
(2002) 01 KAR CK 0027

In the Karnataka High Court

Case No : Contempt of Court Case (Criminal) No. 1 of 2002

S. Venkataraman

APPELLANT

Vs

L.F. Malavalli and Others

RESPONDENT

Date of Decision : 31-01-2002

Acts Referred:

Contempt of Courts Act, 1971 — Section 15

Citation : (2002) ILR (Kar) 3071 : (2002) 3 KarLJ 204

Hon'ble Judges : N.K. Patil, J;M.F. Saldanha, J

Bench : Division Bench

Advocate : Party in person, for the Appellant; Mohan Shanthangoudar, State Public Prosecutor, for the Respondent

Judgement

M.F. Saldanha, J.—The petitioner before us who is a Senior Citizen complains, and perhaps with some justification, that he has been agitating his complaints before the Courts for the last nineteen years and he has stated with some level of bitterness, that despite all the effort put in by him particularly since he appears in person, that the results have been far from satisfactory. To summarise, the petitioner sought to prosecute the accused who are promoters of the Jayanthi Apartments Building and he had alleged that in the course of the transactions that the accused had committed several offences mainly centering around cheating and criminal breach of trust as also under the Karnataka Apartment Ownership of Flats Act, 1972 (hereinafter referred to as the "Flats Act"). If one peruses the course of litigations, the substratum of the petitioner's grievance is that obviously certain influences were at work from the side of the accused which was why strange orders seem to emerge. In the first instance, the private complaint came to be dismissed and the petitioner's revision application against that order also failed. Thereafter, the petitioner came up to this Court and this Court by an order dated 30-3-1994 allowed the criminal petition and remanded the proceeding to the Trial Court for disposal in accordance with law.

2. The petitioner is seriously aggrieved by the fact that despite this direction of

the High Court that the Trial Court once again effectively discharged the accused on this occasion by recording the conclusion that certain offences were time barred and that in respect of the remaining that the dispute was of a civil nature. Once again the petitioner came upto the revisional Court which Court effectively confirmed the order with slight modifications. Thereafter, the petitioner approached the High Court for a second time and on this occasion, by order dated 15-2-1999 the earlier orders were quashed, the complaint was restored and the Trial Court was directed to dispose off the case according to law. On this occasion, the Trial Court by its judgment and order dated 4-1-2001 which is a rather lengthy speaking order once again acquitted the accused of all the major offences except those under the Flats. Act and imposed a very minor penalty of Rs. 2,000/- on accused 1. This order is the subject-matter of a further revision petition filed by the petitioner to this Court, The petition has been admitted and it is pending.

3. According to the petitioner the manner in which the learned Magistrate has disposed off the proceeding in the face of the two earlier orders of the High Court which are really complimentary to each other, constitutes contempt insofar as the petitioner alleges that the judicial officer has disregarded the directions of the High Court. Undoubtedly, the petitioner is dissatisfied and aggrieved by the final order passed by the Trial Court particularly insofar as the accused have been acquitted of all the major offences and it is his submission that despite conclusions that are reflected in the High Court orders which were binding on the Trial Court that it is very clear, that the learned Magistrate has acted not only in disregard but in defiance of the High Court order. Apart from the revision petition which is for corrective action, it is the petitioner's contention that if a judicial officer discharges his functions in this fashion that the issue is actionable under the Contempt of Courts Act vis-a-vis the conduct of the judicial officer and the manner in which the proceeding has been disposed off. Consequently he submits that even though the learned Advocate General has not accorded any sanction that this Court must entertain the proceeding in exercise of its suo motu jurisdiction u/s 15 of the Contempt of Courts Act.

4. The petitioner has drawn our attention to several passages from the commentary on the Contempt of Courts Act by the learned Author V.G. Ramachandran in support of his contention that disregard of directions of a superior Court constitutes contempt. There is no dispute with regard to the correctness of this proposition. He has also drawn our attention to a few decisions reported in.--

1. 1976 Ker. L.T. 879;

2. The Aligarh Municipal Board and Others Vs. Ekka Tonga Mazdoor Union and Others, ;

3. State through the Sessions Judge, Farrukhabad v. C.M.L. Bhatnagar, City Magistrate, Fatehgarh,

4. 1963 MP L.J. 1121;
5. Tapan Kumar Mukherjee Vs. Sri Heromoni Mondal and another, ;
6. Munshi Singh v. State;
7. S. Venkataraman Vs. P.V. Singri and another, ;

These are all cases in which the superior Courts had taken a serious view of instances in which directions that had been reflected in the orders had either been disobeyed or disregarded by the Trial Courts. The submission canvassed is that where the High Court on two occasions effectively recorded its satisfaction that a prima facie case has been made out and that it was actionable by the Trial Court, that despite this position the Trial Court acquits the accused, that it is ipso facto a case of contempt insofar as it constitutes disregard/disobedience of the High Court's findings and directions. It is in this context that the petitioner has moved the present petition.

5. We take note of the fact that in order to decide even prima facie as to whether the final order dated 4-1-2001 disregards the High Court directions or whether that order constitutes contempt for the directions contained in the earlier two orders passed by the High Court that it will be necessary to do an in-depth examination of the merits. Had the other proceeding filed by the petitioner not been admitted and had it not been pending, there would have been scope for this Court to examine the petitioner's grievance on merits. Since the Court of competent jurisdiction is already seized of the matter, it is impossible for this Court in exercise of contempt jurisdiction to embark upon a parallel enquiry for a variety of reasons, the main one being that the proceeding already pending before the High Court is a criminal proceeding where the consequences are of a penal nature and any findings recorded by this Court and that too the Division Bench (Criminal) would necessarily bind the learned Single Judge hearing that proceeding and would prejudice the parties. Apart from that, the basic jurisdiction of embarking on this exercise is vested in that Court and consequently, the petitioner will have to agitate the grievances before that Court at the time when that proceeding is heard. That Court will apply its mind to the grievances projected by the petitioner and will record its findings. These will necessarily involve an enquiry into the question as to whether the directions of the High Court have been disregarded or whether the learned Trial Magistrate was within his rights in passing the type of order which has been done. The answer to that question can only come when that proceeding is decided and that is the fundamental issue that is involved in the present petition. In our considered view, therefore this petition is premature. We say nothing with regard to the merits because the other petition is yet to be heard and if the petitioner succeeds in establishing before that Court that the Trial Court has wilfully disregarded the High Court direction or that it had acted in disobedience thereof or that prima facie, it has acted in contempt of the High Court's directions, that Court will record its findings while passing final orders. If the answers to these

questions are in the affirmative then only the petitioner can contend that the present contempt petition is maintainable.

6. The question therefore arises as to what is the procedure to be followed, Under normal circumstances, we would have disposed off this proceeding or permitted the petitioner to withdraw the same and re-institute the proceedings after disposal of that petition if the circumstances warranted and if he so desired. The slight legal hurdle that would arise is two-fold. Firstly, the aspect of limitation would come in and secondly, the operational difficulty insofar as the petitioner who is aged 82 and a Senior Citizen would be required to go through the laborious task of re-instituting the proceedings. In order to alleviate this difficulty, at this stage we pass no orders except directing the office to retain the present petition on file while treating the present petition as having been disposed off and to file the proceedings along with the proceedings in Cri. A. No. 166 of 2001. The reason for this is because the proceedings should not be then alleged to have been misplaced which is something that happens very often with the Registry of the Court. Secondly, the reason is because if there is sufficient ground when the criminal appeal is disposed off for the contempt proceedings to be taken up, that we grant the liberty to the petitioner to apply to this Court for revival of this proceeding and dispose off the same according to law. This in our considered view is the only fair method of dealing with the present petition.

7. In the light of what we have indicated above and for the reasons set out in this order, this petition to stand disposed off and the office to follow the directions contained in this order.

8. At this stage, the petitioner points out to us that he is aged 82, that he appears in person, that the litigation is nineteen years old and that in the light of the directions of the Supreme Court that all cases pertaining to Senior Citizens must be disposed off on a top priority basis, and that the other criminal appeal in question must be disposed off without any loss of time. This submission is well-placed. Office is accordingly directed to place that appeal for directions before the Court before which it is due to be heard for allotment of a fixed date of hearing along with a copy of this order. The appeal to be listed for directions on 25-2-2002.