
(2015) 01 MAD CK 0242

In the Madras High Court

Case No : Contempt Appeal Nos. 1 and 3 of 2013

N. Ramadas and Others

APPELLANT

Vs

C.A. Mohamed Abdul Huq and Others

RESPONDENT

Date of Decision : 12-01-2015

Acts Referred:

Citation : (2015) 1 LW(Cri) 326

Hon'ble Judges : Sanjay Kishan Kaul, C.J.; M.M. Sundresh, J.

Bench : Division Bench

Advocate : R. Thiagarajan for T. Kannan, for the Appellant; A.E. Chelliah, Senior Counsel for C. Saifullah, Advocates for the Respondent

Final Decision : Allowed

Judgement

M.M. Sundresh, J.—Both these contempt appeals have been filed against the order passed by the learned single Judge in Contempt Petition No. 1390 of 2012 in Crl. O.P. No. 25046 of 2011 dated 21.12.2012. A Memo was filed on 25.11.2014 on behalf of the appellant in Contempt Appeal No. 3 of 2013 stating that he had passed away on 31.07.2014. As there is no dispute over the same, the death of the appellant in Contempt Appeal No. 3 of 2013 is hereby recorded.

2. Heard Mr. R. Thiagarajan, learned counsel appearing for the appellant in both the appeals, Dr. A.E. Chelliah, learned Senior Counsel appearing for the first respondent in both the appeals and the third respondent in Contempt Appeal No. 3 of 2013 and Mr. S.T.S. Moorthy, learned Government Pleader appearing for the second respondent in both the appeals and perused the documents filed.

3. Seeking a direction to respondents 1 and 2 therein to complete the investigation on the complaints dated 23.05.2011 and 25.05.2011 with a further direction to file a Final Report before the jurisdictional Court, the first respondent herein has filed Cr. O.P. No. 25046 of 2011. By an order dated 25.01.2012, the following was passed by the learned single Judge.

"8. Today, when the petition was taken up for hearing, the learned Government

Advocate apologized before the open Court for the wrong committed by the concerned police officer. Considering the apology tendered by the learned Government Advocate, this Court finds that the contempt proceedings need not be continued and it may be closed. However, it is ascertained that the second respondent police has now registered the case based on the complaint of the petitioner dated 23.05.2011. Therefore, the second respondent is directed to take up the case for investigation in an impartial manner and file the final report within a period of 60 days without loss of further time. The first respondent is also directed to monitor the progress of the investigation and see that the investigation is completed expeditiously and the charge sheet is filed within the period stipulated above." 4. Though a statement was made on behalf of the second respondent in Crl. O.P. No. 25046 of 2011, no case was registered on the pending complaints. The appellant took charge of the station after the pronouncement of the order in Crl. O.P. No. 25046 of 2011. Finding that no case has been registered as stated before the Court, the appellant duly registered the complaint made by the first respondent on 08.05.2012 in Crime No. 30 of 2012. Thereafter, the appellant sought for extension of time in Crl. M.P. No. 1 of 2012 in Crl. O.P. No. 25046 of 2011. Accordingly, by an order dated 14.06.2012, the time granted earlier was extended for a further period of three months to file the final report. The appellant duly filed the final report before the jurisdictional Court.

5. Alleging that the appellant has committed contempt of the order passed in Crl. O.P. No. 25046 of 2011, by registering the complaint said to have been made on 08.05.2012 by the first respondent as against the statement made before the Court, the first respondent has filed Contempt Petition No. 1390 of 2012 before the learned single Judge. The learned single Judge, by an elaborate order, found that the appellant in Contempt Appeal No. 3 of 2013 has committed willful disobedience of the order passed. Incidentally, it was held that the conduct of the appellant in Contempt Appeal No. 1 of 2013 also warranted a punishment under the Contempt of Court Act. Accordingly, he was hauled for civil contempt. Challenging the said order passed by the learned single Judge, the present Contempt Appeal No. 1 of 2013 is before us.

6. The learned counsel appearing for the appellant submitted that admittedly, the appellant was not a party to the order passed in Crl. O.P. No. 25046 of 2011. There is neither a willful disobedience nor non compliance of the order passed. The appellant has duly registered a complaint on 08.05.2012 as given by the first respondent. Having found that the statement made earlier by the learned Government Advocate before the Court was not correct and to remedy the situation, the complaint made by the first respondent was accordingly registered. Thereafter, the investigation was duly carried out. A mere fact that the complaint was registered by taking note of the order passed by this Court would not amount to a contumacious act. The subsequent communication sent to the jurisdictional Magistrate about the complicity of the another accused has no nexus with the order passed in Crl. O.P. No. 25046 of 2011. Even assuming, a

mistake is committed in the course of an official duty, it would not warrant an action for willful disobedience. The first respondent has been seeking remedy through the Court of law against the final report filed by the appellant. There is neither a civil nor a criminal contempt made out against the appellant. The learned single Judge has wrongly went into the functioning of the appellant in his official capacity, which is not warranted being one beyond the scope of the contempt jurisdiction. Therefore, the contempt appeal has to be allowed.

7. The learned Senior Counsel appearing for the first respondent submitted that the appellant has wrongly relied upon the order passed by this Court. There was no direction to register a case. There is no business for the appellant to send a communication to the jurisdictional Magistrate about the involvement of another accused being the purchaser of the disputed property. The conduct of the appellant is condemnable. The appellant has not paid the cost as required by the Original Side Rules. For punishing a contemnor, it is not necessary that he has to be a party to the original order passed. The act of the appellant would amount to interference in the free flow of justice. As the learned single Judge has gone into the entire matrix, both on facts and law, no interference is required.

8. Proceeding with a contempt is a business between the Court and the contemnor. A person who initiates a contempt proceeding cannot have a bigger role than that of an informer with respect to a criminal contempt. When a person alleges willful disobedience of an order passed by another, the onus is wholly on him to substantiate it. The proceedings are like in a criminal case which is inclusive of the standard of proof required. They are quasi criminal nature. The power of the Court, which exercises its contempt jurisdiction, is a special and rare one. Therefore, it has to be exercised with circumspection caution and care. There has to be sufficient evidence leading to a finding on the wilfulness relatable to the contemnor. When there are two views possible on the alleged action or inaction of the contemnor, then the benefit of doubt will have to be extended to him. These are the underlining principles governing contempt proceedings before a Court of law. A mere surmise or conjecture can never be a basis to haul a person for contempt. An inadvertence mistake or misunderstanding of an order of Court would not lead to contempt.

9. While dealing with the contempt petitions, the Court is not supposed to go into the various nitty-gritty of the steps taken by the contemnor. The Courts are not required to travel beyond the four corners of the order, which is alleged to have been clotted deliberately and wilfully. In this connection, a fruitful recapitulation of a recent judgment of the Supreme Court in *Ram Kishan V. Sh. Tarun Bajaj and others* [2014-3-L.W. 103 : (2014) 6 CTC 236] is apposite.

"9. Contempt jurisdiction conferred onto the law courts power to punish an offender for his willful disobedience/contumacious conduct or obstruction to the majesty of law, for the reason that respect and authority commanded by the courts of law are the greatest guarantee to an ordinary citizens that his rights shall be protected and the entire democratic fabric of the society will crumble

down if the respect of the judiciary is undermined. Undoubtedly, the contempt jurisdiction is a powerful weapon in the hands of the courts of law but that by itself operates as a string of caution and unless, thus, otherwise satisfied beyond reasonable doubt, it would neither fair nor reasonable for the law courts to exercise jurisdiction under the Act. The proceedings are quasi-criminal in nature, and therefore, standard of proof required in these proceedings is beyond all reasonable doubt. It would rather be hazardous to impose sentence for contempt on the authorities in exercise of contempt jurisdiction on mere probabilities. (Vide : V.G. Nigam and others Vs. Kedar Nath Gupta and another, ; Chhotu Ram Vs. Urvashi Gulati and Another, ; Anil Ratan Sarkar and Others Vs. Hirak Ghosh and Others, ; Bank of Baroda Vs. Sadruddin Hasan Daya and Another, ; Sahdeo @ Sahdeo Singh Vs. State of U.P. and Others, ; and National Fertilizers Ltd. Vs. Tuncay Alankus and Another, .

10. Thus, in order to punish a contemnor, it has to be established that disobedience of the order is willful. The word willful introduces a mental element and hence, requires looking into the mind of person/contemnor by gauging his actions, which is an indication of one's state of mind. Willful means knowingly intentional, conscious, calculated and deliberate with full knowledge of consequences flowing therefrom. It excludes casual, accidental, bona fide or unintentional acts or genuine inability. Willful acts does not encompass involuntarily or negligent actions. The act has to be done with a bad purpose or without justifiable excuse or stubbornly, obstinately or perversely?. Willful act is to be distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It does not include any act done negligently or involuntarily. The deliberate conduct of a person means that he knows what he is doing and intends to do the same. Therefore, there has to be a calculated action with evil motive on his part. Even if there is a disobedience of an order, but such disobedience is the result of some compelling circumstances under which it was not possible for the contemnor to comply with the order, the contemnor cannot be punished. "Committal or sequestration will not be ordered unless contempt involves a degree of default or misconduct. (Vide : S. Sundaram Pillai and Others Vs. `R. Pattabiraman and Others, ; Rakapalli Raja Rama Gopala Rao Vs. Naragani Govinda Sehararao and Another, ; Niaz Mohammad and others, etc. etc. Vs. State of Haryana and others, ; M/S Chordia Automobiles Vs. S. Moosa and Others, ; Ashok Paper Kamgar Union and Others Vs. Dharam Godha and Others, ; State of Orissa and Others Vs. Md. Illiyas, ; and Uniworth Textiles Ltd. Vs. Commissioner of Central Excise, Raipur, .

11. In Lt. Col. K.D. Gupta Vs. Union of India (UOI) and Others, , this Court dealt with a case wherein direction was issued to the Union of India to pay the amount of Rs. 4 lakhs to the applicant therein and release him from defence service. The said amount was paid to the applicant after deducting the income tax payable on the said amount. While dealing with the contempt application, this Court held that withholding the amount cannot be held to be either malafide or was there any scope to impute that the respondents intended to violate the

direction of this Court.?

12. In *Mrityunjoy Das and Another Vs. Sayed Hasibur Rahaman and Others*, , the Court while dealing with the issue whether a doubt persisted as to the applicability of the order of this Court to complainants held that it would not give rise to a contempt petition. The court was dealing with a case wherein the statutory authorities had come to the conclusion that the order of this court was not applicable to the said complainants while dealing with the case under the provision of West Bengal Land Reforms Act, 1955.

13. It is well settled principle of law that if two interpretations are possible, and if the action is not contumacious, a contempt proceeding would not be maintainable. The effect and purport of the order is to be taken into consideration and the same must be read in its entirety. Therefore, the element of willingness is an indispensable requirement to bring home the charge within the meaning of the Act. (See: *Sushila Raje Holkar v. Anil Kak (Retd.)*, AIR 2008 (Supp-2) SC 1837; and *Three Cheers Entertainment Pvt. Ltd. and Others Vs. C.E.S.C. Ltd.*, ."

Keeping the above said principles in view, let us see the case on hand.

Admittedly, the appellant was not a party to the order passed in Crl. O.P. No. 25046 of 2011, dated 21.12.2012. There is no difficulty in appreciating the principle of law that a contempt would lie even against the person, who is not a party to the order alleged to have been violated. However, in the case on hand, the appellant has not violated the order passed. In other words, the order passed was based on a misrepresentation, for which, the appellant cannot be held responsible. He merely made an attempt to remedy the mistake committed on registering the complaint said to have been given by the first respondent. In other words, the appellant made an attempt to comply with the order passed though he was not a party to it. Such an attempt cannot be termed as willful or deliberate and contravention of the said order. In such view of the order, it can also be termed either as a civil or criminal contempt. He has not interfered with the flow of justice. Though it can be said that the approach of the appellant is over zealous, it cannot be termed as an act in violation of the order passed. The appellant may be wrong in his conclusion for which, the remedy for the first respondent lies elsewhere. The submission made by the learned Senior Counsel appearing for the first respondent on the non compliance of the provisions of the Original Side Rules has got no bearing on the contempt petition. But, the appellant has complied with the order passed. In any case, the said issue cannot be a ground to haul the appellant for a contempt. The learned single Judge has gone into the merits of the case, which we feel is not required while dealing with the contempt petition. The jurisdiction of the Court in a contempt petition is rather limited. The first respondent is also pursuing his remedy against the Final Report filed by the appellant. From the records, we do not find any willful action or inaction on the part of the appellant in violation of the order passed in Crl. O.P. No. 25046 of 2011. For the wrong said to have been committed by the

appellant in Contempt Appeal No. 3 of 2013 (since died), the appellant before us in Contempt appeal No. 1 of 2013 cannot be punished. The first respondent has not proved a willful and deliberate violation of the order passed on the part of the appellant. The learned single Judge has also not given any specific findings on the same. Though certain procedural irregularities were pointed out, we are not concerned with this in these proceedings.

Accordingly the order passed in contempt petition is hereby set aside and consequently, Contempt Appeal No. 1 of 2013 stands allowed. Contempt Appeal No. 3 of 2013 is closed as abated.