

(1996) 10 KAR CK 0027
In the Karnataka High Court
Case No : C.C.C. (Criminal) No. 17 of 1996

S. Venkataraman

APPELLANT

Vs

P.V. Singri and another

RESPONDENT

Date of Decision : 23-10-1996

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 245 (2)

Citation : (1997) 1 ALT(Cri) 923 : (1997) CriLJ 1840 : (1997) ILR (Kar) 619

Hon'ble Judges : M.F. Saldanha, J; H.N. Narayan, J

Bench : Division Bench

Advocate : Party in person, for the Appellant; Jayakumar S. Patil, for the Respondent

Judgement

Saldanha, J.—This is an unusual contempt proceeding in which the Petitioner has alleged Criminal Contempt on the part of the learned 4th Addl. Chief Metropolitan Magistrate, Bangalore. The petitioner had instituted a private prosecution before that Court alleging a series of offences on the part of 3 accused who were basically Contractors/Builders with whom the petitioner and his co-residents had certain dealings. The petr. had inter alia alleged offences of cheating, breach of trust and a host of other charges under the Karnataka Apartment Ownership, Flats (Regulation of the Promotion of Construction, Sale, Management & Membership) Act 1972. It is unnecessary for us to set down the facts of the charges in detail except to mention that as often happens, a long period of time had elapsed between the transactions when they originally commenced and what transpired thereafter. The learned trial Magistrate came to the conclusion that the dispute was of a purely civil character and therefore summarily dismissed to complaint against which the petr. preferred a revision application where again he was unsuccessful. The matter thereafter came up to this Court by way of Crl. Ptn. 460/92 and this Court after hearing the parties by an order dated 30-3-1994 set aside the orders of both the lower Courts, allowed the petition and directed the learned Magistrate to "entertain the petition of the complainant and dispose of the same in accordance with law."

2. Effectively, the High Court having restored the original complaint, the learned trial Magistrate took down the verification statement of the complainant and thereafter passed a detailed speaking order in which he recorded the fact that there was sufficient ground to proceed against the accused in respect of the offences that had been alleged and therefore directed the issue of process. After the accused were served, they appeared before the Court and filed applications under S. 245(2), Cr.P.C. contending that the accused were liable to be discharged having regard to the fact that the charges against them were groundless. The petr. resisted the application and he has demonstrated that apart from the various citations, that detailed written submissions were filed before the trial Court and the petr. pointed out that he had produced a considerable amount of documentary material in support of his complaint in addition to which that he proposed to examine a series of witnesses, some of whom were responsible officers and that therefore, there was no warrant to allow the application under S. 245(2) Cr.P.C. One of the contentions raised on behalf of the accused was that some of the charges particularly in relation to the Apartment Ownership Act & Rules prescribed relatively short sentences and that consequently, these offences were time barred. Apart from this, the contention was that there was no dishonesty or criminality involved and that therefore, even assuming a civil dispute existed, that there was no ground for a criminal Court to proceed against the accused. The learned trial Magistrate upheld both these contentions and passed an order dt. 15-12-1995 discharging the accused and consequently dismissing the complaint. The petr. has preferred a revision application against that order which is pending before the Court of Session. This proceeding deals with an entirely different facet of the law.

3. The petr. who is aged 77 and whose grievance is that he and his conflat owners have been, according to them, deceived and put to serious monetary loss and that they are entitled to prosecute the accused and get them punished according to law and the petr. contends that instead of examining the grievance, that on the previous occasion the litigation went all the way up to the High Court which Court disapproved of the summary dismissal of the complaint and he contends that despite a specific direction from the High Court that the learned trial Magistrate has in rank defiance of the High Court Order passed virtually the same order once again. The petitioner's contentions is that as far as the legalities of the order are concerned that undoubtedly he is required to go to the Sessions Court but he has alleged very serious impropriety on the part of the Judicial Officer because he submits that this is a case of wanton disregard and virtually defiance of the High Court direction and he has further alleged that all is not well with this order. He has demonstrated for instance that this is a case in which the High Court has occasion to examine the material which the complainant had produced in considerable detail and that the High Court came to the conclusion that this was a case which required to be entertained. In this background, the petr. submits that it was incumbent upon the trial Court to have respected the High Court's order and to have applied its mind to the case by

accepting the evidence which the complainant desired to produce and thereafter decide the matter on merits. His contention is that without going through this procedure as prescribed by law and by straight away entertaining and allowing an application under 245(2), Cr.P.C., the learned Magistrate has virtually sat in appeal over the order passed by the High Court in so far as there was no difference between the record that was before the High Court and the trial Court and High Court having come to the conclusion on that very record that the case required to be entertained, that it was not only an act of impropriety but that it was downright defiance of the High Court order to take a different view on the same material. The petr. did project another aspect of the matter which in our considered view is of considerable significance. He submitted that as a litigant when he has come to the Court with a substantial grievance and when the High Court itself had come to the conclusion that the case is required to be entertained and for this purpose remanded the matter to the trial Court, that it would constitute an interference with the due cause of a judicial proceeding if the learned if the learned trial Magistrate were to arbitrarily and without looking at the evidence straightway pass an order once again discharging the accused. In sum and substance, what was contended was that even though this is an unusual situation, that the interest of justice require that the High Court must take a strict view of what has happened because the petr. has been made to run from pillar to post and has been virtually denied a fair opportunity of establishing his case and that all this has happened in the face of a specific direction from the High Court is to the contrary. It is in this background that the petr. has taken the unusual step of instituting criminal contempt proceedings and that too against a Judicial Officer. As is a requirement under the Contempt of Courts Act, the petr. applied to the learned Advocate General for sanction and the learned Advocate General after examining the facts and the law has accorded the required sanction for the institution of these proceedings. An earlier Bench of this Court considering the matter, issued notice to the respondent. The respondent is represented and has filed his reply.

4. The defence pleaded by the respondent is basically in two parts. In the first instance, what he contends is that as a Judicial Officer he is required to deal with applications that are filed by the parties and that when an application was made under S. 245(2) Cr.P.C. that he was duty bound to hear the parties and pass order according to the best of his ability. He contends that the accused has raised certain aspects such as plea of limitation which had not been specifically projected to the notice of the Court when the process was issued and that after hearing the parties he has passed a detailed speaking order and the submission was that if at all the Court has gone wrong in its view, that at the highest the petr. would have to get the position rectified but that it is wholly unjust and improper to allege that there is any contempt on the part of the Judicial Officer. The second part of the defence consists of a further explanation to the effect that the understanding of the respondent was that the High Court virtually restored the proceeding and left the trial Court with all powers that were normally open to

it, including the power to discharge the accused if no case was made against him. It is contended that if at all the respt. misunderstood the High Court order or directions, that this could never constitute contempt because contempt presupposes an act of rank defiance or total and wanton disregard for the order of a superior Court. It was also contended that under no circumstances the accusation could come within the ambit of a criminal contempt and lastly the respondent submitted that as an officer of some seniority he has always held the Courts superior to him high esteem and has always respected them and that consequently assuming without admitting that he has done something wrong, that an unconditional apology tendered by him should be accepted and that the proceeding should be closed. As far as this last aspect of the matter is concerned, we need to record that it is well settled law that even though it is always open to a party to defend a contempt proceeding on merits and to show to the Court that no contempt has been committed or to explain the conduct away, that such a procedure involves an inherent risk in so far as if the defence fails, the party cannot in the alternative seek to tender an apology. This aspect of the matter is of some importance because when a contempt notice is issued, the Court is prima facie satisfied that a case of contempt has been made out and it is a matter of propriety that if a party desires to tender an apology at the earliest point of time, that it must be unqualified and unconditional and furthermore, it must be genuine apology. It is not permissible under the law to plead elaborate defences and to thereafter end the reply or the explanation with a submission that in the event of the Court holding that contempt has been committed, that an apology is being tendered. The correct procedure is that the apology be first tendered and it is certainly open to the party to request the Court to consider the circumstances or the explanations or even a possible defence so that even if one fails in that respect, the contempt will not be aggravated. This briefly being the scheme of the law, we need to record that if at all the apology was being tendered that it should have been done in the first instance and not in the last instance.

5. Mr. Patil, learned advocate who represents the respondent submitted that this case is very different from the run of the mill matters where the contemnor is a Govt. Officer or a member of the public. He submitted that the function of a Judicial Officer is to decide applications filed in Court and when the respondent was faced with the application under S. 245(2) even though the evidence had not been lead, he was required to deal with that application. He submits that the respondent has acted in good faith as will be evident from the fact that it is a 31 page order and he further submitted that there has been clear application of mind and that therefore it is unfair to allege arbitrariness. Mr. Patil also submitted that any Judicial Officer could go wrong and could deliver an incorrect decision and that is far far different from committing contempt. Interpreting the High Court order, Mr. Patil submitted that the High Court had only disapproved of the earlier orders because the Judges had not examined the matter carefully and had therefore restored the proceeding to file and according to the learned

advocate this did not take away the powers of the learned Magistrate who was entitled to discharge the accused if no case was made out against him. This last submission is far from correct in so far as undoubtedly at a subsequent stage of the proceeding or if additional material had come before the Court and the record so justified, the Magistrate would have been within his powers to discharge the accused. What he could not have overlooked was that when the application under S. 245(2) was made before him, that the record of the case was identical to the one which was before the High Court when the High Court came to the conclusion that a dismissal of the complainant was unjustified. More so, the same learned Magistrate after examining the material placed before him on 9-8-1994 while issuing process, recorded the finding to the effect that the charges were sustainable. Between the date when that order was passed and 15-5-1995 when the impugned order was passed, the accused had not produced any material, the complainant had not been examined; he had not been cross-examined and virtually not one letter of the record had been altered. This is what distinguishes the present case from all other ones and this is a factor which the learned Magistrate could never have overlooked. Under the circumstances, even if an application had been made for discharge, the correct order would have been to hold that the Court could not consider it at that point of time.

6. The real question arises as to whether such an error of procedure could be constituted as bringing the case within the ambit of criminal contempt. The petr. who appears in person has vehemently submitted that there could be no other view in so far as the case law is very clear to the effect that where a direction is given to a subordinate Court and that direction is disregarded, it constitutes direct interference with the course of a judicial proceeding, disobedience of the direction and consequently contempt. Mr. Patil, on behalf of the resp't. vehemently submitted that at the highest it would be a breach of procedure and that the order was revisable, and that the intention to defy or disobey was not there. We are unable to agree with this last submission for the reason that on the peculiar facts of this case the subordinate Court could not have recorded a finding that virtually overruled the order passed by the High Court. It is not within the province of a subordinate Court to do this because such conduct would not only constitute judicial indiscipline but more importantly would certainly, interfere with the administration of justice and in this background it would be difficult to hold that there is no case of contempt made out.

6-A. In the effect however, we have considered the entire matter in its totality. We have heard the learned State Public Prosecutor in this regard and it was his submission that it is incumbent upon a subordinate Court to carefully understand the direction of the superior Court and to follow them to the letter. He has also pointed out that this was not one of the cases where any ambiguity arose and where the direction was capable of more than one interpretation and in this background he submits that the sanction accorded by the learned Advocate General was more than fully justified. He further submitted that even though the respondent is a Judicial Officer, that the law cannot totally exonerate a person

merely because of his status in so far as all Judicial Officers owe a sacred duty to the cause of administering justice in an unpolluted atmosphere.

7. Normally, where an apology is tendered, the Court hearing a contempt proceeding adopts a magnanimous view. Mr. Patil pointed out to us that the respondent is a Judicial Officer of some seniority and he also submitted that this Court should be pleased to take the view that at the highest there was a serious misunderstanding. He also emphasised the fact that since an unconditional apology has been tendered, that this was not a case which warrants any further action. We are inclined to accept his submission in so far as even though it is very unfortunate that the petitioner who is an elderly person and who has been persisting with his complaint for several years has been unnecessarily subject to two stages of litigation upto the High Court, we need to observe that having regard to the fact that an unconditional apology has been tendered, that there is no necessity to impose any punishment on the respondent. We need to however make it very clear that this Court will never take a lenient view or for that matter condone situations wherein instances of the present type take place and where precious judicial time is fettered away, and where cases are and where unnecessarily dilated and where litigants are made to run from pillar to post under all sorts of technical pretext. It is with some degree of hesitation that we accept the apology tendered and for this reason we refrain from passing any order against the respondent. We need to however observe for the reasons recorded in this order that the impugned order ought never to have been passed in so far as it is an order that not only conflicts with but even goes to the extent of overriding the order passed by the High Court. It was a very clear mandate from the High Court that the complaint should be entertained and disposed of according to law which presupposes the fact that the material which the petr. had produced ought to have been examined and thereafter it was always open to the trial Court to pass appropriate orders.

8. Having regard to the aforesaid position, the contempt petition stands disposed of with no specific orders being passed against the respondent. In the circumstances of the case, there shall be no order as to costs.

9. The petitioner has pointed out to us that the impugned order has been challenged on merits before the Court of Session and that the revision petition is pending. Having regard to the view that we have taken, it is open to the petitioner to produce a copy of this order before that Court and to pray for appropriate orders. The Court of Session shall in the aforesaid circumstances dispose of the revision petition expeditiously, preferably on the next date of hearing.

10. Order accordingly.