit filed in the High court by the applicants is repugnant to the plain teaching of the Bible and is detrimental to the life and witness of the Church.

(ii) The Bible cautions Christians against taking disputes among themselves to the Courts of those who are not guided by the Lord Jesus Christ.

(iii) If according to law any pastoral appointment should be set aside by court of law, consequences are that "person duly married in Church will have to be declared as "living (sic)sin" and their children automatically become illegitimate being born outside wedlock."

(iv) Such litigation will divide the Christians in the Not Christian World.

3. The respondent has first filed a counter affidavit sworn to on 10-6-1991 and subsequently filed into this Court an affidavit on 8.8.1991 sworn to on 7-8-1991. In the said affidavit, the respondent states that he had been advised to withdraw the counter affidavit filed already. In this counter affidavit, the respondent has merely stated as hereunder:

(3) I respectfully submit that I had absolutely no intention of either lowering the authority of this Hon"ble court or interfering with judicial proceedings or interfering with the administration of justice. Without going into the various allegations made by the petitioners in the contempt application. I respectfully submit that the publication in the newspaper of my appeal, is totally unintentional and was (sic) caused to be published with a view to scandalise or tend (sic) scandalise or lower or lend to lower the authority of the Hon"ble court or interfere with the administration of justice.

(4) I hereby tender my unconditional and unquiet apology for the same, I, therefore, pray that this Hon'ble court may be graciously pleased to accept the same.

On 23-8-1991, when the arguments were above to be concluded, the respondent who was personally present in court also affirmed about the statements contained in the affidavit filed on 8-8-1991 and stood by and reiterated and reaffirmed the unconditional apology tendered in the said counter affidavit and expressed his repentance.

4. Mr. U.N.R. Rao, learned Senior counsel appearing for the applicants took us through the notice dated 30-12-1990 and while reiterating the submissions made in the affidavit referred to the decisions in (a) Pratap Singh and Another Vs. Gurbaksh Singh, , (b) Govind Sahai and Another Vs. State of U.P. and Another, (c) In Re:P.C. Sen AIR 1970 SC 1821 = : 1969 (2) S.C.R. 649 and (d) Haji Rasheed Mohammed v. D. Ramanujam AIR 1986 Madras 119 and contended that the respondent is guilty of criminal contempt of this Court as defined under S. 2(c) of Contempt of Courts Act, 1971. The learned senior counsel also contended that subsequently, the bishop himself has filed two suits, one in this Court (C.S. No. 438 of 1991) and the other in the Madras City Civil Court (O.S. No. 836 of 1991). The appeal dated 30-12-1990 published in the newspaper is said to be with reference to the suit C.S. No. 10 of 1991 and that it has close and causal connection with the threat said to have been administered by the bishop to the first applicant on 28-12-1990. The learned senior counsel also contended that the apology of the respondent ought not to be accepted and even if it is to be accepted by this Court, the respondent should be directed to have the apology duly published with the same prominence as the offending notice was published in the newspapers.

5. Mr. R. Krishnamoorthy, learned senior counsel appearing for the respondent, while reiterating the averments in paragraphs 3 and 4 of the affidavit filed on 8-8-1991 submitted that the respondent had absolutely no intention of either lowering the authority of this Court or interfering with judicial proceedings or interfering with the administration of justice and that without going into the various allegations made in the affidavit in support of the Contempt Application, he would submit that the publication of an appeal in the newspaper is totally unintentional and was not aimed to be published with a view to scandalise or tend to scandalise or lower or tend to lower the authority of this Court or to interfere with the administration of justice. Argued the learned senior counsel further that the unconditional apology tendered in para 4 reaffirmed in person in open Court may be accepted.

6. We have carefully considered the matter and the respective submissions of the Learned Counsel on either side. In our view, there is no rhyme or reason in the attempt of the learned senior counsel for the applicants to telescope into this case the grievances of the applicants against Rev. M. Azariah, the bishop who is the contemner in Contempt Application No. 80 of 1991. The said bishop is not a

party to the present proceedings and merely because the two applications have been filed simultaneously or came up before Court together or related to events connected with C.S. No. 10 of 1991, they do not by themselves justify such an attempt. The contempt alleged in each of these applications have to be confined in their consideration to the respective parties shown as respondents in the respective applications only.

7. Before taking up for consideration the question as to whether the act complained of constitutes "criminal contempt" as defined under S. 2(c) of the Contempt of Courts Act, 1971, it is necessary to refer to the case law referred to and relied upon for the applicants. The decision in Pratap Singh and Another Vs. Gurbaksh Singh, concerned the action of the appellants before the Court in exerting pressure to withdraw or not to press a pending suit. The Apex Court observed that any conduct which interferes with or prejudices a party litigant during the litigation amounts to contempt of court and that the question is not really whether the action in fact interfered with but whether it had a tendency to interfere with the due course of justice. In Govind Sahai and Another Vs. State of U.P. and Another, , the Apex Court while considering the action taken by the Congress party expelling a member of the party for filing a suit challenging the election to the organisation of the body, held the same to constitute deliberate interference with the conduct of the litigation amounting to contempt of court. The case reported in In Re: P.C. Sen, is one wherein the Apex Court was concerned with the speech broadcast by a Chief Minister justifying a Government Order which was challenged in a proceeding pending before the court. While repelling the plea on behalf of the Chief Minister concerned that there was no intention on the part of the Chief Minister, that no direct reference to any pending proceedings were made, that no real prejudice either in the mind of the Judge or to the cause of the petitioner before Court was caused and that the Chief Minister was under a duty to make the speech to instruct the public about the true state of affairs the Apex Court held as hereunder:

Speeches or writings misrepresenting the proceedings of the court or prejudicing the public for or against a party or involving reflections on parties to a proceeding amount to contempt. To make a speech tending to influence the result of a pending trial, whether civil or criminal, is a grave contempt. Comments on pending proceedings, if emanating from the parties or their lawyers, are generally a more serious contempt than those coming from independent sources. The question in all cases of comment on pending proceedings is not whether the publication does interfere, but whether it tends to interfere, with the due course of justice. The question is not so much of the intention of the contemner as whether it is calculated to interfere with the administration of justice.

Banerjee, J.,

In the judgment under appeal was of the view that the speech was likely to influence public opinion against the petitioners since the Chief Minister occupies a

highly responsible position of power and authority under the Constitution, and being a person most likely to know the needs of the State there would be many who may believe in factual statements made by him. The learned Judge observed that he was not prejudiced by the speech against the petitioners before him, since he was only "concerned with the constitutional and legal validity of the Control Order, and incidentally only with its socio economic justification", but it could not be said that the speech did not or could not or was not likely to prejudice the public against the cause of the petitioners. He also observed that for the Chief Minister to have made a public appeal in support of the Order, with the knowledge of the issue of the Rule nisi calling upon the State Government and the Secretary, Department of Ammal Husbandry and Veterinary Services to show cause why the Control Order should not be declared void was "improper and ill-timed" and also "contumacious", for, the Chief Minister had published in advance the defence to be taken against the Rule.

The criticism made by the learned Judge is not unwarranted. The statements in a broadcast speech by an important dignitary of the State that persons who prepare sweets out of milk in the course of their business are on the version set up by him criminals, and the suggestion that the order was issued in the interests of the public, whereas it was the contention of the petitioners that it was done "recklessly, arbitrarily and vindictively and without earing for the consequences, and without considering their duty to the public", are prima facie calculated to obstruct the administration of justice, since they are likely to create an atmosphere of prejudice against the petitioners and also to deter other persons having similar claims from approaching the Court.

There is in the speech no direct reference to the proceedings pending before the Court, but it is now common ground that the Chief Minister was aware of the filing of the petition and the issue of the rule which was served upon the Government. Whether he was aware of all the details of the allegations made in the petition is not relevant. If he knew that a petition was filed and the rule was served upon the Government of which he was the Chief Minister, before making any statement on a matter which was controversial it was his duty to acquaint himself with the allegations made and also to ascertain what the points in dispute were before going on to a public broadcasting system to announce the case of the Government. Whatever may be the motive of the Chief Minister and whatever he may have thought as a Chief Minister to be necessary in order to acquaint the public, a speech which presented the case of the Government to the public, before it was tried by the court, and suggested that those who prepare sweetmeats out of milk were criminals and were acting in a manner contrary to the interest of the general public, was calculated to interfere with the due administration of justice.

In the decision reported in AIR 1986 Madras 119, a Division Bench of this Court held that where knowing about the pendency of and stay granted in the writ proceedings in the High Court challenging the validity of the Video legislation, the

participants in a Doordarshan discussion programme (between a Minister in the then Cabinet of Tamil Nadu and the then Chairman of the All India Film Federation) referred to such proceedings and talked in favour of and justified the legislation they were guilty of contempt under S. 2(c) (iii) since their speeches tended to interfere with the administration of justice. Ultimately, the Division Bench was pleased to accept the bona fide apology tendered by those participants who were found guilty and dropped further proceedings. The learned senior counsel for the respondent relied upon the decisions reported in AIR 1986 Madras 119 and Sri K. Ramadas Shenoy Vs. The Chief Officer, Town Municipal Council, Udipi and Others, and K.R. Shenoy v. Udipi Municipality to contend that where there was a bona fide belief that the action may not constitute contempt it was always open to the court to accept the apology tendered and pleaded that the apology tendered may be accepted.

8. Thus, it could be seen that the question is always to see whether the action complained of tends to interfere with the due course of justice or likely to create an atmosphere of prejudice against the parties to the pending proceedings and also tend to deter other persons having similar claims from approaching the court. The notice issued by the respondent in the newspaper "Indian Express" dated 30-12-1990, in our view, tends to lower the authority of this Court, it tends to interfere with the due course of judicial proceedings and also tends to interfere with and obstruct the administration of justice. We called upon the learned senior counsel for the respondent to disclose the basis for a move of the nature undertaken in the form of the offending publication. Reference was sought to be made to some of the Biblical quotations. Out of interest to ascertain the correctness of the source of the so-called inspiration from Biblical quotations, we have scanned through the same to ultimately find that the principles and ideas have been lifted from such quotations de hors their context, purpose and objectives to serve selfish ends. That apart, the respondent ought to have known, as a citizen of this country, that the administration of justice, the supremacy of the Rule of law and dignity of courts are far more important than any personal view and the laws of the country have to be implicitly obeyed.

9. The Constitution of India has assigned to the Courts of law a place of primacy. In the Sovereign Socialist Secular Democratic Republic of India, it is the right of the people to approach the courts of law to seek justice. No person, whosoever he may be and whatsoever may be his position, can be permitted in any way to obstruct the course of justice or cause to prevent the citizen from approaching the courts. Any effort on the part of an individual to cause interference in the course of justice cannot be allowed. Since in this country governed by the rule of law, parties have a constitutional right to have their cases, causes and disputes tried fairly in courts, any attempt to influence the course of justice, by publication, in newspapers or otherwise, in matters with reference to a pending cause, which have the tendency to intimidate or unduly influence and control judicial action, has to be eschewed.

10. It is no defence to a charge of contempt that the offensive article did not produce the result complained of, or that the court was not in any way prevented from performing its duties fairly and properly, or even that the respondent had no disrespectful or contumacious design of reflecting upon the dignity of the Court or to cause interference in the course of justice, or that the article, published during the pendency of the case, was published without any intent to interfere with the administration of justice. The gravamen of the charge in all such cases is that the party published the offending article or writing which was calculated to or had the tendency to interfere with the due course of justice. To quote Scriptures out of context, in support of a contumacious act, ignoring as it were, the context and the situation and the time when the quotation was made, during the pendency of proceedings in the courts or to create an impression that taking recourse to the courts, established by law, for vindication of their rights by the parties would invite Biblical displeasure, has a great potential of mischief to interfere with the proper administration of justice and amounts to adding insult to injury.

11. The law of contempt is well settled. When litigation is pending before any court, no one shall comment on it in such a way that there is danger of prejudice to the trial of the action and none shall by misrepresentation or otherwise bring unfair pressure to bear on the court or one of the parties to a cause so as to force him to drop his complaint or defence. As already noticed, in such cases it is relevant to remember that it is not necessary to establish the actual interference in the due course of justice if the offending comment or material has the tendency to interfere in the due course of justice in any judicial proceeding.

12. We are conscious that contempt proceedings are a special type of proceedings wherein summary justice is meted out. The question whether the respondent in a given case has committed contempt of Court or not is a serious one. The Courts, therefore, have to act, in such cases, with as great circumspection as possible, making allowances for errors of judgment. But, when a clear case of contumacious conduct, not explainable otherwise arises, then, the Court cannot vacillate or hesitate and must hold the party as guilty of having committed contempt of court to vindicate the majesty of law and uphold the dignity of the courts. Looking to the contents of the offending notice published by the respondent, admittedly, with the knowledge of the pending proceedings and the expressions used therein, we are satisfied that it is a clear case of contumacious conduct, not explainable otherwise. The respondent aimed at interfering with the due course of justice by making statements in the offending notice, rather recklessly and vindictively. Interference with the administration of justice and prejudicing a section of the society against a person or persons before his case is heard in a Court of law or casting veiled innuendos on the courts of law, are well recognised heads of Contempt of Court. It is essential for the proper maintenance of the Rule of law that the courts protect themselves from abuse by persons of its majesty and dignity and do not permit any interference in the administration of justice. Since the matter published and

complained of has the tendency to substantially interfere with the due course of justice, the respondent, who caused the offending notice to be published, has committed contempt of court. Dictates of prudence and even elementary common sense should have counseled respondent to conform to the governing laws of the land. Frenzied approach and attempt to counteract a fellow member of the religious fraternity appears to have made him fall in the trap to find himself worst confounded by the charge of contempt against him. The principles laid down by the Apex Court in *In re P.C. Sen*'s case (*supra*) squarely apply to the case on hand. Even a cursory perusal of notice, dated 30-12-1990 published by the respondent shows that the contents of the same, judged in the light of the relevant principles referred to above, in our view, constitutes gross criminal contempt within the meaning of S. 2(e) of the Contempt of Courts Act, 1971. The question of imposing the punishment falls for consideration next. The learned senior counsel submits that there was no intention to commit any contempt of the lawful authority of this Court by the respondent and that the bona fide and unconditional apology tendered by him and reiterated at the Bar may be accepted. The respondent appears to us to be truly and genuinely repentant. We are satisfied that the unconditional apology tendered by the respondent and reiterated in the open Court is bona fide and that the contemner realises his mistake and is genuinely sorry for the same. The apology is also voluntary, unconditional and indicative of remorse and contrition. We find that the tendered apology which was reiterated at the Bar, is a full a frank confession of a wrong done by a truly repentant person and is not a "cringing way of a coward shivering at the prospect of the stern hand of justice about to descend on his head". The Authority, magnanimity and dignity of the Court lies not only in its power to punish those who challenge its Authority, but also in showering mercy and granting pardon to those who sincerely repent. Thus, taking a lenient view of the matter, we accept the unconditional apology tendered by the respondent and direct that all further proceedings against him be dropped subject to the condition that the respondent shall within two weeks from this date publish in the same Newspaper, with same prominence, an apology for the offensive publication dated 30-12-1990. Ordered accordingly. In view of this direction, we make no separate orders as to costs.