
(2025) 02 KL CK 1300
In the High Court Of Kerala
Case No : Writ Petition (C) No. 2407 Of 2025

N.Prakash

APPELLANT

Vs

R.Ashakumari

RESPONDENT

Date of Decision : 28-02-2025

Acts Referred:

Contempt of Courts Act, 1971 — Section 2(c), 14, 15, 15(1), 15(1)(b), 15(2)
Bharatiya Nyaya Sanhita, 2023 — Section 229

Citation : (2025) 02 KL CK 1300

Hon'ble Judges : C.S.Dias, J

Bench : Single Bench

Advocate : V.Manu

Final Decision : Dismissed

Judgement

C.S.Dias,J

1. The petitioner has filed W.P.(C) No.19869 of 2024 before this Court, to direct the District Supply Officer and Taluk Supply Officer, Kanayannur, to take action against the 1st respondent (the petitioner's brother's wife) who has obtained a ration card by perpetrating fraud. The 1st respondent has filed a counter affidavit in the writ petition containing false statements to mislead the Court. The 1st respondent has filed the affidavit, knowing the statements to be false. The 1st respondent is guilty of criminal contempt. Hence, the petitioner filed Sanction Petition No.7 of 2024 before the learned Advocate General (the second respondent) under Section 15(1)(b) of the Contempt of Courts Act, 1971 ("Act", for short) to initiate criminal contempt proceedings against the 1st respondent. The petitioner has also filed I.A.No.3 of 2024 in W.P(C)No.19869 of 2024 to initiate proceedings against the 1st respondent under Section 229 of the Bharatiya Nyaya Sanhita, 2023. However, by Ext.P17 order, the learned Advocate General has rejected the petitioner's application. Ext.P.17 order is opposed to law and is liable to be interfered with by this Court.

2. Heard; Sri.Prakash. N, the petitioner and Sri. V. Manu, the learned Special Government Pleader.

3. The petitioner argued that Ext.P17 order has been passed without any application of mind or valid reason. The impugned order is justiciable before this Court in view of the decisions of the Karnataka High Court in R.L.Jalappa v. Advocate General for the State of Karnataka and others (2009 SCC OnLine Kar 237) and H.Munireddy v. Advocate General, State of Karnataka, Bengaluru and others (2019 SCC OnLine Kar 3085).

4. The learned Special Government Pleader opposed the writ petition. He contended that the writ petition is not maintainable because the grant or refusal of sanction/consent by the learned Advocate General under Section 15 (1) (b) of the Act is not justiciable. The role of the learned Advocate General is that of an amicus curiae to assist this Court on the administrative side. Furthermore, the grant or refusal of sanction is immaterial because even if the sanction is granted, this Court can dismiss the contempt case, and the refusal of sanction does not preclude this Court from suo motu taking cognizance of the contempt. He relied on the decisions of the Honourable Supreme Court in P.N.Duda v. P.Shiv Shanker and others [(1988) 3 SCC 167] and Bal Thackrey v. Harish Pimpalkhute and others [(2005) 1 SCC 254] and the decision of the Karnataka High Court in N.Venkataramanappa v. D.K.Naikar and others (AIR 1978 Kant 57) to substantiate his contentions.

5. Section 2(c) of the Contempt of Courts Act, 1971 defines criminal contempt; Section 14 lays down the procedure where contempt is in the face of the Supreme Court or a High Court, and Section 15 deals with the manner in which cognizance is to be taken in a criminal contempt proceeding, other than those falling under Section 14.

6. To understand the question at hand, it is necessary to refer to sub-sections (1) and (2) of Section 15 of the Contempt of Courts Act, 1971, which reads as follows:

"15. Cognizance of criminal contempt in other cases.—(1) In the case of a criminal contempt, other than a contempt referred to in Section 14, the Supreme Court or the High Court may take action on its own motion or on a motion made by—

(a) the Advocate-General, or

(b) any other person, with the consent in writing of the Advocate-General,

(c) in relation to the High Court for the Union Territory of Delhi as the Central Government may, by notification in the Official Gazette, specify in this behalf, or any other person, with the consent in writing of such Law Officer.

(2) In the case of any criminal contempt of a subordinate court, the High Court may take action on a reference made to it by the subordinate court or on a

motion made by the Advocate-General or, in relation to a Union territory, by such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf ”.

7. In *S.K. Sarkar v. Vinay Chandra Misra* [(1981) 1 SCC 436], the Honourable Supreme Court has explained the powers of the Advocate General under Section 15 of the Act as under:

“19.In such cases, the High Court may be well advised to avail of the advice and assistance of the Advocate-General before initiating proceedings. The advice and opinion, in this connection, expressed by the Sanyal Committee is a pertinent reminder:

“In the case of criminal contempt, not being contempt committed in the face of the Court, we are of the opinion that it would lighten the burden of the court, without in any way interfering with the sanctity of the administration of justice, if action is taken on a motion by some other agency. Such a course of action would give considerable assurance to the individual charged and the public at large. Indeed, some High Courts have already made rules for the association of the Advocate-General in some categories of cases at least. . .the Advocate-General may, also, move the court not only on his own motion but also at the instance of the court concerned. . . .”

8. In *P.N. Duda's* case, the two Judges of the Hon'ble Supreme Court took divergent views while considering whether the granting or non-granting of consent is justiciable. Justice Sabyasachi Mukherji opined that it was not possible to accept the position that under no circumstances can the exercise of discretion by the Attorney General or Solicitor General be enquired into. The learned Judge held that even though the Attorney General may have declined to deal with the matter, the Court could deal with the matter, on attention being drawn to the Court. On the contrary, Justice Ranganathan opined that the role of the Attorney General/Solicitor General was akin to that of an *amicus curiae* to assist the Court in an administrative matter rather than a quasi-judicial role determining a lis involving the rights of a member of the public vis-a-vis an alleged contemner. If the consent is granted, no person can approach the Court to contend that the Attorney General/Solicitor General ought not to have given his consent, for it would always be open to the Court if it is found that there is no reason to initiate action, to dismiss the petition. The learned Judge further observed that it was not a fruitful exercise to review the decision of the Attorney General/Solicitor General, and in any event, the petitioner is not deprived of his remedy of coming before the Court and requesting the Court to take suo motu action. The petition would be nothing more than information on which the Court may or may not take suo motu action.

9. Subsequently, in *Joseph Kuzhijalil v. Joseph Pulikunnel* [1999 KHC 557], the question of whether the granting or refusal of consent by the learned Advocate

General is justiciable was settled by the Division Bench of this Court by holding as follows:

"6. S. 15(1) of the Contempt of Courts Act contemplates a motion either by the Advocate General or by any other person with the consent in writing of the Advocate General. The refusal of consent by the Advocate General cannot be said to be justiciable. Unlike in the case of a refusal of sanction under S. 92 of the Code of Civil Procedure before its amendment in the year 1976, when an Advocate General refuses sanction for moving the Court under S. 15(1) of the Contempt of Courts Act, no right of a party could be said to have been impaired. Hence the principle recognised by this Court in *Simon v. Advocate General* (1975 KLT 78) may not have application to a case where the Advocate General refuses the consent. This was the view adopted by this Court in *Berely v. Xavier* (1986 KLT 1078) wherein this Court held that the refusal to give consent by the Advocate General is not justiciable and a petition under S. 226 of the Constitution of India seeking to challenge that order was not maintainable. This Court of course relied on the decision of the Karnataka High Court in *N. Venkitaramanappa v. D.K. Naikar* (AIR 1978 Karnataka 57) in support. Though the decision in *N. Venkitaramanappa v. D.K. Naikar* (AIR 1978 Karnataka 57) was overruled by a Full Bench of the Karnataka High Court in *A.V. Kowdi & Co. v. R.V. Laxshmi Devamma* (ILR 1990 KAR 4355) that was not on this point but on the point of applicability of S. 20 of the Contempt of Courts Act in the matter of initiation of suo motu action under Art. 215 of the Constitution.

7. In *Conscientious Group v. Mohammed Yunus* ((1987) 3 SCC 89) the Supreme Court indicated that when reasons for refusal of consent by the Advocate General (Solicitor General in that case) are not found to be irrelevant or arbitrary, the Court cannot permit the revival of the contempt of Court proceeding which had earlier been permitted to be withdrawn so as to enable the petitioner to move first, the Solicitor General for consent under S. 15(1) of the Act. This decision indicates that the Court can when it is moved for initiating action for contempt of Court, consider whether the reasons given by the Advocate General are irrelevant in the eye of law and to a limited extent can consider whether the view expressed by him is arbitrary, illegal or unreasonable. This Court in the judgment in *O.P. 7352 of 19185 (Contempt)* (1986 KLT SN Case No. 38) while considering the question of absence of consent of the Advocate General stated:—

"It is true that even in a case where suo motu action for contempt is not taken, and where the Advocate General had declined to give his consent, this Court, when properly alerted, can consider action under the Act against the offending publications. However, the fact that the Advocate General had not considered it fit to give his consent would weigh with this Court as one of the aspects to be adverted to, in embarking upon an enquiry whether the statements complained of constitute contempt"

8. It has also been laid down by the Supreme Court in *Delhi Judicial Service Association case* ((1991) 4 SCC 406) that S. 15 of the Contempt of Courts Act

prescribes the modes for taking cognizance of criminal contempt by the High Court and by the Supreme Court. It is not a substantive provision conferring power on the High Court and the Supreme Court for taking action for contempt of its subordinate courts. The whole object of prescribing procedural modes of taking cognizance under S. 15 of the Act is to safeguard the valuable time of the High Court and the Supreme Court being wasted by frivolous complaints of contempt of court. S. 15(2) of the Act does not restrict the power of the High Court to take cognizance of the contempt of itself or of a subordinate court, on its own motion although apparently, the Section does not say so. It can thus be seen that the Advocate General moved for sanction, is not taking a decision on whether contempt of court has been committed, but only considers whether sanction ought to be given on the materials placed before him. But certainly, it is a procedural safeguard to weed out frivolous or unnecessary motions being made before the Court for initiation of contempt action. In that context, when the Court is moved after sanction is refused by the Advocate General, the Court has necessarily to keep that fact in mind before deciding to initiate suo motu action for contempt of court. As observed by the Division Bench in the Guruvayur Devaswom case referred to earlier, the view of the Advocate General in that context is entitled to weight and due consideration. But that is different from saying that the Court cannot initiate action merely on the ground that the Advocate General has not granted the consent sought for in a given case”.

(emphasis supplied)

10. In the light of the emphatic proclamation of the law in Joseph Kuzhijalil's case, an order declining sanction by the learned Advocate General under Section 15 (1) (b) of the Contempt of Courts Act, 1971 is not justiciable. Therefore, the writ petition has to necessarily fail. Nonetheless, it is clarified that, the dismissal of this writ petition will not fetter the right of the petitioner to prosecute his application for initiating proceedings against the 1st respondent under Section 229 of the Bharatiya Nyaya Sanhita, 2023, and this

Court from deciding whether criminal contempt of court proceeding is to be initiated against the 1st respondent.

With the above observation, the writ petition is dismissed.