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**(2015) 08 KL CK 0149**

**In the High Court Of Kerala**

**Case No :** Contempt Case (C) No. 1199 of 2011 (S) in W.P.(C) 15569 of 2011

Satish Chandran

APPELLANT

Vs

T.C. Mathew and Others

RESPONDENT

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**Date of Decision :** 19-08-2015

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Contempt of Courts Act, 1971 — Section 2(b)

**Citation :** (2015) 08 KL CK 0149

**Hon'ble Judges :** Ashok Bhushan, C.J.;A.M. Shaffique, J

**Bench :** Division Bench

**Advocate :** Rajit, for the Appellant; Nidhi Sam Johns, P.B. Krishnan and A.V. Thomas, Advocates for the Respondent

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## **Judgement**

A.M. Shaffique, J—This contempt case has been referred by the learned Single Judge as per order dated 12/07/2013, after having found that there is prima facie contempt on the side of the respondents.

2. The contempt case has been filed alleging non compliance of an undertaking given by the learned counsel appearing on behalf of the respondents that the Executive Committee of the Kozhikode District Cricket Association (hereinafter referred as "District Association") shall not be superseded and any such decision would be taken by the Central Council of the Kerala Cricket Association (for short "KCA") only after considering the enquiry report and in the event of any action being taken, the same shall be done only after issuance of a show cause notice and after considering the explanation offered by the District Association.

3. Petitioner alleges that in violation of the aforesaid undertaking, which is recorded by the learned Single Judge in the judgment dated 09/06/2011, the respondents had taken a decision to supersede the newly elected District Association and an ad hoc committee has been formed without notice or giving an opportunity to explain their stand in the matter.

4. An affidavit has been filed by the respondents for which reply has been filed by the petitioner. The respondents had also submitted additional objections as permitted by Court as per order dated 13/08/2013 and additional documents have also been filed. The undertaking which is the subject matter of the issue is recorded in para 5 and 7 of the judgment which reads as under:

"5. The learned counsel for the first respondent submits that the Enquiry Committee has submitted its report and the proceedings have to be taken to a logical conclusion by considering the said report in the light of the relevant materials, by the competent authority. It is with this intent, that a meeting of the central council has been convened on 11/06/2011 and information has been furnished to the petitioner, to make the proceedings transparent, giving an opportunity to the petitioner to attend the meeting. The learned counsel further submits that the matter will be considered and a decision will be taken by the Central Council (not by the Secretary of the first respondent) and based on the said decision further proceedings will be pursued. If at all any further step has to be taken, will of course be on the basis of a show cause notice to be issued asking for explanation. As such, the apprehension of the petitioner is quite premature and no interference is warranted in this writ petition submits the learned counsel for the first respondent."

"7. Going by the pleadings and prayers, the basic apprehension of the petitioner as to the alleged supersession is quite out of place as on date, since further proceedings are assured to be taken only on the basis of the decision to be taken by the Central Council and after issuance of a show-cause notice as mentioned already."

In the operative portion of the judgment, the learned Single Judge observed that;

"In the above circumstances, the submission made by the learned counsel for the 1st respondent is recorded and interference is declined, relegating the petitioner to pursue the remedy by approaching competent Civil Court, as and when necessitated."

5. In the counter affidavit, the respondents sought to explain the manner in which the order of supersession of District Association happened to be passed. It is stated that after the judgment dated 9th June, 2011, the Central Council meeting as well as Special General Meeting of the KCA was held on 11/06/2011 to discuss the report of the Enquiry Committee and to take further action. Petitioner and his faction did not appear before the General Body on 11/06/2011. The Special General Meeting discussed the Enquiry Committee report and found that there is factional feud in the District Association. However, no action was taken in the matter and in order to settle the issues, a seven member Committee was constituted to visit Kozhikode and to hold discussions with the petitioner and other members and take appropriate action. It is stated that the District Association had conducted a Special General Meeting on 11/06/2011 and there had been change in the members of the Executive Committee. It is stated that

the General Body and Central Council meeting of KCA were later convened on 31/07/2011. Before commencing the meeting, Sri. M.V. Shreyams Kumar, representing the faction headed by the petitioner, held discussions with the President, Hon. Secretary and one of the Vice Presidents of KCA. Though the President invited Sri. Shreyams Kumar to attend the meeting, he did not attend the same. It is stated that Sri. Shreyams Kumar after being convinced of the situation agreed that the District Association cannot be allowed to continue as such in view of the feud between two factions headed by the President and the Hon. Secretary of District Association. After prolonged deliberations, it was decided that the existing Executive Committee shall be dissolved and in its place an ad hoc committee appointed by KCA shall take over administration of the District Association. It is stated that, it was on the basis of the said consensus that the matter was discussed in the Central Council and it was unanimously decided to dissolve the Executive Committee of District Association and to appoint an ad hoc committee in its place. The respondents also produced the minutes of the said meeting. According to the respondent, this fact had appeared in the print and visual media. It is contended that they had not committed any willful contempt as this supersession and appointment of ad hoc Committee was based on the subsequent events that occurred and does not amount to any willful contempt of the directions issued by this Court.

6. Heard the learned counsel for the petitioner as well as the learned counsel for the respondents.

7. Learned counsel for the petitioner submits that Sri. Shreyams Kumar, who is alleged to have agreed on superseding the District Association has filed an affidavit before this Court stating that he has not given any such consent. The said affidavit is produced as Annexure D along with the reply affidavit. After referring to the relevant passages in the affidavit filed by Sri. T.R. Balakrishnan, it is stated as under:

3. On 11-06-2011, I was unanimously elected in the Special General Body Meeting of Kozhikode District Cricket Association (KDCA, for short) as the Hon. Secretary. By my letter dated 14-6-2011, Kerala Cricket Association (KCA, for short) was informed about the same. But KCA wanted to protect the former Hon. Secretary of Kozhikode District Cricket Association, who had been removed from his post after due process of enquiry. By letter dated 27/6/2011, I was informed that I will not be invited to attend meeting as Hon. Secretary of KDCA. When I came to know about the KCA meeting to be held on 31/7/2011 at Kochi, I reached the venue (Hotel Abad Plaza, Ernakulam), accompanied by Mr. Sabu Samuel, one of the KDCA nominees to the KCA. It is absolutely wrong to state that I went there as a spokesman of a faction of KDCA. I was there in my capacity as the duly elected Hon. Secretary of KDCA.

4. When the President of KCA, Sri. T.R. Balakrishnan, approached me before the commencement of the meeting, I reiterated that the KCA has no power or right to interfere in the internal affairs of the KDCA and that the former Secretary of

KDCA, whom the KCA wanted to protect, conducted the league in a shoddy manner and abandoned it half way through, and did not hand over records including those which disclosed the particulars of league matches held. Sri. T.R. Balakrishnan, appealed to me that I may not attend the meeting as a face saving measure for the Kerala Cricket Association and that nothing would take place in the meeting adversely affecting the vital issues projected by me. I was also assured that all these issues would be amicably settled without any delay, and without taking them up in the meeting.

5. In the light of these assurances, I bona fide decided not to take part in the meeting, especially since the KCA President seemed keen to solve the issues and appeared to be in need of some time for that.

6. Facts being as stated above, I dispute and deny each and every statement in the portion of the "reply" quoted above as incorrect and far from the truth".

8. On this basis, it is argued that the alleged consensus of Sri. Shreyams Kumar was totally baseless and the respondents were only trying to find out some method to wriggle out of the contempt proceedings. It is also argued that contemnors were not even prepared to render an apology before this Court for having wilfully violated the undertaking given by them.

9. On the other hand, it is argued on behalf of the respondents that after the judgment of this Court, there had been certain changes and subsequent events by which a decision was taken to supersede the District Association and to appoint an ad hoc committee. Primarily it is argued that the writ petition itself was not maintainable, and the Court had relegated the parties to pursue the remedy by approaching a competent civil court. The Court had only recorded the submission of the counsel appearing on behalf of respondents and expressed its opinion that the apprehension of the petitioner regarding supersession is out of place as it was assured that any decision will be taken only after issuing show cause notice.

10. Further it is argued that though notice of general meeting of the KCA was served on all the members of District Association and it was held at Kochi on 11.6.2011, contrary to the direction of Central Council not to convene meeting of the District Association until the issues are resolved by the parent Association, the petitioner conducted the meeting of District Association on 11.6.2011 itself. In the said meeting of District Association, the Secretary and Treasurer of the association have been removed and Mr. M.V. Shreyams Kumar, MLA, has been elected as Secretary. In regard to the meeting of the KCA and Central Council held on 31.7.2011, it is argued that the consensus was arrived at during discussion between the President of KCA and Sri. Shreyams Kumar, and it was agreed that the District Association cannot be allowed to continue on account of the feud between two factions headed by the President and Secretary of the District Association. Hence it was decided to dissolve the existing committee and appoint an ad hoc committee. The matter was thereafter discussed by the

Central Council and an unanimous decision was taken. Learned counsel placed reliance on the minutes of the said meeting and also other materials to substantiate the above contention. Learned counsel also placed reliance on the judgment of Supreme Court in *Indian Airport Employees Union Vs. Ranjan Chatterjee and another*, AIR 1999 SC 880 : (1999) CriLJ 1332 : (1999) 81 FLR 655 : (1999) 1 JT 213 : (1999) 1 LLJ 661 : (1999) 1 SCALE 216 : (1999) 2 SCC 537 : (1999) SCC(L&S) 558 : (1999) 1 SCR 326 : (2000) 1 SLJ 265 : (1999) 1 UJ 589 : (1999) AIRSCW 548 : (1999) 1 Supreme 278 , *Anil K. Surana and another v. State Bank of Hyderabad* [ (2007) 10 SCC 257 ], *Sahdeo @ Sahdeo Singh Vs. State of U.P. and Others*, (2010) CLT 665 : (2010) CriLJ 2034 : (2010) 1 Crimes 195 : (2010) 2 JT 423 : (2010) 3 SCC 705 : (2010) 2 SCR 1086 and *Dinesh Kumar Gupta Vs. United India Insurance Co. Ltd. and Others*, (2010) 12 JT 81 : (2011) 1 RCR(Civil) 696 : (2010) 12 SCC 770 : (2011) 1 TAC 623 : (2010) 9 UJ 4494 and also the judgment of this Court in *Sreedhara Menon, O. P. and Others Vs. Amarnath Shetty, K. and Others*, (2013) CriLJ 1684 : (2012) 2 ILR (Ker) 315 : (2012) 2 KLJ 23 , to contend that the respondents have not committed willful contempt and the actions of the respondent does not warrant any action for contempt. It was further argued that pursuant to the judgment of the learned single Judge, some of the members of District Association have already filed a suit as O.S. No. 1/2012, which is pending consideration before the civil court wherein the plaintiffs have challenged the supersession of District Association and the formation of an ad hoc committee. Though an interim injunction was sought for, the same had been rejected by the civil court. In an appeal against the rejection of interim relief, it is observed that the ad hoc committee had conducted election on 4/7/2012 and new committee elected as per the said election has assumed charge on the same day.

11. Having heard the learned counsel on either side, the short point to be considered is whether the respondents have committed willful contempt or not. In *O.P. Sreedhara Menon's* case (supra) a Division Bench of this Court held that, though violation of undertaking given before the Court is as bad as violation of any order or direction and it clearly comes within the definition of civil contempt, as defined under section 2(b) of the Contempt of Courts Act, 1971, the question to be considered is whether, but for giving such undertaking, the Court would have passed any adverse order or direction. In *Indian Airports Employees Union* (supra), the Supreme Court observed that where there is no deliberate flouting of the orders of the Court but a misinterpretation of the Court order, it would not be a case of civil contempt. In *Anil K. Surana* (supra), the Supreme Court held that when a Counsel has offered on behalf of the appellant to clear the debt within a specified period in instalments, and it is recorded by the Court, breach thereof does not amount to an undertaking given by the appellant. Any direction to pay the amount in instalments can at best be treated as a decree of Court. In *Sahdeo* (supra), the Apex Court held that non-compliance of Court's order by mistake, inadvertence or by misunderstanding would not amount to contempt, unless it is intentional. In *Dinesh Kumar Gupta* (supra), the Apex court held that

contempt proceedings cannot be initiated on a mere assumption, speculation or inference. Paragraph 24 of the judgment is relevant, which reads as under:

24. To reinforce the aforesaid legal position further, it would be relevant and appropriate to take into consideration the settled legal position as reflected in the judgment and order delivered in Ahmed Ali v. Supdt., District Jail as also in B.K. Kar v. High Court of Orissa that mere unintentional disobedience is not enough to hold anyone guilty of contempt and although disobedience might have been established, absence of willful disobedience on the part of the contemnor, will not hold him guilty unless the contempt involves a degree of fault or misconduct. Thus, accidental or unintentional disobedience is not sufficient to justify for holding one guilty of contempt. It is further relevant to bear in mind the settled law on the law of contempt that casual or accidental or unintentional acts of disobedience under the circumstances which negate any suggestion of contumacy, would amount to a contempt in theory only and does not render the contemnor liable to punishment and this was the view expressed also in State of Bihar v. Rani Sonabati Kumari and N. Baksi v. O.K. Ghosh.

12. Having regard to the aforesaid factual and legal issues involved in the matter, the questions to be considered are two fold. One is whether the undertaking given by the learned counsel for respondents is an undertaking for the violation of which, contempt can be taken. If so, the second issue is whether the decision taken by the respondents in their meeting held on 31.7.2011, amounts to willful disobedience, warranting framing of charge against the respondents.

13. In fact, even before filing the W.P. (c) No. 15569/2011, the petitioners filed W.P. (c) No. 7637/2011 apprehending supersession of the District Association. The said case was disposed of when it was submitted on behalf of KCA that steps are only being taken to form an enquiry committee and appropriate orders will be passed only after finalisation of the proceedings by the enquiry committee. The committee conducted an enquiry in the matter and evidence was also collected. In the meantime, KCA convened the Central Council and Special General Meeting on 11.6.2011 and one of the items in the agenda was discussion about report of the enquiry committee constituted by KCA. It is apprehending further proceedings that the present writ petition was filed. The learned Single Judge apparently did not consider the matter on merits and made the following observation:

"8. With regard to the disputed rights and liberties, it is a matter to be looked into and decided by the competent civil court, on the basis of the relevant pleadings and evidence to be let in, which exercise need not be pursued by this court assuming the role of a fact-finding agency, that too, while exercising the discretionary jurisdiction under Article 226 of the Constitution of India. This is, more so, in view of the observations made by the division bench of this court in paragraph 8 of the judgment dated 25/5/2011 in W.P. (c) No. 13848 of 2011."

It is therefore apparent that the Court did not exercise the jurisdiction, as it did

not feel it necessary to become a fact-finding agency. In other words, if the dispute could have been decided based on available materials and without taking any evidence, probably the learned Single Judge would have considered the issue. It is also apparent that the question regarding immediate supersession of the District Association was not gone into by the learned Single Judge, only on account of the submission of the learned counsel for respondents that they may not supersede the District Association without issuing show cause notice and seeking an explanation. Therefore, we are of the view that, but for the submission of the learned counsel that the respondents will not take any steps for supersession of the District Association without issuing show cause notice, probably the learned Single Judge would have considered and passed appropriate orders regarding the same. In the said circumstances, it is clear that the undertaking given by the learned counsel on behalf of the respondents, if violated, and that too wilfully, would attract the proceedings for contempt.

14. The second question is whether the respondents have wilfully violated the said undertaking. The fact that the District Association was superseded and an ad hoc committee was formed in the meeting held on 31.7.2011, is not in dispute. The only disputed fact is whether there is any change in circumstances, warranting such an act on the part of the respondents. The respondents rely upon a consensus arrived at with the new office bearers, by which it was virtually agreed that the District Association could be superseded and an ad hoc committee can be constituted to manage its affairs. This apparently is a disputed fact. On the one hand, Sri. Shreyams Kumar has filed an affidavit denying the said consensus. On the other hand, the respondents relied upon certain materials to indicate that the said fact had appeared in the news channel and the print media on the very next day. Annexure R(6) is a newspaper report which appeared in Malayalam Manorama daily. It is indicated in the report that it is after discussions held between the KCA officials and the Secretary of the Cricket Association, Mr. Shreyams Kumar MLA and others that a decision was taken to appoint an ad hoc committee. Annexure R(7) is another newspaper report wherein it is reported that a lot of drama was expected in the morning prior to the KCA Central Council meeting and AGM. There was talk that Mr. Shreyams Kumar, MLA who was elected as the Secretary of the District Association recently, would not be allowed to take part in the meeting of KCA, but since Mr. Shreyams Kumar opted to stay away from the meetings after discussions with the KCA officials, the said issue was fizzled out. Said report also indicated the decision in the meeting for appointing an ad hoc committee to administer the day-to-day functioning of the District Association. The respondents also relied upon Annexure R(8) the transcript of the news item broadcasted in Malayalam TV channel, where Mr. Shreyams Kumar appears to have mentioned that a decision was taken to arrive at a formula for amicable settlement and the KCA President will inform about the same. He also stated that he is not participating in the meeting and that for settling the issue, they have arrived at a consensus. In fact, in the affidavit, Mr. Shreyams Kumar has disputed and denied about such a

consensus though he agreed that he had discussion with the President of KCA. It is stated that on the request of the President he did not attend the meeting and he was assured that all issues would be amicably settled.

15. The validity or otherwise of the meeting and the decision taken to appoint the ad hoc committee is admittedly pending consideration before the civil court. The issues raised in the present contempt case and the question regarding validity of the agreement is also the subject matter of the Lis. In this proceedings, we are only concerned with the question, whether the action of the respondents in acting contrary to the undertaking is deliberate or not. Perusal of the minutes of the meeting held on 31.7.2011, would show that the meeting was informed about the High Court order declining interference in the matter relating to holding the meeting. It is stated that the District Association on 11.6.2011, despite having received the notice of KCA meeting, had removed the existing office bearers in a meeting convened on the same day. They also referred to a letter dated 14.6.2011 from Mr. Shreyams Kumar, MLA regarding his election on 11.6.2011. It was also replied stating that the said election was against the byelaws. In the said meeting the President informed the general body about an agreement with Mr. Shreyams Kumar regarding appointment of an ad hoc committee in the place of the existing executive committee. The members were also informed about the discussion the President had with Mr. Sanil Chandran, the Secretary of District Association and his faction and reluctantly they also agreed with the suggestion. It is in the said background that a decision was taken to dissolve the District Association and appoint an ad hoc committee. It is therefore evident that after the judgment of the learned Single Judge, the District Association themselves conducted an election and changed the office bearers. Therefore, the subsequent event also resulted in the President of KCA to have discussion with both the groups. The President in the meeting had informed the members about the consensus, after discussing with both the factions. The general body in fact proceeded on the said basis and passed the resolution. It is an admitted fact that the President of KCA and Sri. Shreyams Kumar met on 31.7.2011, before the meeting. From the affidavit filed by Sri. Shreyams Kumar, he denies the consensus, but the President of KCA had a different understanding in the matter after discussions and proceeded on the basis that there was a consensus to supersede the District Association. In such circumstances, we do not think that a case of willful contempt can be taken on the basis of surmises or doubts regarding the entire factual issues. It is possible and as evident from the affidavit filed, that the President of KCA believed that both the rival factions have agreed for superseding the District Association and have agreed for formation of an ad hoc committee. It is also possible that it may not be the understanding of Mr. Shreyams Kumar after the said meeting. Under such circumstances, we do not think that a case of willful contempt has been made out warranting further proceedings against the respondents.

In the light of the above discussion, the contempt case is dropped.