

(1977) 11 KAR CK 0005

In the Karnataka High Court

Case No : Contempt of Court Case (Criminal) 2 of 1977

N. Venkataramanappa

APPELLANT

Vs

D.K. Naikar and Another

RESPONDENT

Date of Decision : 07-11-1977

Acts Referred:

Contempt of Courts Act, 1971 — Section 12, 15, 20
Criminal Procedure Code, 1973 (CrPC) — Section 200, 202

Citation : AIR 1978 Kar 57 : (1978) CriLJ 726

Hon'ble Judges : V.S. Malimath, J;D.B. Lal, J

Bench : Division Bench

Advocate : G.N. Seshagiri Rao, for the Appellant; R.N. Byre Reddy, for the Respondent

Judgement

This Judgment has been overruled by : P.N. Dua Vs. P. Shiv Shanker and Others, AIR 1988 SC 1208 : (1988) CriLJ 1745 : (1988) 2 JT 102 : (1988) 1 SCALE 728 : (1988) 3 SCC 167 : (1988) 3 SCR 547

Malimath, J.—The complainant in this case is an Advocate practising at Bangalore who has filed this petition under the Contempt of Courts Act, 1971 (hereinafter referred to as the Act) praying that the two accused he punished u/s 12 of the Act read with Article 215 of the Constitution of India.

2. The facts stated by the complainant are as follows; Cr. R. P. No. 605 of 1973 was filed by one Nagawwa against V. S. Koujalgi and A. K. Kottarashetti and the same was pending on the file of this Court. It was disposed of by Mr. Justice D. Noronha on 16-12-1974. On 11-4-1977 the Chief Justice of this Court made a speech referring to the sad demise of the retired Judge Mr. Noronha, Appreciating the qualifies and judicial independence of Justice Noronha, the Chief Justice observed us follows:

"I will be failing in my duty if I do not place on record an incident which may never be known to the public. There was a criminal case pending in this Court in

which some of the Ministers of the State Government were personally involved. On the basis of intelligence reports received, I directed the Registrar to post the case before one of my colleagues. As foreseen by me, that learned Judge was approached by one or more Ministers and therefore the learned Judge saying that he would not like to hear the case, directed the office to post it before some other Judge. When this matter came to my notice, I sent for Mr. Justice Noronha whose health was not at all good then. I asked him whether he will hear and dispose of the case even if pressures were brought by Ministers. Mr. Noronha agreed to hear the case. He heard and decided the matter and the decision went against the interested Ministers. Justice Noronha later told me that as I had rightly warned him, he was approached by one of the Hon"ble Ministers but he told the Minister that he has taken the oath of office. I brought this fact to the notice of the then Chief Justice Mr. A. N. Ray." 1977 (1) Kant LJ 97. But, in the speech the names of two Ministers who approached the Judges of this Court were not disclosed. In the Rajya Sabha Sri Mulka Govinda Reddy, M. P., asked the following question to the Union Law Minister:

"(a) whether the Chief Justice of Karnataka is reported to have made a statement to the effect that some Ministers of Karnataka allegedly interfered in the dispensation of justice by the High Court; and

(b) if so, what are the details in this regard? (Exhibit B).

The Minister of Law, Justice and Company Affairs gave reply in the Rajya Sabha on the 25th July, 1977 as is clear from the proceedings of the Rajya Sabha, a copy of which has been produced in the case as Exhibit-C. The answers given by the Minister read as follows;

"(a) Yes, Sir.

(b) A statement is laid on the Table of the House."

The Statement laid on the Table of the House reads as follows:

"In April 1977, the Chief Justice of Karnataka High Court at a Reference, while paying a tribute to Shri D. Noronha, a retired Judge of the Karnataka High Court who had died, stated that in a criminal case pending in the High Court, one or more Ministers had approached the Judges before whom the case had been posted for hearing. The Chief Justice thereupon asked Justice Noronha if he would hear the case even if pressures were brought by Ministers. Justice Noronha agreed and after deciding the case told the Chief Justice that he had been approached by a Minister.

2. According to the information now furnished by the Chief Justice of the Karnataka High Court, 8 persons had been committed to the Court of Session, Belgaum as a result of an incident on 19-3-1973, in which one Nagappa was way-laid and assaulted by a group of persons. Nagappa died after the police Patil had recorded his dying declaration. During the pendency of the Sessions case (No. 30 of 1974), Nagappa, mother of the deceased Nagappa, filed a private complaint u/

s 200 Cr. P. C., arraying two more persons as accused. One of the two was Shri V. S. Koujalagi, Minister of State in the Karnataka Government, The Magistrate recorded the statement of the complainant and examined some witnesses, Arguments were heard and the case posted for orders on 16-10-1973. In the meanwhile the Magistrate was transferred on 11-10-1973 and relieved of his charge on 15-10-1973. The successor Magistrate made an order directing an enquiry into the complaint by the Superintendent of Police u/s 202 Cr. P. C. This order of the Magistrate was challenged by the complainant before the High Court in Criminal Revn. Petn. No. 665 of 1973: Nagawwa Vs. Veeranna Shivalingappa Koujalagi and Others, The revision petition was posted for hearing before a succession of judges, one of whom directed that the matter be posted before some other Bench and told the Chief Justice, on confidential enquiry being made, that some Minister had talked to him about the case.

3. Thereafter, the matter was posted before Shri Justice D. Noronha. The State supported the stand of the accused Justice Noronha allowed the complainant's revision petition by his order dated 16-12-1974, remitting the case to the Magistrate with the direction to proceed with the case according to law and to examine other witnesses, if any, himself. In his judgment, Shri, Justice Noronha made the following observation: Within the sacred precincts of the Court Hall, politics and influence have no entry. . . ." Shri Justice Noronha later disclosed to the Chief Justice the name of the Minister who had tried to influence him in the decision of case.

4. On receipt of the record of the case from the High Court, the Magistrate, after hearing arguments, made an order directing the issue of summons to accused Nos. 9 and 10, i.e., Shri V. S. Koujalagi and Shri Kotra Shetty. This order was challenged before the High Court in Criminal Petitions Nos. 50 and 51 of 1975. They were admitted by Shri. Justice Noronha and subsequently listed before another Judge who quashed the order of the Magistrate. The Supreme Court, on appeal, set aside the order of the High Court observing that they had not found any error of law committed by the Magistrate and that the High Court in quashing his order had completely failed to consider the limited scope of an enquiry u/s 202.

5. The Chief Justice, Karnataka High Court has now disclosed to the Minister of Law, Justice and Company Affairs, the names of the Ministers of Karnataka who had tried to influence the Judges as being-

(1) Shri D. K. Naiker.

(2) Smt. Eva Vast."

3. It is on the basis of this information that the complainant filed this petition in this Court on 30th July 1977 for taking action under the Act.

4. When this matter came up before us on 5th October, 1977, we found that action on the petition cannot be taken at the instance of the complainant unless

he obtains consent in writing from the Advocate-General as required by Section 15(1)(b) of the Act, the alleged contempt being criminal contempt. We, therefore, gave time to the complainant to approach the Advocate-General for grant of permission u/s 15(1)(b) of the Act. The complainant, thereafter, approached the Advocate-General for grant of permission whereupon the Advocate-General, by his letter dated 15/17-10-1977, produced in the case as Exhibit-E, declined to accord consent as prayed for by the complainant. This is what the learned Advocate-General has stated in his letter while refusing consent:

"I have ascertained that Justice Noronha has pronounced orders in Criminal Revn. Petn. No, 665 of 1973 on 16-12-1974 : Nagawwa Vs. Veeranna Shivalingappa Koujalagi and Others, It is obvious therefore that the alleged contempt has been committed some time prior to 16-12-1974. It is evident that Section 20 of the Contempt of Courts Act is a clear bar for the initiation or the prosecution of the contempt petition. I further find from the petition that there is no legally admissible evidence in proof of the alleged contempt, and no specific grounds are made about the locus standi of the petitioner to initiate contempt proceedings.

On a consideration of the above factors and all other relevant circumstances, I do not consider it proper to exercise my discretion to give the consent asked for. The consent asked for is therefore declined."

5. It was explained to us by Sri G. N. Seshagiri Rao learned Counsel appearing for the complainant, that what is alleged against D. K. Naiker and Smt. Eva Vaz is that they interfered with the due course of the judicial proceedings in Cr. R. P. No. 665 of 1973, Interference with the course of any judicial proceedings constitutes criminal contempt as defined in Section 2(c)(ii) of the Act. Section 20 provides that no court shall initiate any proceedings for contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed. The bar contained in Section 20 of the Act is an absolute bar. It bars initiation of any proceedings for contempt after the expiry of the period of one year from the date on which the contempt is alleged to have been committed. The bar is applicable not only for initiation of contempt at the instance of "the complainant but also against suo motu initiation of proceedings by the High Court. The language of Section 20 makes it clear that the period of one year commences from the date on which the contempt is alleged to have been committed, After the expiry of the said period of one year, no court can initiate any proceedings for contempt either suo motu or otherwise. It is not possible to accede to the contention of Sri Seshagiri Rao, learned counsel appearing for the complainant, that it is the date of knowledge of the contempt that is the starting point for the limitation prescribed by Section 20, and not the date on which the contempt is alleged to have been committed. Having regard to the clear language employed in Section 20 of the Act, namely, "from the date on which the contempt is alleged to have been committed" it is impossible to take the view that the date of knowledge of the

complainant has any relevance for the purpose of computing the period of limitation.

6. Though Sri Seshagiri Rao contended that the learned Advocate-General declines to give consent sought by the complainant u/s 15 of the Act he is entitled to maintain the petition on the ground that the refusal of consent by the learned Advocate-General is unjustified. It appears to us that absolute discretion is vested in the Advocate-General in the matter of according consent u/s 15(1) (b) of the Act. Grant or refusal of consent by the Advocate-General u/s 15 of the Act, in our opinion, is not justiciable.

7. But it was rightly maintained by Sri Seshagiri Rao that even if the complainant cannot maintain the petition under the Act he not having obtained consent from the Advocate-General he can persuade us to take action suo motu to initiate contempt proceedings against the accused. Though we can take action suo motu on the information being laid before us that contempt has been committed, it has to be pointed out that even for suo motu action to be taken by this Court the bar contained in Section 20 of the Act applies.

It is clear from Section 20 of the Act that whether action is taken at the instance of the complainant or suo motu by the Court, the bar contained in Section 20 of the Act is attracted. As the Advocate-General has refused consent stating that initiation of contempt proceedings is barred by limitation u/s 20 of the Act, we have to examine whether Section 20 is a bar to our taking suo motu action in the matter.

8. For the purpose of determining whether action can be taken to initiate proceedings under the Act, we have to find out the date on which the contempt alleged was committed. In the letter refusing consent the Advocate-General has stated that Cr. R. P. No. 665 of 1973 was disposed of on 16-12-1974: Nagawwa Vs. Veeranna Shivalingappa Koujalagi and Others, and that the contempt alleged in this case must have been committed prior to 16-12-1974. If the contempt was committed prior to 16-12-1974 it is obvious that no action can be taken u/s 20 of the Act after the expiry of one year from that date. We have also perused the original records in Cr. R. P. No. 665 of 1973 and the order-sheet of that case. The same clearly disclose that final order was pronounced by Justice Noronha in Cr. R. P. No. 665 of 1973 on 16-12-1974. Sri Seshagiri Rao also explained that the alleged contempt was committed by the accused when Cr. R. P. No. 665 of 1973 was pending on the file of this Court and not after its disposal. It is clear from the speech of the Chief Justice made on 11-4-1977 and the statement of the Union Law Minister dated 25-7-1977 made on the basis of the information furnished by the Chief Justice which we have extracted in paragraph 2 above that the two accused are alleged to have approached the Judges in connection with Cr. R. P. No. 665 of 1973. We also see From the order-sheet of Cr. R. P. No. 665/73 that the case was earlier posted for hearing on 18-11-1974, on which date Justice Range Gowda directed that it should be posted before some other Bench for hearing. It is, therefore, that the Chief Justice posted the case before

Justice Noronha who heard and disposed of the same by order dated 16-12-1974. It is alleged two learned judges were approached by the two Ministers in connection with Cr. R. P. No. 665/73, it is obvious that such approach could have been made when Cr. R. P. No. 665 of 1973: Nagawwa Vs. Veeranna Shivalingappa Koujalagi and Others, was pending and before it was finally disposed of on 16-12-74. In the circumstances, it is impossible to expect the ministers to approach the Judge or Judges after 16-12-1974. The materials before us clearly establish that the alleged contempt must have been committed before 16-12-74, the date on which the final order was pronounced. As already stated the case as put forward by the complainant is that it is for the first time when the Chief Justice of this Court made a reference to this aspect of the matter on 11-4-1977 while speaking on the occasion of the demise of Justice Noronha, that the complainant came to know of the alleged contempt. But even on that date, more than a year had elapsed from the date on which the alleged contempt was committed. It is for the first time on 11-4-1977 that the Chief Justice publicly disclosed that Judges of this court were approached by ministers in connection with a pending criminal case. Till then the facts constituting the alleged contempt could have been known only by the two Judges who are alleged to have been approached, the Chief Justice of our Court and the Chief Justice of India who was informed about it. Though we do not have any positive material in regard to the actual date on which Justice Noronha informed about this matter to our Chief Justice, it is reasonable to infer that the said information must have been conveyed to our Chief Justice within a short time after Justice Noronha disposed of Cr. R. P. No. 665 of 1973 on 16-12-1974: Nagawwa Vs. Veeranna Shivalingappa Koujalagi and Others, It was therefore possible to initiate proceedings under the Act within the prescribed period of limitation, We would, however, like to make it clear that for the purpose of computing the period of limitation u/s 20 of the Act what is relevant is the date on which the alleged contempt was committed and not the date on which the Chief Justice was informed about it by the concerned Judges. As the alleged contempt must have been committed on or before 16-12-1974, we cannot initiate proceedings against the accused having regard to the statutory bar of limitation contained in Section 20 of the Act.

9. It is true, as maintained by Sri. Seshagiri Rao, that if the facts alleged by the complainant are true the contempt committed in this case would be a criminal contempt of the gravest order. We are not unmindful of the fact that by not taking action on the ground of limitation, the alleged contempt will remain without being enquired into.. For this situation we have to blame ourselves and not the complainant. We are constrained to close this case expressing our hope that there will be no such occasion in the future when such serious cases of contempt go without prompt action being taken within the period of limitation prescribed by Section 20 of the Act.

10. As we cannot initiate contempt proceedings in this case, we drop the proceedings and dismiss the petition.

11. Petition dismissed.