

(2002) 08 KAR CK 0052

In the Karnataka High Court

Case No : Contempt of Court Cases (Criminal) No. 46 of 2002

K. Dinakar

APPELLANT

Vs

M.S. Kapoor and Another

RESPONDENT

Date of Decision : 28-08-2002

Acts Referred:

Constitution of India, 1950 — Article 32

Contempt of Courts Act, 1971 — Section 11, 12, 2 (c)

Citation : (2002) ILR (Kar) 4576 : (2002) 6 KarLJ 99

Hon'ble Judges : M.S. Rajendra Prasad, J;H.N. Narayan, J

Bench : Division Bench

Advocate : Party in person, for the Appellant; Radhesh Prabhu for Tukaram S. Pai, for the Respondent

Final Decision : Dismissed

Judgement

1. A complaint is filed before this Court by the complainant herein under Sections 11 and 12 of the Contempt of Courts Act (hereinafter referred to as the "Act" for short), praying this Court to initiate criminal contempt proceedings against the accused 1 and 2, i.e., respondents herein, personally for the gross disobedience of this Court's order in W.P. No. 32248 of 1994 (GM), dated 6-3-2002, and punish them appropriately in accordance with law.

2. The facts alleged in the complaint are that the complainant filed W.P. No. 32248 of 1994 praying writ of mandamus against the respondents. The said writ petition was allowed with a clear-cut order of writ of mandamus with the following directions:

1. Hand over the physical vacant possession of the small-scale industry of the complainant within a period of two weeks;

2. To restore the goods, etc., to this complainant shifted by them and to comply the order within 30 days from the date of receipt of the said order;

3. Granted rehabilitation package to the small-scale industry unit as per R.B.I.

guidelines to help the sick units.

It is further alleged that the respondents have not at all respected the writ of mandamus issued by learned Single Judge in W.P. No. 32248 of 1994 (GM) and violated and disobeyed the order of the Hon''ble High Court of Karnataka which amounts to clear-cut criminal contempt of this Court. This is in spite of the fact that they are legally bound to obey and follow the order.

3. This office has raised the preliminary objection that whether the disobedience of the order of this Court amounts to criminal contempt or civil contempt u/s 2(b) of the Contempt of Courts Act of 1971? When this matter came up for preliminary hearing on 27-5-2002, the question whether it is a civil contempt or a criminal contempt, was needed to be considered and hence, the Court thought it desirable to hear the respondents also as far as these aspects are concerned. Therefore, this Court issued notice to respondents 1 and 2, who entered appearance through their Advocate, Tukaram S. Pai. On 11-6-2002, the Bench heard both sides, not on the question of maintainability of this case, but on the question of rehabilitation and directed the parties to work out if a resolution is possible and to find some final solution to this problem. It is at this stage that the matter came up before us. The learned Counsel for the respondents requested us to decide the question of maintainability of a criminal contempt case before this Bench.

4. We have heard the complainant who is in person and Mr. K. Radhesh Prabhu, learned Counsel for Tukaram S. Pai, Advocate for the respondents. We have perused the complaint allegations and also the affidavit and counter-affidavit filed by the parties.

5. So, the short question which calls for consideration at this stage is:

Whether the proceedings initiated by the complainant is civil contempt in nature or whether there are sufficient grounds to initiate criminal contempt proceedings as defined u/s 2(c) of the Act?

6. This case has a chequered history. Respondents who represent the Syndicate Bank, Mangalore, initiated recovery proceedings on the file of the learned Civil Judge, Mangalore, by filing a suit in O.S. No. 152 of 1994 on 22-6-1994 against the present complainant. There was an interim order in the said suit attaching the machinery and detention and preservation of the machinery during the pendency of the suit. After the establishment of the Debt Recovery Tribunal, which exercises jurisdiction over the States of Karnataka and Andhra Pradesh, O.S. No. 152 of 1994 pending on the file of the Civil Judge, Mangalore, came to be transferred to the file of said Tribunal and renumbered as O.A. No. 941 of 1995.

7. In the meantime, the complainant feeling aggrieved by the interim order passed by the learned Civil Judge, Mangalore, for attachment of movables, detention and their preservation, challenged the same before the Apex Court in

W.P. No. 551 of 1994 (Civil), invoking the powers of the Apex Court under Article 32 of the Constitution of India. The Hon''ble Supreme Court has dismissed the said writ petition on 16-9-1994, with liberty to approach the High Court for necessary relief. The complainant thereafter filed W.P. No. 32248 of 1994 (GM) in the month of October 1994 before this Court. On 5-10-1998, after hearing the parties, the learned Single Judge passed an interim order to sell the attached machinery and in any event, if the machinery was not sold in public auction, the respondents were permitted to remove and take the machinery to their custody. Accordingly, the machinery was sold in pursuance of this order on 24-12-1998. The complainant has not challenged this order dated 5-10-1999. Thereafter, the matter was heard in full and the learned Single Judge allowed the writ petition by his order dated 6-3-2002, giving three directions to the respondents, which we have extracted in this order. The complainant presented this complaint on 30-4-2002 during Summer Vacation-2002, while the respondents preferred Writ Appeal No. 3059 of 2002 on 27-5-2002, on the reopening day of the High Court. After notice to the complainant who entered a Caveat, the Division Bench admitted the writ appeal on 23-8-2002 and stayed the judgment of the learned Single Judge passed in W.P. No. 32248 of 1994 (GM). It is canvassed by the respondents that the interim order in the said writ appeal came to be passed on 3-6-2002 after hearing the present complainant (respondent before the Appellate Court).

8. It is contended by the learned Counsel for the respondents herein that the learned Single Judge issued writ of mandamus to the respondents regarding the compliance of the order within two weeks, without giving them an opportunity of challenging the said order in the writ appeal. It is further submitted that the respondents have a statutory right to prefer an appeal against the order of the learned Single Judge. This aspect needs consideration not in this proceeding, but in the said writ appeal itself. After lapse of two weeks, the complainant noticing the non-compliance of writ of mandamus issued by the learned Single Judge in W.P. No. 32248 of 1994 (GM), readily presented this complaint.

9. Now the question that arises for our consideration is:

Whether the non-compliance of the direction issued by the Court within a period of two weeks amounts to civil contempt or criminal contempt?

10. The complainant in person has taken us through the definition of both civil contempt and criminal contempt as provided u/s 2(b) and (c) of the Act and submitted that the non-compliance of the direction of the Hon''ble High Court amounts to "interferes or tends to interfere with, or obstructs or tends to obstruct the administration of justice in any other manner".

11. The learned Counsel for the respondents on the other hand, submitted that no positive act is committed by the respondents in pursuance of the order of mandamus issued by the learned Single Judge. There is no allegation of scandalising the Court nor obstruction or interference with the directions issued

by the said Court and therefore, the silence during that interregnum period does not amount to criminal contempt.

12. "Civil contempt" as defined u/s 2(b) of the Act means:

"Willful disobedience to any judgment, decree, direction, order, writ or other process of a Court or Willful breach of an undertaking given to a Court".

"Criminal contempt" as defined u/s 2(c) of the Act means:

"the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which--

(i) scandalises or tends to scandalise, or lowers or tends to lower the authority of any Court; or

(ii) prejudices, or interferes or tends to interfere with the due course of any judicial proceeding; or

(iii) interferes or tends to interfere with or obstructs or tends to obstruct the administration of justice in any other manner".

The Apex Court in *Pritam Pal Vs. High Court of Madhya Pradesh, Jabalpur through Registrar*, , interpreted this question as follows:

"An intention to interfere with the proper administration of justice is not an essential ingredient of the offence of contempt of Court".

Deliberately and wilfully making a false or a misleading or a wrong statement by a party to the proceedings to obtain a favourable order would amount to "criminal contempt" as laid down by the Apex Court in *Afzal and another Vs. State of Haryana and others*, . The Apex Court in *S. Abdul Karim and Others Vs. M.K. Prakash and Others*, , held that the broad test to be applied in cases of "criminal contempt" is whether the act complained of was calculated to obstruct or had an intrinsic tendency to interfere with the course of justice and the due administration of law. The standard of proof required to establish a charge of "criminal contempt" is the same as in any other criminal proceeding.

13. It is undisputed that there is no act of scandalising the Court or Judge, disobedience does not take the place of undermining or tending to undermine the peoples confidence in administration of justice. A wrong or misleading statement deliberately and wilfully made by a party with a view to obtain a favourable order would prejudice or interfere with the due course of the judicial proceeding and thus amounts to contempt of Court.

14. None of these ingredients are noticed from the allegations made in the present complaint. The nature of directions issued to respondents by way of writ of mandamus by the learned Single Judge, is now before the Bench. We hasten to add, in the light of the undisputed facts placed before us that mandamus is issued without giving an opportunity to the respondents, to prefer an appeal. The

respondents have got statutory right to challenge the said order. The said order is now stayed by the Division Bench and virtually order of mandamus is not in force. In the light of these facts, we are of the clear opinion that the non-compliance of the mandamus issued by the learned Single Judge even if we give it a liberal interpretation as "Willful disobedience", which we do not say so for the present, we are of the clear opinion that there is no material before this Court for holding that it is a case of criminal contempt. Since we are called upon at this stage to give our opinion on this question, we hold that the office objection is clearly sustainable and this complaint is not maintainable.

15. Therefore, the contempt proceedings are dropped and this contempt of Courts case stands dismissed.