

(2011) 06 MAD CK 0338

In the Madras High Court

Case No : Contempt Petition No. 1187 of 2010

S. Sugumar

APPELLANT

Vs

Vijayaraghavan, The Assistant Commissioner of Police,
Kilpauk Range

RESPONDENT

Date of Decision : 16-06-2011

Acts Referred:

Constitution of India, 1950 — Article 21
Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 323
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)

Citation : (2011) 06 MAD CK 0338

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : K. Balaji, for the Appellant; K.P. Ananthakrishnan, Government Advocate (Crl. side), for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—Heard both sides.

2. The Petitioner has filed the present contempt seeking for punishing the Respondent for having disobeyed the order passed by this Court in Crl. O.P. No. 3274 of 2010, dated 17.02.2010. The said O.P was filed by the Petitioner seeking for a direction to the Respondent to file a final report in Crime No. 479 of 2009. This Court after notice to the learned Additional Public Prosecutor and after recording the statement that investigation was almost over and a final report was to be submitted at the earliest and after perusal of the records, gave a direction to the Respondent to file the final report within a period of two months from 17.2.2010. It is for the disobedience of the said order, the contempt petition came to be filed.

3. It is the stand of the Petitioner that he is a practicing Advocate and he

normally appears before various Metropolitan Magistrate Courts at Egmore. He belonged to the scheduled caste community. He also resides within the jurisdiction of the Respondent. He was informed that his client one Muni was taken to the police station by the Inspector of Police, K-6, T.P. Chatram Police Station. On information, he went to the police station. In the police station, he found that the Inspector of Police Lakshmanan and two other constables kept his client hanging upside down and they also put a wooden stick and beat him severely from top to bottom with a police lathi in a brutal manner. When the Petitioner questioned the Inspector of Police as to the legal authority for beating his client, the Inspector of Police had attacked the Petitioner on his chest and hip. He also used filthy language and called him by his caste name. He also threw a dust bin containing contaminated wastes at him thereby soiling the clothes worn by the Petitioner. He further threatened the Petitioner with dire consequences if he does not leave the station immediately. Thereafter, the Petitioner went and registered a complaint with the higher police authorities. He sent a telegram followed by a letter sent by registered post against the said Lakshmanan.

4. Since no action was taken, the Petitioner filed a Criminal O.P. No. 7594 of 2009 to register his complaint. Pending that petition, a criminal case was registered against the said Inspector of Police Lakshmanan in Crime No. 479 of 2009 for offences punishable u/s 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 read with Section 323 of IPC on 22.7.2009. The Petitioner's earlier O.P was closed on 28.07.2009. Though a case was registered, there was no progress in the said case. The Respondent did not take any action because the complaint was laid against the member of their own police force. Therefore, the Petitioner filed a Crl.O.P. No. 3274 of 2010 seeking for a direction to Respondent to file the final report. Though this Court had directed the report to be filed within two months, the same was not filed and that the statements of concerned persons were not recorded. The Petitioner also gave a legal notice on 2.7.2010. Since the same was not filed, the contempt Petitioner came to be filed.

5. When the matter came up on 21.4.2011, this Court directed the Respondent to file a status report with reference to the stage of the criminal investigation. When the matter came up on 28.4.2011, the Respondent had filed the status report, dated 28.4.2011 and requested for further time to get an order from the District Collector. This Court expressed its dismay with the stand taken by the Respondent. The Respondent was directed to hand over the original file to see the progress of the case. In the status report filed by the Respondent, it was stated that he had duly examined the witnesses and recorded their statements. Subsequently, when the matter came up on 9.6.2011, the Respondent produced a copy of the final report, dated 3.6.2011. He had recorded that the complaint given by the Petitioner was contrary to truth and was done with a view to wreak vengeance. Hence, the case was to be treated as mistake of fact. He also produced a copy of the MF report to be served on the defacto complainant.

6. A perusal of the original file clearly showed that the Respondent was not sincere in conducting the investigation. He was clouded by the fact that the member of his own force was involved as an accused. In fact, the statements recorded u/s 161 Code of Criminal Procedure from the private persons including the Petitioner and M. Munirathinam, S/o. Murthy, G. Sathishkumar, S/o. Gangadurai, C. Nagammal, W/o. Chellappan, R. Muralikrishnan, S/o. Raghunath and Gokulakrishnan, S/o. Raghunathan, clearly showed that the incident spoken to by the Petitioner had taken place and supported by the witnesses. In order to underplay the seriousness of those charges, the Respondent had examined police officers from his own police station and neighbouring stations. He had acted like a judge to come to the conclusion that the complaint was false and made with oblique motive. Even one Dr. Arumugam, CMO of KMC Hospital, who was examined, had stated that the Petitioner had approached the hospital with a complaint of chest pain. These are all matters which will have to be examined in a trial. The Respondent cannot come to his own conclusion to close the file.

7. It must be noted that the offence u/s 3(1)(x) when committed by a public servant, the court will have to take the same with more seriousness. The Petitioner is a practicing Advocate and when he had visited the station, he found to his disbelief that the authorities were inflicting third degree torture on an alleged accused. Whatever the criminal background of the said person, the Respondent or his subordinates have no right to inflict such tortures and acting in gross violation of Article 21 of the Constitution.

8. In this context, it is necessary to refer to a recent judgment of the Supreme Court in Arumugam Servai Vs. State of Tamil Nadu, . The Supreme Court in paragraph 13 of the said judgment had observed as follows:

13...

22. It may be mentioned that when we interpret Section 3(1)(x) of the Act we have to see the purpose for which the Act was enacted. It was obviously made to prevent indignities, humiliation and harassment to the members of SC/ST community, as is evident from the Statement of Objects & Reasons of the Act. Hence, while interpreting Section 3(1)(x) of the Act, we have to take into account the popular meaning of the word 'Chamar' which it has acquired by usage, and not the etymological meaning. If we go by the etymological meaning, we may frustrate the very object of the Act, and hence that would not be a correct manner of interpretation.

23. This is the age of democracy and equality. No people or community should be today insulted or looked down upon, and nobody's feelings should be hurt. This is also the spirit of our Constitution and is part of its basic features. Hence, in our opinion, the so-called upper castes and OBCs should not use the word 'Chamar' when addressing a member of the Scheduled Caste, even if that person in fact belongs to the 'Chamar' caste, because use of such a word will hurt his feelings. In such a country like ours with so much diversity - so many religions, castes,

ethnic and lingual groups, etc. - all communities and groups must be treated with respect, and no one should be looked down upon as an inferior. That is the only way we can keep our country united.

24. In our opinion, calling a member of the Scheduled Caste 'Chamar' with intent to insult or humiliate him in a place within public view is certainly an offence u/s 3(1)(x) of the Act. Whether there was intent to insult or humiliate by using the word 'Chamar' will of course depend on the context in which it was used.

9. The Supreme Court in the same judgment also gave directions to Execution Magistrates to take strong measures as found in paragraph 17 of the said judgment, which reads as follows:

17. Hence, we direct the administrative and police officials to take strong measures to prevent such atrocious acts. If any such incidents happen, apart from instituting criminal proceedings against those responsible for such atrocities, the State Government is directed to immediately suspend the District Magistrate/Collector and SSP/SPs of the district as well as other officials concerned and chargesheet them and proceed against them departmentally if they do not (1) prevent the incident if it has not already occurred but they have knowledge of it in advance, or (2) if it has occurred, they do not promptly apprehend the culprits and others involved and institute criminal proceedings against them, as in our opinion they will be deemed to be directly or indirectly accountable in this connection.

A copy of the said judgment was also directed to be circulated to all concerned including the judges of the High Courts. This will show the sensitivity that was required in dealing with such cases. When the Supreme Court has held that serious view will have to be taken note of, it is not open to the Respondent to treat the complaint lightly and file a farce of a final report along with a MF notice.

10. It is needless to state that when once a report is filed, u/s 173, the Magistrate if he decides not to take cognizance of the offence and to drop the proceedings by holding that there are no sufficient grounds for proceeding, he has to give notice to the informer and to provide him an opportunity of hearing at the time of consideration of the report.

11. In this context, it is necessary to refer to a judgment of the Supreme Court in Bhagwant Singh Vs. Commissioner of Police and Another, . In paragraphs 4 to 6, the Supreme Court had observed as follows:

4. ...There can. therefore, be no doubt that when, on a consideration of the report made by the officer-in-charge of a police station under Sub-section (2)(i) of Section 173, the Magistrate is not inclined to take cognizance of the offence and issue process, the informant must be given an opportunity of being heard so that he can make his submissions to persuade the Magistrate to take cognizance of the offence and issue process. We are accordingly of the view that in a case

where the Magistrate to whom a report is forwarded under Sub-section (2)(i) of Section 173 decides not to take cognizance of the offence and to drop the proceeding or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the first information report, the Magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report. It was urged before us on behalf of the Respondents that if in such a case notice is required to be given to the informant, it might result in unnecessary delay on account of the difficulty of effecting service of the notice on the informant. But we do not think this can be regarded as a valid objection against the view we are taking, because in any case the action taken by the police on the first information report has to be communicated to the informant and a copy of the report has to be supplied to him under Sub-section (2)(i) of Section 173 and if that be so, we do not see any reason why it should be difficult to serve notice of the consideration of the report on the informant. Moreover, in any event, the difficulty of service of notice on the informant cannot possibly provide any justification for depriving the informant of the opportunity of being heard at the time when the report is considered by the Magistrate.

5. ...But even if such person is not entitled to notice from the Magistrate, he can appear before the Magistrate and make his submissions when the report is considered by the Magistrate for the purpose of deciding what action he should take on the report. The injured person or any relative of the deceased, though not entitled to notice from the Magistrate, has locus to appear before the Magistrate at the time of consideration of the report, if he otherwise comes to know that the report is going to be considered by the Magistrate and if he wants to make his submissions in regard to the report, the Magistrate is bound to hear him. We may also observe that even though the Magistrate is not bound to give notice of the hearing fixed for consideration of the report to the injured person or to any relative of the deceased, he may, in the exercise of his discretion, if he so thinks fit, give such notice to the injured person or to any particular relative or relatives of the deceased, but not giving of such notice will not have any invalidating effect on the order which may be made by the Magistrate on a consideration of the report.

6. This is our view in regard to the question which has arisen for consideration before us. Since the question is one of general importance, we would direct that copies of this judgment shall be sent to the High Courts in all the States so that the High Courts may in their turn circulate this judgment amongst the Magistrates within their respective jurisdictions.

12. In the light of the above, the contentions of the Respondent had to be rejected. But yet as it is only a contempt petition and unless there was a willful disobedience of the order of the Court, the Respondent contemnor cannot be punished. The order passed by this Court merely directed the Respondent to file the final report within a time frame. Since the investigation had taken some

more time, no punishment can be given to the Respondent. But at the same time, this Court is not willing to close the contempt and intends to give certain directions to the learned Magistrate.

13. As and when the final report is received along with MF report, the 5th Metropolitan Magistrate, Egmore, Chennai-600 008 or any other Magistrate dealing with the case, shall give a notice to the Petitioner. After hearing his submissions, he must make an appropriate direction including an order for fresh investigation by some other investigating agency. While doing so, the learned Magistrate will take note of the order passed in this regard and the relevant legal provisions. A copy of the order will be marked to the learned Magistrate. With these observations, the contempt petition will stand closed. No costs.