
(1980) 07 MAD CK 0027

In the Madras High Court

Case No : Contempt Application No. 16 of 1980

K. Ganesan

APPELLANT

Vs

P. Marimuthu Mudaliar and Others

RESPONDENT

Date of Decision : 09-07-1980

Acts Referred:

Contempt of Courts Act, 1971 — Section 15

Citation : (1980) 07 MAD CK 0027

Hon'ble Judges : Sethuraman, J;Natarajan, J

Bench : Division Bench

Advocate : Mr. S. Govindaswamy, for the Appellant; Mr. N.T. Vanamamalai for M/s. R. Ganesan and A. Padkiayaraj, for the Respondent

Judgement

Natarajan, J.—On a reference by the Principal Subordinate Judge of Tiruchirapalli on 8th April, 1980 stating that the respondents herein bad willfully "caused an affront to the dignity and authority" of the Advocate-Commissioner appointed by him, suo "motu action was taken by. this Court, under S. 15 of the Contempt of Courts Act, 1971, and notice was ordered to the alleged condemners (who will hereinafter be referred to as the respondents) to call upon them to show cause why they should not be punished for contempt of court said to have, been committed by them. On receipt of the notice, the respondents, have appeared in court and filed counter-affidavits denying the charge of contempt and inter alia tendering unconditional apology in the event of this Court not being satisfied with their plea of denial to the charge of contempt.

2. The proceedings for contempt have come to be initiated in the following circumstances: One K. Ganesan filed a suit O.S. No. 393 of 1979 on the file of the Court of the Principal Subordinate Judge, Tiruchirapalli seeking therein a declaration of his rights in a ^partnership firm known as Sri Balakrishna Boiler and Rice Mill, Manachanallur. On the application of the said Ganesan, the Subordinate Judge issued an ex parte commission to take an inventory of the account books, etc., kept in the premises of the Rice Mill.

3. An advocate by name Thiru S. Jayakumar, who was appointed Commissioner, visited the Mill on 18th April, 1979 to execute the warrant of commission. The Advocate-Commissioner could not execute the warrant as some of the respondents and some others assembled at the premises of the Mill exhibited an attitude of defiance and thereby prevented the Commissioner from taking an inventory of the account books. Thereupon, the Commissioner locked and sealed the office premises where the account books and cash were kept and submitted an interim report to the Court on the next day, i.e., 19th April, 1979. Even as the report was being filed by the Commissioner, the plaintiff in the suit came to know that the seal put on the premises by the Commissioner had been broken open and hence the plaintiff reported the matter to the Court for appropriate action. The Subordinate Judge directed the Commissioner to verify the matter, and on his visiting the premises on 21st April, 1979, the Commissioner found the information given by the plaintiff, viz., the breaking open of the sealed premises, to be true. The Commissioner noticed respondents 2,3,9 and 11 to be seated in the Mill premises. The Commissioner also noticed the lock put up by him to be missing and likewise, the account books also to be missing. He therefore, inferred that the account books had been stealthily removed from the premises after the lock was broken open and entry gained into the premises. Thereupon, the Commissioner submitted a second report to the Court stating that the warrant of commission was not capable of execution and therefore, he was returning the warrant unexecuted.

4. The learned Subordinate Judge directed the Commissioner to make a report to the police authorities about the highhanded act of the breaking open of the premises so that a case could be registered and the matter investigated into. In addition, the Subordinate Judge brought to the notice of this Court the events which had happened and prayed this Court to institute such action as it may deem fit and necessary for dealing with the criminal contempt committed by the respondents in causing affront to the dignity and authority of the officer appointed by him and for removal of the records in the custody of the Commissioner.

5. Mr. Vanamamalai, learned counsel appearing for the respondents, strenuously contended before us that the respondents had not caused affront to the Advocate-Commissioner appointed by the Subordinate Judge or broken open the premises and removed the account books there from and consequently, no action was called for against the respondents under the Contempt of Courts Act. Before going into the details of the case, we may conveniently mention at this stage, two preliminary objections raised by Mr. Vanamamalai regarding the maintainability of the contempt proceedings. He first contended that with reference to the terms of the partnership deed, the plaintiff Ganesan, who is one of the sons of the deceased partner, had no locus standi to file a suit for declaration of his rights in the partnership business and for rendition of accounts and hence the Subordinate Judge had gone beyond his jurisdiction in issuing an ex parte commissioner for an inventory of the account books being taken. We

have no hesitation in rejecting this contention straightway, for, the point that is urged is not at all germane for consideration. Even assuming that the Subordinate Judge had acted wrongly in issuing the warrant of Commission the respondents cannot take umbrage under the mistake and justify a defiance of the court's order amounting to contempt. Nextly, Mr. Vanamamalai submitted that in as much as the defiance complained of is only with reference to the Advocate-Commissioner appointed by the Court and not to the Presiding Officer of the Court itself, a charge of contempt cannot be leveled with reference to the provisions of the Contempt of Courts Act. Even this plea is devoid of merit because an Advocate-Commissioner will undoubtedly be an officer of Court (Vide : Fourth Clause of S. 21,I.P.C.) Moreover, S. 2(c) of the Contempt of Courts Act defines "Criminal contempt" (relevant portion alone extracted) as follows:

2. In this Act, unless the context otherwise requires,-

(a) "contempt of Court" means civil contempt or Criminal contempt;

(b)

(c) "Criminal contempt" means the publication (whether by words, spoken or written, or by visible representations, or otherwise) or any matter or the doing of any other act whatsoever which-

(i)

(ii)

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

We are therefore, of opinion that if the facts warrant an adverse finding against the respondents, the mere fact that the affront to and the interference with the performance of duties was directed only against an Advocate-Commissioner and not against the Court itself, will not absolve the respondents of their liability for punishment for contempt of Court.

6. Turning now to the more earnest contentions advanced by Mr. Vanamamalai, the learned counsel firstly stated that there is nothing in the report of the Commissioner to show that all the respondents or even some of them had offered defiance to the Commissioner or prevented him from the discharge of his duties and, more than that they had broken open the locked premises and stealthily removed the account books. The further argument was that even assuming that there was some basis for accusation against some or all there respondents the proper remedy will be for suitable action being taken under the appropriate Chapter X of the Indian Penal Code dealing with contempt's of the lawful authority of public servant.. In support of the latter contention Mr. Vanamamalai placed reliance on the proviso to S. 10 of the Contempt of Courts Act, which lays down that no High Court shall, take cognizance of a contempt alleged to have" been committed in respect of a Court subordinate to it where

such contempt is an offence punishable under the Indian Penal Code,. Elaborating this argument, learned counsel submitted that if the charge of offering obstruction to the Commissioner and the removal of the account books is true, suitable action can be taken against such of those respondents who are responsible for it under Ss. 175, 186, 187 and 189 of the Indian Penal Code. We do not think, we should examine this argument of Mr. Vanamamalai in detail since in our view, the first of his submissions appears to be well founded and having sufficient force as to merit our acceptance.

7. In the first report submitted by him, the Commissioner has stated that when he entered the Mill premises for the first time on the morning of 18th April 1979, he found respondents 5 and 10 to be present in the premises and that he informed them of the nature of his visit. He has then stated that subsequently, respondents 10, 8, 4, 6, 7, etc., came to the Mill premises one after another. According to the Commissioner, the first respondent who is the Managing Partner and the second respondent turned up at the premises at 2 p.m. and there upon he asked respondents 1 and 2 to place all the account books before him for an inventory being taken, but they refused to do so. As to what happened thereafter he has stated as follows:-

I have seen about 75 account books on the tables in the office premises. I have also seen one steel bureau. Even during my visit, the said Marudai opened the steel bureau thrice and I have found a series of account books in two trays of the bureau. There were two cloth bags containing currency notes of some thousands. During my presence the said" Marudai tried to remove it away and I told him that he could not do so unless my warrant was executed, because wanted to know the closing balance on the previous day, and the opening balance of this (sic) day in order to find out the correctness of the accounts. The said Marudai obliged my request and he placed the said two bags of currencies again in the same steel bureau.

I was in the office premises upto 5 p.m. and right from the time of my visit, I asked the partners present then and there to produce the account books. All the partners have evaded. In the meanwhile a huge crowd gathered in the Mill and they were all watching what was going on there. I found myself helpless to seize the account books and take inventory and if I had resorted to the same, there would have been breach of peace. I found that I was lacking security to my person. Neither the partners of the first defendant nor the second defendant wanted to help me in executing warrant. I had no other go in the said circumstances and also in the interests of justice, except to lock the said office premises and to seal it. I informed my intention of locking and sealing the premises to all the partners of the first defendant and second defendant. I closed all the windows and doors of the said office room and I locked it with the lock of the plaintiff. I tied the said lock with white cloth and I sealed it at four places on the cloth at about 5 p.m.

I met the inspector of police, Manachanallur by 5-30 p.m. for providing

necessary police band bust to the locked premises.

As already stated, the Commissioner made a second visit to the premises as per the directions of the Court and in the second report filed by him he has stated as follows:

I saw Krishnan the partner of first defendant firm Chinnaiyan (C-2) Chinnaswamy and one Assistant Accountant Mr. Veliyan in the office room. I have locked the office premises and sealed it on 18th April, 1979. Now, the said lock was missing and the office premises was kept open and the abovesaid persons were occupying the said office room at the time of my visit. All the account books I had noticed on 18th April 1979 in that office room had disappeared then and there and it had become impossible for me to take inventory of the account books on account of stealthy removal of account books after the breaking open of the sealed lock.

Placing reliance on the first report of the Commissioner the learned Government Pleader argued that there had been defiance of the authority of the Commissioner and consequent prevention of discharge of duty, viz., taking of inventory by the respondent and such acts clearly amounted to criminal contempt. We find ourselves unable to accept the contention of the Government Pleader, because the charge of contempt is founded more upon the breaking open of the locked premises and removal of account books rather than upon any acts of obstruction and interference caused to the Commissioner on the 18th. In the first report, the commissioner no doubt, alleges that the managing partner of the first defendant and the second defendant refused to place all the account books before him for the purpose of taking the inventory but what was actually meant by the Commissioner is not quite clear. It is not known whether the refusal has reference to the managing partner and the second defendant disobeying the Commissioner's direction to make available the account books to him for being inventoried, or has reference to the refusal of those persons to physically carry the books from the steel almirah and other places and place them before the Commissioner for being inventoried. Then we find the Commissioner stating in his report that when Marudai attempted to remove the cloth bags containing cash, he warned him not to do so and the said Marudai obliged him by replacing the bags of currency steel bureau itself. The further statement of the Commissioner that he was feeling insecure and hence he considered it advisable to lock the premises in order to secure the account books, cannot be taken to mean that it was the respondents who prevented the Commissioner from discharging his duties. Even according to the Commissioner, a large number of persons had gathered there and were watching the proceedings. No light is thrown as to who those persons were and the Commissioner has not stated that the respondents went and brought those persons in order to intimidate him. In such circumstances it cannot be said that such of those respondents as have been named by the Commissioner in his first report had misbehaved with him in any manner from taking an inventory of the

books. There is also the further fact that the Commissioner was able to clear the respondents from the premises and effectively lock the same and put seals on the lock. Had there not been a breaking open of the lock subsequently and removal of the account books, the Commissioner could have successfully executed the warrant issued to him. There would then be no room for a charge of contempt being laid against the respondents. When the matter is viewed from that perspective, we are of opinion that the charge of contempt cannot successfully be laid against the respondents for the events that happened on the 18th.

8. As to what happened subsequent to the Commissioner sealing the premises and going away, we do not have any direct or clear" evidence. No light is thrown as to when, how and by whom the lock was broken open and likewise, as to when the account books were removed and by whom. The only material that is available is that on the 19th April, 1979 the plaintiff came to learn that the sealed premises had been broken open. He has at once reported the matter to the Court and thereupon the Court has directed the Commissioner to visit the premises and find out if the plaintiff's report was true. The Commissioner went to Manachanallur on the 10th, but he could not make an inspection of the premises, because he could not get police bandobust on that day. Hence, he had to go on the next day for making the inspection, i.e., on the 21st., and it was then he found the lock and the account books to be missing and respondent 2,3,9 and 11 to be seated in the premises. The question is whether on the basis of the abovesaid material, we can render a finding that some or all of the respondents have committed contempt of court.

9. Mr. Vanamamalai submitted that the consequences of contempt of court are serious in that the contemnor will not only have to face the punishment awarded by court, but also bear the stigma attached to a sentence and hence courts should be very wary of exercising their powers under the Contempt of Courts Act for punishing persons charged of having committed contempt. Learned counsel also stated that for bringing home a charge of contempt evidence should not only be reliable, but also clinching and the evidence even in a case of civil contempt should be of such standard and degree as would be required in criminal proceedings. As authority for his contentions Mr. Vanamamalai cited S. Abdul Karim and Others Vs. M.K. Prakash and Others, and Syed Azimudin Vs. Syed Mazharuddin and Another, . Yet another contention of Mr. Vanamamalai Was that before any of the respondents can be. punished, he must be proved to have committed overt acts leading to the contempt and he cannot be found guilty either vicariously or constructively on the basis of overt acts committed by someone else even if that person happens to be one of the condemners hauled up for enquiry. With reference to this argument, Mr. Vanamamalai cited Sadhu Venkayya and Another Vs. Colla Meenakshamma,

10. Countering the arguments of Mr. Vanamalai, Mr. Govindaswami, appearing oft behalf of the Advocate General drew our attention to several features in the case

which in the opinion of the learned counsel, dearly brought home the charge of contempt leveled against the respondents. Firstly, he relied upon the averment of the Commissioner in his first report to the effect that in spite of his informing all the partners about the order of the Court and the purpose of his visit, all the partners evaded the production of the accounts and that he found the atmosphere to be surcharged with tension and therefore, unsuited for his taking an inventory of the account books. We have already dealt with this aspect of the matter in some measure in an earlier portion of the judgment. As we have stated therein, the events of the 18th April, 1979 cannot reasonably form the basis for sustaining a charge of contempt, and in fact, but for the subsequent breaking open of the premises and the removal of the account books, the Commissioner could have well executed the warrant irrespective of the handicaps experienced by him on the 18th.

11. Mr. Govindaswami contended that no one else except the respondents appearing before Court would have broken open the premises and removed the account books as they alone stand to gain by the suppression of the account books. In this connection, the learned counsel invited our attention to a counter-affidavit filed by the first respondent before the Court below wherein he has stated that to his knowledge the account books had not been removed by anyone and the information received by him was that the police constable posted on guard duty at the Mill premises had himself broken open the lock on the ground that his superior officers had told him that the plaintiff had no right have the Mill premises sealed and as such the locking of the premises by the Commissioner was itself not lawful. Mr. Govindaswami stated that having set up such a story in the counter-affidavit, it was for the respondents to prove that the premises had been broken open of the lock. Yet another feature highlighted by the Counsel was that if the respondents had no hand in the breaking open of the premises and the removal of the account books, they would have certainly informed the police authorities or the Subordinate Judge about the breaking open of the premises. They derived intelligence of it on the 19th April, 1979. Since no such report had been made, the counsel argued, the respondents themselves were the culprits and that was why they did not report the matter to anyone. Lastly, he argued that if the premises had been broken open by someone else, respondents 2, 3, 9 and 11 would not have been found inside the premises on the 21st when the Commissioner inspected the place and the presence of those respondents in the premises clearly pointed out who was responsible for the incident.

12. In the course of his arguments, Mr. Govindaswami placed for our consideration two decisions. The first is an unreported decision of this Court dated 7th March, 1967 in C. Kalandaivelu Gounder v. M. Chinna Gounder Contempt Appln. No. 2 of 1967. The facts in that case were that one Chinna Gounder, the respondent therein, was charged with willful disobedience of the order passed by the Subordinate Judge, Tiruchirapalli in I.A. No. 120 of 1967 in O.S. No. 49 of 1967 on the file of his Court, in that he refused to permit the Commissioner appointed by the Court to take an inventory of the movables,

account books and other records in his custody. The contempt application was heard by a Division Bench consisting of Anantanarayan, C. J., and Natesan, J. The Bench called for a detailed report from the Subordinate Judge and on the basis of such report, it found that the contemnor, Chinna Gounder, had undoubtedly offered obstruction to the Commissioner in the performance of his duties in accordance with the warrant of commission issued to him. Consequently, the Division Bench punished the respondent for contempt, but however, showed leniency in the matter of sentence and imposed only a fine of RS. 100/ on the contemnor. The other decision cited is State of Madhya Pradesh Vs. Revashankar, The ratio laid down by the Supreme Court in that case is to the effect that even in cases where action can be taken against a contemnor under S. 228, I.P.C., if the act complained of amounted to something more than the commission of the offence, viz, scandalizing the court itself or doing anything which will have the effect of undermining the confidence of the public in the Court and hindering the due administration of justice, the High Court will take action against the contemnor under the Contempt of Courts Act.

13. On a careful consideration of all the submissions made by Mr. Govindaswami we are of opinion that with reference to the material on hand it will not be just and legal to find the respondents guilty of contempt and award punishment to them. The legal propositions put forward by Mr. Govindaswami on the basis of the decisions cited by him are no doubt incontrovertible. But, before applying the legal principles, we must be satisfied that the facts of the case are such that the charge of contempt is established beyond doubt. We have already stated that there is no evidence, either direct or circumstantial to warrant the conclusion that these respondents had broken open the premises and removed the account books. It is no doubt true that the beneficiaries of the removal of the account books would be the respondents and the respondents alone. On account of that we may at best entertain serious doubts about the plea of innocence advanced by the respondents. But suspicion however, strong, cannot take the place of legal proof. We have before us, not one or two respondents but several of them. In the absence of proof it cannot be predicated with certainty whether one or more of the respondents had broken open the locks and removed the account books and if so, who among them were the culprits. Likewise, the story which to our minds appears to be a tall one, advanced by the first respondent that the policeman himself had broken open the lock and factors, such as the non-reporting of the breaking open of the premises to any of the authorities and the strange conduct of some of the respondents being found in the premises when the Commissioner visited the place on the 21st April, 1979, are all matters which throw a cloud of suspicion over the respondents. But, in as much as we are dealing with contempt proceedings, we cannot act on surmises or conjectures or inferences drawn from abnormal features in the case. In such circumstances, we have necessarily to hold that on the materials placed before Court, we cannot find the charge of contempt to be sufficiently established as to justify the respondents being punished for Contempt of Court.

14. Before parting with the judgment we wish to observe that since a report has been made to the police authorities against the respondents by the Advocate-Commissioner as per the directions of the Subordinate Judge, the police authorities will make due enquiry into the matter and lay charge-sheet against the accused if the evidence gathered during the investigation warrants such a step. We make it clear that the police or other authorities should not be influenced by any observation of ours in this order regarding the respondent's complicity or otherwise in the breaking open of the lock and the removal of the account books.

15. In view of our conclusion, the respondents will stand absolved of the charge of contempt and the notice will stand discharged.