

(1975) 03 KAR CK 0002
In the Karnataka High Court
Case No : Writ Petition No. 6129 of 1974

Suneel Keerthi

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 19-03-1975

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Contempt of Courts Act, 1971 — Section 14, 15 (1) (b), 19, 19 (1)

Citation : AIR 1975 Kar 224 : (1975) 2 KarLJ 121

Hon'ble Judges : K. Jagannatha Shetty, J

Bench : Single Bench

Advocate : Mohandas K. Hegde, for the Appellant; K.S. Puttaswamy, 1st Additional Government Advocate, for the Respondent

Judgement

1. In this petition, under Article 226 of the Constitution, the validity of Section 15(1)(b) of the Contempt of Courts Act, 1971 (which is hereinafter called "the Act"), and of Rule 7 of the "Rules to regulate contempt proceedings in the High Court of Karnataka" is called into question.

2. The petitioner is a land holder at Moodabidri, South Kanara District. He has some pending litigation before the Court of Munsif, Karkala, as against Respondent 7, in respect of the tenancy claimed by the latter. According to him, respondents 4 to 7 have committed contempt of the said Court. Respondent 4 is the Hon'ble Minister for Revenue, respondent 5 is a Member of the legislative Assembly and respondent 6 is the Hon'ble Minister for Stale for Small Scale Industries. The petitioner wants to prosecute them for contempt. For that purpose, he approached the Advocate General with an application u/s 15(1)(b) of the Act seeking his consent to move this court for taking action against the said respondents.

3. Section 15(1)(b) provides-

"15. Cognizance of criminal contempt in other cases.--

(1) In the case of a criminal contempt, other than a contempt referred to in Section 14, the Supreme Court or the High Court may take action on its own motion or on a motion made by--

(a) The Advocate General; or

(b) any other person, with the consent in writing of the Advocate-General."

The petitioner states that the condition imposed by Section 15(1)(b) is unreasonable without any guidances provided to the Advocate General as to how he should exercise his discretion, and therefore, it offends Article 14 of the Constitution. He further states that the Advocate General holds office during the pleasure of the Governor and in turn has to obey the instructions of the Government, and in the very nature of his position, it would be impossible for him to give consent to initiate contempt proceedings against the Hon"ble Ministers of the Government.

4. I do not find much substance in the contention. The imposition of the said condition cannot by itself invalidate the section, nor can it be said that the power conferred therein is arbitrary. The Advocate General is expected to exercise his discretion reasonably and in accordance with the policy indicated by the Act, while considering a request for consent to move this Court to initiate action for Contempt. The bare possibility that the discretionary power may be abused is no ground for invalidating the section.

5. I will now take up the contention relating to the validity of Rule 7 of the Rules to regulate contempt proceedings in the High Court of Karnataka. The Rule was framed under the Contempt of Courts Act, 1952, and it reads as follows:

"7. initiation of proceedings. Any petition, information or reference for action being taken under the Act, shall, in the first instance, be placed before the chief Justice on the Administrative side.

The Chief Justice or such other Judge or Judges as may be designated by him for the purpose shall determine the expediency or propriety of taking action under the Act." It was urged that the Rule is invalid as it is contrary to Sections 18 and 19(1) of the Act. Section 18 of the Act provides that every case of criminal contempt shall be heard and determined by a Bench of not less than two Judges. Section 19 provides for an appeal against an order or decision of the High Court. The scope of these provisions came up before the Supreme Court in *Baradakanta Mishra Vs. Justice Gatikrushna Misra*, Chief Justice of the Orissa High Court, in which Bhagwati, J., speaking for the Court observed:

".....It is for the Court in the exercise of its discretion to decide whether or not to initiate a proceeding for contempt. Even if the Court is prima facie satisfied that a contempt has been committed, the Court may yet choose to ignore it and decline to take action. There is no right in any one to compel the Court to initiate a proceeding for contempt even where a prima facie case appears to have been made out.

So far as the contempt jurisdiction is concerned, the only actors in the drama are the Court and the alleged contemner. An outside party comes in only by way of drawing the attention of the Court to the contempt which has been committed; he does not become a party to the proceeding for contempt which may be initiated by the Court."

Learned Judge further observed :

"..... The motion or reference is only for the purpose of drawing the attention of the Court to the contempt alleged to have been committed and it is for the Court, on a consideration of such motion or reference, to decide, in exercise of its discretion, whether or not to initiate a proceeding for contempt. The Court may decline to take cognizance and to initiate a proceeding for contempt either because in its opinion no contempt prima facie appears to have been committed or because even if there is prima facie contempt, it is not a fit case in which action should be taken against the alleged contemner. The exercise of contempt jurisdiction being a matter entirely between the Court and the alleged contemner, the Court, though moved by motion or reference, may in its discretion, decline to exercise its jurisdiction for contempt. It is only when the Court decides to take action and initiates a proceeding for contempt that it assumes jurisdiction to punish for contempt. The exercise of the jurisdiction to punish for contempt commences with the initiation of a proceeding for contempt, whether suo motu or on a motion or a reference. That is why the terminus a quo for the period of limitation provided in Section 20 is the date when a proceeding for contempt is initiated by the Court. Where the Court rejects a motion or a reference and declines to initiate a proceeding for contempt, it refuses to assume or exercise jurisdiction to punish for contempt and such a decision cannot be regarded as a decision in the exercise of its jurisdiction to punish for contempt. Such a decision would not therefore, fall within the opening words of Section 19, Sub-section (1) and no appeal would lie against it as of right under that provision"

6. From the above statement of law, it is clear that the petitioner has no right to compel this Court to take contempt proceedings against any person. Rule 7 provides preliminary procedure for initiating contempt proceedings. It enables this Court to scrutinise the allegations in the motion or reference to find out whether or not there is any need to initiate contempt proceeding. If the Court decides that there is no need to take steps, it refuses to assume or exercise jurisdiction to punish for contempt. Such a decision, as observed by the Supreme Court in *Baradakanta Mishra Vs. Justice Gatikrushna Misra*, Chief Justice of the Orissa High Court, would not fall u/s 19 of the Act, and the petitioner has no right of appeal against that decision. Rule 7 cannot therefore be said to be invalid or contrary to Section 18 or 19 of the Act.

7. What I have said above is only regarding the validity of the said rule so far as it pertains to the criminal contempt and I shall not be understood to have expressed any opinion on the validity of the rule so far as it relates to civil contempt.

8. The petition is therefore rejected.

9. Petition dismissed.