

**(1995) 03 MAD CK 0115  
In the Madras High Court**

Seetharami Reddy

APPELLANT

Vs

Joseph Vilangadhan

RESPONDENT

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**Date of Decision :** 29-03-1995

**Acts Referred:**

Contempt of Courts Act, 1971 — Section 12

**Citation :** (1995) 2 LW 556 : (1995) 2 MLJ 463

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**Judgement**

1. This is an application filed u/s 2(c) read with Section 12 of the Contempt of Courts Act, 1971 (hereinafter referred to as "the Act") to punish the

Respondent for abusing the process of the court by misrepresentation and suppression of the fact of filing the writ petitions in the High Court in the

suit filed before the City Civil Court Judge, in respect of the very same subject matter.

2. On the notice being issued, the respondent had put in appearance through a counsel and filed a counter-affidavit. Therefore, the matter was

heard at great length and came to be adjourned to today for further hearing. Today, the respondent has filed an additional counter-affidavit stating

the background in which the suit came to be filed before the City Civil Court, and further, tendering an unconditional apology.

3. Few facts of the case, which are not in dispute, are as follows:

The petitioner filed two writ petitions (W.P. Nos. 5339 and 5340 of 1994) before this Court on 24.3.1994. In W.P. No. 5339 of 1994, the

petitioner sought for issue of a writ in the nature of mandamus, directing the Chief Engineer (Constn), Headquarters Office, Works Construction

Branch, Southern Railway, Egmore Madras-600 008, to award the contract in respect of item No. 2 of the tender notice No. 36/CE/CN/93

dated 28.10.1993, opened on 25.11.1993, in favour of the petitioner, whose tender was the lowest and duly complied with the conditions of the tenders whereas in W.P. No. 5340 of 1994, he sought for issue of a writ in the nature of mandamus, directing the very same Chief Engineer to forbear from awarding to, implementing, entering into contract with or having the work executed through, the 2nd respondent, viz., Seetharama Reddy (petitioner herein) in respect of item No. 2 of the tender Notice No. 36/CE/CN/93 dated 28.10.1993, opened on 25.11.1993. The writ petitions were filed on the basis that the tender submitted by the respondent had been wrongly . rejected. These writ petitions came up before a learned single Judge of this Court on 25.3.1994 and the same were admitted and notice was ordered on the W.M.Ps. filed for interim orders. The High Court and the Subordinate Courts were closed on 26th the 27th March, 1994, being Saturday and Sunday. On 28th March, 1994, the respondent filed O.S. No. 2364 of 1994 before the II Assistant Judge, City Civil Court, Madras, for the relief of permanent injunction, restraining the defendants, viz., The Chief Engineer and Seetharama Reddy, from in any way executing the works being the item No. 2 of the Tender Notice of the Chief Engineer No. 36/CE/CN/93, dated 28.10.1993. opened on 25.11.1993 either by awarding in favour of the 2nd defendant or by entering into contract by and between the 1st and 2nd defendants, or by accepting or by implementing the same by the 2nd defendant, or otherwise, a mandatory injunction directing the cancellation of the contract awarded in favour of the 2nd defendant, a mandatory injunction directing the 1st defendant to award the contract of the works being item No. 2 of the tender notice of the 1st defendant No. 36/CE/CN/93 dated 28.10.1993, opened on 25.11.1993 in favour of the plaintiff and costs of the suit. He also filed an application in the suit for the relief of interim injunction and obtained an order of interim injunction, restraining the defendant in the suit from in any way executing the works being item No. 2 of the tender notice No. 36/CE/CN/93 dated 28.10.1993 opened on 25.11.1993 either by awarding in favour of the 2nd defendant or by entering into contract by and between the 1st and 2nd defendants or by accepting or by implementing the some by the 2nd defendant. Subsequently, in the appeals preferred by the defendants in the suit being C.M.A.Nos. 46 and 47 of 1994, the VII Additional Judge City Civil Court, Madras, by the

order dated 6.5.1994 vacated the order of temporary injunction. Subsequently, learned Counsel, who appeared for the writ petitioners, filed a

letter dated 25.5.1994 stating that the writ petitions may be dismissed as withdrawn. Accordingly, the writ petitions were dismissed as withdrawn

on 25.5.1994.

4. The complaint against the respondent in this Contempt Application is that he has abused the process of the City Civil Court by suppressing the

material fact that he had filed the writ petitions for the very same relief and also sought for interim orders in the writ petitions, though the writ

petitions were admitted only notice was ordered in the W.M.Ps. filed for interim orders; that he filed the aforesaid civil suit as though he had not

approached this Court in petitions under Artical 226 of the Constitution and thereby obtained interim injunction in the suit; that if only the

respondent had disclosed the fact of filing the writ petitions and W.M.Ps. and that this Court had only ordered notice in the W.M.Ps. in all

probability, the learned II Assistant City Civil Judge, would not have passed an order of temporary injunction in the suit, that too in a case where it

pertained to a contract.

5. In the counter-affidavit dated 16.11.1994 filed by the respondent, he has tried to justify his action, by contending as follows:

I have not committed any abuse of process of court by deliberately non-mentioning the writ petitions filed by me and its withdrawal in the suit, I

have not deliberately suppressed the facts and I have not played fraud on the court and I have not mislead the Hon"ble Court. I have not

disobeyed any orders of this Hon"ble Court and as such this contempt application is not maintainable. As the petitioner sought to punish me for

disobeying the order dated 25.3.1994 made in W.M.P.Nos. 8396 and 8397 of 1994 passed by His Lordship Mr. Justice Kanakaraj is only to

notice to the respondent therein on 25.3.1994. I have not committed any Contempt of Court, I am a lay men and I am innocent and ignorant of

legal process. In any event, I tender my unconditional apology before this Hon"ble Court, if this Hon"ble Court feels that I had committed any

contempt of Court." In the additional counter-affidavit filed today, he has submitted as follows: "I most humbly and respectfully tender my

unconditional apology for the incidents. I am a Registered Contractor with the

Railway Department and I have been engaging in contract work for more than 20 years. I am also doing regular contract work for Indian Oil Corporation. Since the Railways did not accept my tender, the Advocate at Kerala gave me a draft to instruct my Advocate to prepare the writ petition. Accordingly, I gave the original draft based on which the writ petition was filed. Though the writ petition was admitted by his Lordship Justice Kanakaraj, His Lordship felt that the matter has to be dealt with by Civil Court, I instructed my advocate to withdraw the writ petition on the same day and immediately approached a different counsel and I gave him the copy of the same draft which I handed over to the earlier counsel. The very same wordings and narrations of the facts in both the writ petition as well as the suit would show my innocence that I have not suppressed any facts. Since my wife, was very ill at Cochin, I had to leave to Cochin. I did not inform the Counsel regarding the filing of the writ petition. I humbly submit that I am of man of well reputations and I am a well known contractor having 20 years experience in the business like and since I am ignorant of the legal consequence. I have committed the abovesid act. I had no intention of committing any abusive process of law and I once again tender my unconditional apology before this Hon"ble Court as I never intentionally did anything. I once again tender my unconditional apology and I may be pardoned for my act and I may be exonerated from the contempt proceedings. Thus the respondent, as on today, does not dispute him act of approaching the civil court without disclosing and suppressing the fact of filing of the writ petition before this Court and the notice being ordered on the interim prayer made, in the W.M.Ps. filed in the Writ Petitions. However, he has tendered an unconditional apology after stating several facts.

6. On the very facts stated in the counter-affidavit and in the additional counter-affidavit, it is not possible to accept the unconditional apology tendered by the respondent as there is no bona fide in it. He is not an illiterate person or a person not knowing the proceedings of the Court. He claims that he has been in the field for over 20 years and he has doing contract work with Indian Railways and also with Indian Oil Corporation. He states that he had brought draft of the writ petition prepared by an Advocate in Kerala and after filing the writ petitions, as no interim order was

granted, he gave the said draft to another Advocate for filing a civil suit with instructions to the Advocate, who had filed the writ petitions, to

withdraw the writ petitions. There is no affidavit of the learned Counsel, who filed the writ petitions, to the effect that he had been instructed by the

petitioner to withdraw the writ petitions as he was going to file a suit. When the copies of the affidavits and the writ miscellaneous petitions filed in

the writ petitions were given to the learned Counsel who filed the suit, it is not possible to believe the petitioner that he did not inform the counsel

regarding the filing of the writ petitions. This only shows that wilfully and deliberately, with an avowed object of obtaining interim orders from the

civil court, the true and material facts of filing of the writ petitions and not granting of interim orders in the W.M.Ps. were suppressed and were

omitted to be mentioned in the suit. The suppression was wilfully and was with the purpose of obtaining an interim order from the Civil Court. It is

not possible to avoid this inference from the proved and undisputed facts. As far as the legal position is concerned, it is very much clear. In

Naraindas Vs. The Government of Madhya Pradesh and Others, , it has been specifically held that, ""if a wrong or misleading statement is

deliberately and wilfully made by a party to a litigation with a view to obtain a favourable order, it would prejudice or interfere with the due course

of judicial proceeding and thus amount to contempt of court. But, it must be established satisfactorily that any deliberate and wrong statements was

made and there was a favourable order in consequence of the statement. As we have already pointed out, this is a case in which wilful suppression

of actual and material facts would amount to making a wrong statement and thereby misleading the court with a view to obtain an interim order. In

the instant case, the interim order in the suit was obtained by suppressing the true and material facts, therefore, we are of the view that the

respondent has wilfully abused the process of the court with a view to obtain an advantage in his favour by obtaining an interim order and

therefore, he is guilty of criminal contempt, liable to be punished u/s 12 of the Act. This case also fails within the ratio of the decision of the

Supreme Court in Advocate General of Bihar v. K.P. Nhair Industries AIR 1980 S.C. 944. The relevant portion of the judgment is as follows:

While we are conscious that every abuse of the process of the court may not necessarily amount to contempt of court abuse of the process of the

court calculated to hamper the due course of a Judicial proceeding or the orderly administration of justice we must say is a contempt of court. It

may be that certain minor abuses of the process of the court may be suitably dealt with as between the parties, by striking out pleadings under the

provisions of Order 6, Rule 16 or in some other manner. But on the other hand, it may be necessary to punish as a contempt, a course of conduct

which abuses and makes a mockery of the judicial process and which thus extends its pernicious influence beyond the parties to the action and

affects the interest of the public in the administration of justice. The public have an interest, an abiding and a real interest, and a vital stake in the

effective and orderly administration of justice, because, unless justice is so administered, there is the period of all rights and liberties perishing. The

court has the duty of protecting the interest of the public in the due administration of justice, and so, it is entrusted with the power to commit for

contempt of court, not in order to protect the dignity of the court, not in order to protect the dignity of the court against insult or injury as the

expression "contempt of court" may seem to suggest, but, to protect and vindicate the right of the public that the administration of justice shall not

be prevented, prejudiced, obstructed or interfered with. "It is a mode of vindicating the majesty of law, in its active manifestation against

obstruction and outrage.

Per Frankfurter, J., in *Offutt v. U.S.* (1954) 348 U.S. 11. "The law should not be seen to sit by limply, while those who defy it go free, and those

who seek its protection lose hope." Per Judge, Curtis-Raleigh quoted in *Jennison v. Banker* (1972) 1 All E.R. 997 .

In Halsbury's Laws of England, (4th Edn., Vol. 9, Paragraph 38), there is a brief discussion of when abuses of the process of the Court may be a

punishable contempt. It is said:

38. Abuse of process in general. The court has power to punish as the contempt any misuse of the court's process. That the forging or altering of

court documents and other deceits of like kind are punishable as serious contempts. Similarly, deceiving the court or the court's officers by

deliberately suppressing a fact, or giving false facts, may be a punishable contempt.

Certain acts of a lesser nature may also constitute an abuse of process as, for

instance, initiating or carrying on proceedings which are wanting in bona fides, or which are frivolous, vexatious or oppressive. In such cases the court has extensive alternative powers to prevent an abuse of its process by striking out or staying proceedings or by prohibiting the taking of further proceedings without leave. Where the court, by exercising its statutory powers, its power under rules of court, or its inherent jurisdiction, can give an adequate remedy, it will not in general punish the abuse as a contempt of court. On the other hand, where an irregularity or misuse of process amounts to an offence against justice, extending its influence beyond the parties to the action, it may be punished as a contempt.

[Italics supplied]

7. We have already pointed out that unconditional apology, in the facts and circumstances of the case, cannot be held to be a bona fide one and as such it cannot at all be accepted. Accordingly, we hold that the respondent is guilty of contempt of court falling in the category of criminal contempt.

8. The next question for consideration as to the quantum of punishment. For the act of criminal contempt committed by the respondent, he is liable to be punished with simple imprisonment. However, taking into consideration of the fact that the respondent is a contractor and the punishment of imprisonment is likely to result in black-listing him, thereby affecting his very profession itself and also taking into consideration the fact that he has realised that he has committed criminal contempt and seriousness of the offence and offered an unconditional apology, which we have held, in the facts and circumstances of the case cannot be accepted, we only impose the penalty of Rs. 2,000 (Rupees two thousand) which shall be paid by the respondent within four weeks from today. In the event the respondent fails to pay the fine into this Court with the aforesaid period, he shall undergo simple imprisonment of two weeks. The authorities concerned shall take appropriate steps in the event the respondent fails to pay the fine as imposed.

9. The contempt application is ordered accordingly. No costs.