

(1992) 02 KL CK 0014

In the High Court Of Kerala

Case No : Contempt of Court Case No. 4 of 1992

K.P. Isaac and Sons Private Limited and Another

APPELLANT

Vs

K. Prathyodhanan and Another

RESPONDENT

Date of Decision : 05-02-1992

Acts Referred:

Contempt of Courts Act, 1971 — Section 12, 12(1), 2

Citation : (1992) CriLJ 2587 : (1992) 3 ILR (Ker) 327

Hon'ble Judges : K.T. Thomas, J;K.S. Paripoornan, J

Bench : Division Bench

Advocate : P.C. Chacko, for the Appellant; Adv.-General and M.C. John, Govt. Pleader, for the Respondent

Judgement

K.S. Paripoornan, J.—There are two petitioners in this petition. The first petitioner is a private limited company represented by its Managing Director. The second petitioner is the Manager of Hotel Residency, Munnar, run by the first petitioner-Company. The company was assessed to tax under the Building Tax Act. The first petitioner moved this Court in O.P. No. 13019 of 1991 to quash the orders assessing the company to building tax and for further reliefs. After hearing counsel for the petitioner-company and also the learned Government Pleader, Chettur Sankaran Nair, J., by judgment dated 19th December, 1991, directed the petitioner to make a request to the Government for exemption and seek appropriate reliefs from the Government and to enable the petitioner to do so, the demand under Exts. P3 and P3(a) was directed to be held in abeyance for five weeks from the date of judgment. The period of five weeks will expire on 22/23-1-1992.

2. The gravamen of the charge in this proceeding initiated by the petitioners, is that the first respondent (Tahsildar, Devicolam) and the second respondent (Deputy Tahsildar (R.R.), Devicolam), even after knowledge of the order passed by this Court, attached the movable of the company lying in Hotel Residency and insisted the company to furnish security for the release of the attached article,

which in the circumstances, amounted in the commission of offence u/s 2(b) of the Contempt of Courts Act punishable u/s 12 of the said Act.

3. This Court issued notices to the respondents. On behalf of the respondents two counter-affidavits have been filed. The first counter-affidavit was filed on 17-1-1992 and the second counter-affidavit was filed on 29-1-1992. It is common ground that the attachment of the movables belonging to the first petitioner-company under the Revenue Recovery Act, was made on 26-12-1991. In the affidavit filed on 17-1-1992, by the first respondent, the plea is that the respondents were not aware of the order passed by this Court till 3.45 p.m. on 26-12-1991, when a photostat copy of the judgment in O.P. No. 13019 of 1991 along with a covering letter dated 26-12-1991 was received by the Tahsildar (1st respondent) on 26-12-1991 at 3.45 p.m. It is also stated that there was no communication received from the office of the Advocate-General about the order of this Court dated 19-12-1991 till 26-12-1991. The communication from the office of the Advocate-General dated 20-12-1991 was received in the office of the Tahsildar on 26-12-1991 at 4.30 p.m. In these circumstances, the first respondent has stated in the affidavit dated 16-1-1992, that the attachment made at about 10 a.m. and completed by 11.40 a.m. on 26-12-1991 was valid and was so done without the knowledge of the order passed by this Court.

4. This Bench felt, on a perusal of the affidavit filed by the petitioners and the counter-affidavit of the first respondent dated 16-1-1992, that the nature of the pleas raised require a probe and in the light of the conflicting pleas put forward by the parties, an enquiry should be held. By order dated 21-1-1992, this Bench directed the respondents to appear in this Court on 30-1-1992. Notice was also issued to the learned Advocate-General. The respondents appeared before this Bench on 30-1-1992. Just a day prior thereto, the first respondent has filed a counter-affidavit dated 28-1-1992, on behalf of respondents 1 and 2. The averments contained in paragraph 3 of the second affidavit dated 28-1-1992 are significant. It is admitted in the said affidavit that the communication sent from the office of the Advocate-General was received in the office of the first respondent on 20-12-1991, but the first respondent did not give proper attention to the message, since he was in a very "sorrow mental state of affairs". It is further stated in paragraph 5 of the said affidavit, that the plea of the respondents in the earlier affidavit dated 16-1-1992, that they were not aware of the pendency of O.P. No. 13019 of 1991 is a mistake and was made due to an inadvertent omission, that happened at the time of drafting the affidavit. It is reiterated in paragraph 5, that the message from the office of the Advocate-General was received in the office of the first respondent on 20-12-1991, but the first respondent did not give proper attention to the message. In paragraphs 3 and 5 of the affidavit dated 28-1-1992, the respondents have regretted for the omission and they have tendered unconditional apology for having disobeyed the order of this Court rendered in O.P. No. 13019 of 1991, thereby committing the offence of Contempt of Court. The respondents have also prayed that their apology may be accepted and they may be exonerated from the charges. It is

seen that the first respondent is due to retire soon. The respondents have undertaken that they will hereafter be very cautious with respect to matters pending in the Courts and will always see that the orders passed by this Court are obeyed in the strict sense. In paragraph 7 of the affidavit dated 28-1-1992, the respondents have expressed deep regret stating that they are really ashamed to have committed the offence and pray that their unconditional apology may be accepted and they may be exonerated from the charges levelled against them.

5. We should state that the respondents have taken up inconsistent stands in the affidavits filed before this Court. In the first instance, the attempt was to disclaim knowledge of the pendency of the O.P. (O.P. No. 13019 of 1991) and the order passed thereon. In the second affidavit dated 28-1-1992, the respondents have unambiguously stated that the communication from the office of the Advocate-General was received by the first respondent on 29-12-1991, but the first respondent did not give proper attention to the message due to the very sorrowful mental state of affairs, he possessed then. Then this Court ordered a probe and proceeded to serve charges on the respondents and take evidence in the matter, the respondents would have felt on the basis of documentary and other evidence, that they cannot easily disclaim the knowledge of the pendency of O.P.No. 13019 of 1991 and the order passed thereon. Probably faced with the reality of the situation, the respondents resiled from their earlier stand and admitted their guilt in the matter.

6. In pursuance to the notice issued by this Court, the learned Advocate-General Mr. M. B. Kurup appeared before us. We heard counsel for the petitioner, Mr. P. C. Chacko, the learned Advocate-General Mr. M. B. Kurup and the respondents, who appeared in person before this Court. We expressed our strong displeasure about the conduct of the respondents. The fact that the respondents flouted the orders of this Court, in spite of knowledge thereof, is patent. The conduct of the respondents in flouting the order passed by this Court would very well be known to the entire people of Munnar. xxx The first petitioner is a well known company running a modern hotel in Munnar.xxx The attachment of the movables and other proceedings taken by the respondents would have lowered the credit and prestige of the first petitioner-company, at least in the said locality, if not in other places also.

7. In the circumstances, we felt that it is not sufficient if the respondents offer a ritualistic and formal apology in the affidavits filed in this Court. Contempt of Court is an act or omission calculated to interfere in the due administration of justice. By committing contempt, the supremacy of the law is challenged. By hampering the due course of a judicial proceeding or the administration of justice, it is really the right and interest of the public that is put in peril. The public have a real and vital interest in the administration of justice and any interference with the administration of justice and affecting prejudicially the majesty of the law in its active manifestation is an affront against the right and

interest of the public. The observations made by a Bench of this Court, relying on the decision of the Supreme Court in *Asharam M. Jain Vs. A.T. Gupta and Others*, . Advocate-general, *State of Bihar Vs. Madhya Pradesh Khair Industries and Another*, and other decisions, in *Advocate General Vs. K. Ramkumar*, are relevant in this context. We may usefully quote the material portions therein.

...Delivering the judgment of the Bench, Chinnappa Reddy, J. observed :

There is never any risk of judicial hypersensitivity. The very nature of the judicial function makes judges sympathetic and responsive. Their very training blesses them with "insensitivity" as opposed by hyper-sensitivity. Judges are always seeking good reasons to explain wrong conduct. They know there are always two sides to a coin. They neither give nor take offence because they deal with persons and situations impersonally, though with understanding. Judges more than others realise the foibles, the frustrations, the undercurrents and the tensions of litigants and litigation. But, as elsewhere, lines have to be drawn. The strains and mortification of litigation cannot be allowed to lead litigants to tarnish, terrorise and destroy the system of administration of Justice by vilification of judges. It is not that judges need be protected; Judges may well take care of themselves. It is the right and interest of the public in the due administration of justice that has to be protected.

10. "Contempt of Court" means an act or omission calculated to interfere in the due administration of justice. The offence consists in interfering with the administration of law, in impeding and preventing the course of justice. It is not the dignity of the Court which is offended -- a petty and misleading view of the proceedings involved -- It is the fundamental supremacy of the law which is challenged. The jurisdiction exists in order that the authority of the law as administered in the courts may be established and maintained. The abuse of process of the Court calculated to hamper the due course of a judicial proceeding or the ordinary administration of justice is contempt of Court. The public have a real and vital interest in the administration of justice. The power is vested in the Court to protect and vindicate the rights of the public, so that the administration of justice shall not be prevented, prejudiced or obstructed or interfered with. It is a mode of indicating the majesty of the law in its active manifestation against obstruction and outrage -- *Advocate-general, State of Bihar Vs. Madhya Pradesh Khair Industries and Another*, *Attorney-General v. Leveller Magazine Ltd.* (1979) 1 All ER 745 at p. 757; *Prabhakara Menon v. Managing Director, KSRTC* 1985 KLT 66: 1985 KLJ 383 at pp. 386 and 387; *The King v. Dunbabin* (1935) 53 CLR 434 pp. 442 and 443."

In a similar situation, a Bench of this Court, to which one of us was a party, held in *Abraham Vs. Director of Telecommunications and Others*, thus:

The proviso to Section 12(1) of the Contempt of Courts Act permits remission of the punishment awarded or discharge of the accused on apology being made to the satisfaction of the Court: The apology need not be one made in Court but

made in such a manner that, considering the circumstances of the case, the Court is satisfied that the apology in that manner would be proper. The apology must necessarily be bona fide. Any apology would be lacking in good faith if it is not made honestly but made merely for fear that there will be punishment, the assessment of the genuineness of the regret must be on the basis of the averments in the statement of the offender. The conduct by the Junior Engineer in flouting the order would be very well known to the people of the locality. If at all 3rd respondent wants to make amends it is not by offering a ritualistic apology in the affidavit filed in this Court. We feel the apology must be made openly in a manner that serves a larger purpose, as a deterrent to those who treat the orders of Court with callous disregard or indifference.

8. The above aspects highlighted in the Bench decisions of this Court in Abraham Vs. Director of Telecommunications and Others, and In Re An Advocate, 1985 Ker LT 813 : 1986 Cri LJ 60 were brought to the notice of the respondents and the learned Advocate-General. Indeed, it is gratifying to note that the learned Advocate-General spontaneously submitted before us that having regard to the facts in this case, the respondents should submit an apology in public as held by this Court in Abraham Vs. Director of Telecommunications and Others, The learned Advocate-General also pleaded that if a public apology is so offered by the respondents, this Court should accept the same and exonerate the respondents from the charges levelled against them.

9. The respondents have filed a statement dated 4-2-1992 to the following effect:

We, K. Pradyodanan, Tahsildar, Devicolam and S. Arumughan, Deputy Tahsildar (RR), Devicolam do hereby submit and state we are ready and willing to express our apology in public at Munnar on any day. We further submit that our apology may be accepted and we may be relieved of the contempt charges.

We bestowed our anxious thought over the matter. At least at a late hour, the respondents realising their mistake owned it and have offered an unconditional apology. They have also stated in unequivocal terms, that they are ready and willing to express their apology in public at Munnar on any day.

10. We accept the above offer of the respondents to express their apology in public at Munnar on any day. If that is done, the respondents shall be relieved from the contempt charges. We hold that the respondents have committed Contempt of Court. However, we accept the offer of the respondents that they will express their apology in public at Munnar and if it is so done they will be relieved from the contempt charges. We direct that a public meeting shall be held at Munnar, in some prominent place, wherein the President of the Panchayat, and in his absence, the Vice-President and in the absence of both the President and the Vice-President, a senior member of the Panchayat shall preside. The said meeting shall be convened after due public notice of one week, about the date of the meeting, venue etc. by the petitioners. Notice shall be published in important places in the locality. In the said meeting, presided over

by the President of the local Panchayat and in his absence the Vice-President and in the absence of both the President and Vice-President, a senior member of the Panchayat, respondents 1 and 2 shall individually express their unconditional apology for flouting the orders of this Court and in effecting the attachment of the movables belonging to the first petitioner-company disregarding the orders of this Court.

11. The above proceeding shall be properly and duly conducted and the report thereof shall be sent to this Court by the Munsiff, Devicolam, who is hereby directed to personally attend to the matter in all details.

12. We hope that the entire matter will be over within one week from the date of receipt of a copy of this judgment by the local authority. This is a case where the respondents have acted without due care and caution in attaching the movables of the petitioners. They have acted mala fide. They have caused harm and injury to the reputation of the petitioners. Monetary loss has also been caused to the petitioners. We have already held that the action of the respondents is totally unauthorised and illegal. The consequential order should follow. We direct that the respondents shall, at their cost and expense, deliver all the attached movables to the petitioners from the place where they were attached. In the peculiar facts of this case, we do not embark upon the enquiry as to whether the petitioners are entitled to further compensation. We leave the question open. Post this again on 25-2-1992.

13. The Registrar shall send a photostat copy of this order (1) The Executive Officer, Munnar Panchayat, (2) The Munsiff, Divicolam (3) The Advocate-General, Ernakulam. A photostat copy of this order shall be supplied to counsel for the parties, on usual terms.