

(1994) 12 MAD CK 0056
In the Madras High Court

Suo Motu Contempt Application No. 426 of 1994

APPELLANT

Vs

Mrs. Manonmani Muthuswami

RESPONDENT

Date of Decision : 22-12-1994

Acts Referred:

Constitution of India, 1950 — Article 19(1)(a)

Citation : (1995) 1 MLJ 375

Hon'ble Judges : Srinivasan, J

Bench : Division Bench

Judgement

Srinivasan, J.—This is a suo motu contempt proceeding initiated by us. The respondent herein filed W.P. No. I 1238 of 1994 questioning the validity of 32 sale deeds registered in the office of the Sub Registrar, Anna Nagar, Madras-40 and praying for quashing them. The only respondent in that writ petition was the Sub Registrar, Anna Nagar, Madras. The parties to the sale deeds were not impleaded. The writ petition was dismissed in limine by single Judge of this Court by order dated 21.7.1994. The respondent filed Writ Appeal No. 1438 of 1994 against the said order. In the memorandum of grounds, she had made certain allegations, which were found to be objectionable by the Registry and she was called upon to delete those grounds. While refusing to do so, she filed a separate statement, containing some more scurrilous allegations against the Chief Justice of this Court. The last part of the statement reads as follows:

My words are only the reflections for the unlawful orders of the Judges and correct opinion about the existing frauds. I cannot reduce, change or alter my grounds of Writ Appeal since it is made for the sake of justice.

She had also filed a petition in C.M.P.S.R. No. 65251 of 1994 praying for permission to post the appeal in the Court of Hon'ble Mr. Justice Mishra to admit and investigate the same. In the affidavit filed in support of the petition, she had made allegations as under:

...no law permits a Judge to pass injustice order. Even though Judges are passing

injustice orders, violating law, order and justice, under the disguise of fraud reasons. This is a very high disqualifications to hold the public Official post as Justice. The Chief Justice is misusing his power.

[Italics ours]

When the papers were placed before us administratively, we directed the office to number the appeal and at the same time, give notice to the respondent that unless the objectionable portions were deleted, the appeal would not be heard on merits for admission. When the matter was called in court on 28.11.1994, the respondent refused to delete the objectionable portions and we dismissed the appeal holding that the allegations made by her would tantamount to contempt of court made with the intention of threatening the court. We have passed a detailed order and for the relevant facts, reference may be made to the said order, which are made part hereof.

2. We directed the Registry to issue a notice to the respondent for proceeding in contempt against her. That notice was served on the respondent. She filed a petition on 9.12 1994 on the Appellate Side of this Court along with an affidavit sworn to by her. The prayer in the petition is as follows:

For the reasons stated in the accompanying affidavit, the petitioner herein request that the number of justices of this Honourable Court may be pleased to get rid of their coordinative decision to dismiss my honest petition and to restore justice in all my past dismissed petitions and also to reserve justice in my future petitions.

3. In the affidavit, she has again chosen to make some reckless allegations not only against the Judges, but also against the staff of this Court and more particularly, in one of the paragraphs, it is stated:

I state that misuse of power will not thrive longer. The Chief Justice misuses his power and also takes support of the misuse of power of other number of Justices in the matter of destroying my honest petitions made for the sake of protection of fundamental rights guaranteed in the Constitution of India.

4. However, on the docket of the petition, the following was found typed:

Petition to refuse the notice in Contempt of Court and to request to restore justice.

We are only sorry to note that even when a notice-in Contempt of Court proceedings is served on her, she has chosen to aggravate the contempt by making further scurrilous allegations against the Judges of this Court not only in her affidavit, but also by stating in the docket that she was filing the petition to refuse the notice in contempt proceedings.

5. That petition was forwarded by the Appellate side to the Original Side on 13.12.1994 and the Original Side returned the papers on the same day, as not maintainable. The respondent had not however taken back the papers from the

office. On her request, we sent for the papers from the Registry and perused them.

6. When the matter came up before us on 19.12.1994, the respondent was present in court. We informed her that if she so desired, she could engage a counsel to represent her in the matter. We also gave an opportunity to her to file an affidavit in support of her stand in the contempt proceedings. She did not choose to adopt either of the methods. On the other hand, she argued that the only and essential point of law to be argued by her is that "every citizen in the country has got a fundamental right of freedom of speech guaranteed by Article 19(1)(a) of the Constitution of India and that the court cannot proceed against her in contempt proceedings for the passages contained in the memorandum of grounds of appeal filed by her in the writ appeal.

7. We thought it fit to appoint an amicus curiae to scrutinise the records and place before us the correct position of law. We directed Shri S. Gopalratnam, Seniormost Advocate practising in this Court, who is also a designated Senior Advocate, to function as amicus curiae. We also informed the respondent that if she so desired, she could meet the amicus curiae and take advice from him in this matter. We are informed by the amicus curiae that she did not approach him.

8. The matter was heard in detail yesterday and the learned Senior Counsel has placed before us the relevant authorities. Thereafter, the respondent put forward her defence by way of arguments to which we will make a reference later.

9. The Advocate, whom we appointed as amicus curiae is the seniormost member of the Madras Bar and he is well known for his extraordinary knowledge in all branches of law. We can even say that he is a walking encyclopaedia not only in the matter of Indian Law, but also in English Law and American Law and inspite of oar pointing this to the respondent, she did not take his advice by approaching him.

10. The relevant passages in the memorandum of grounds of appeal in W.A. No. 1438 of 1994 are as follows:

1. I state that the order and judgment fail to have any validity in front of law, order and justice to maintain in this Hon"ble Court, because it lacks good qualities.

2. I stale that the order and judgment fail to protect the fundamental rights guaranteed in the Constitution of India, rather the order deliberately wants to protect unlawful, orderless, offences.

3. I state that my writ petitions and affidavit are simple and clear in presenting the case. But, the order in the second page fourth line, admits that my petitions and affidavit are not quite clear. This is twisting of the facts, lie and irrelevant comment, which no order (honest order) can possess.

4. I state that the 18th and 19th lines of second page of the order supply more

lies, which says that the petitioner alleges in her supporting affidavit, fraud and cheating on the part of the husband. I never alleged any fraud and cheating on the part of my husband in my affidavits.

5. I state that the order consists of only irrelevant allegations and finding fault with the petitions and affidavits of W.P. No. 11238 of 1994. The order carries only number of lies, irrelevant questions, twisting of the facts and frauds. I am wondering whether such a type of order is maintainable in this Hon'ble Court because the order is a written fraud.

6. I state that the order is adamant in nature in the dismissal, which reveals the intensive purpose to destroy law, order, justice and court honours. Any order should always aim to protect law, order, justice and honours of this Court.

7. I state that the last para of the order alleges that the petitioner has not impleaded necessary parties as respondents. It also alleges that there is no-specific allegation against the respondent. There are lies, twisting of the facts and fraud. Because, law binds each and everybody of this nation. So, I need not implead all those parties. The necessary party is only the Sub Registrar of Anna Nagar, Madras-40, which I have impleaded adequately with specific justifiable reasons of allegations. The Sub Registrar has duties and responsibilities to do fair registrations. The Registration Act and procedure should also not fairly to protect the rights and control frauds. Each and every public official has specific duties and responsibilities to maintain law, order and justice.

8. I state that the last but 5th line of the order lies that how a writ remedy is sought against him in this writ petition. This question is not correct. I am asking no remedy against him, rather, I am seeking remedy from unfair registrations and unfair act which allowed such unfair registrations to exist. For all these reasons, I see no justifiable reason to dismiss but to admit the writ petition under Article 226 of the Constitution of India.

9. I state that these grounds for writ appeal should be investigated in Honourable Justice Mishra's Court, since the appellant is having the experience of misuse of power in the 1st Court, in W.A. Nos. 185 of 1994 and 676 of 1994. (The other grounds are omitted as unnecessary).

11. Section 2(c) of the Contempt of Courts Act, 1971, defines a criminal contempt in the following manner:

2. (c) Criminal contempt" means the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which-

(i) scandalises or tends to scandalise, or lowers or tends to lower the authority of any court; or

(ii) prejudices or interferes or tends to interfere with, the due course of any judicial proceeding; or

(iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner.

12. In *Shri C.K. Daphtary and Others Vs. Shri O.P. Gupta and Others*, , the question was considered in detail. The court held that even if a judgment contains errors, that can be no excuse for imputing dishonesty to the Judge. The fact that a booklet was printed for use by Members of Parliament only as draft of proposed impeachment motion, would not absolve the contemner when its circulation by him in public at large was proved and there was no proof that the booklet was published under the authority of the Parliament. The court also pointed out that right to punish contempt under Article 129 cannot be said to have been conferred on the Supreme Court in order to curb the right of freedom of speech. It was also held that a scurrilous attempt on a Judge in respect of a judgment or past conduct affects adversely on the due administration of justice. Even if a Judge is said to have committed gross error in judgment, that does not amount to misbehaviour within the meaning of Article 124(4) of the Constitution of India. The court said that if a judgment is criticized as containing error coupled with dishonesty on the part of the Judge, the court trying the Contempt of Court cannot act as an appellate court and decide whether there are errors or not. Contempt proceeding is of summary nature. Thus, the argument of the respondent that her freedom of speech guaranteed under Article 19(1) is curtailed by the initiation of proceedings in contempt for raising the grounds in the memorandum of grounds of appeal cannot be accepted.

13. In *Babu Ram Gupta Vs. Sudhir Bhasin and Another*, , the Supreme Court held that the power to punish for contempt should be exercised to uphold the majesty of law and dignity of Court.

14. In *Rachapudi Subba Rao Vs. Advocate General, Andhra Pradesh*, , the court agreed with the High Court and held that the tone, temper and contents of the notice, particularly of the passages extracted in the judgment, which impute malice, partiality and dishonesty to the Subordinate Judge in the judicial adjudication of the aforesaid suits against the appellant constituted deliberate attempt to scandalise the Judge to terribly embarrass him and to lower the authority of his office and the court. It was held that the act and conduct of the appellant in issuing that notice fell squarely within Sub-clauses (i) and (ii) of the definition of "criminal contempt" given in Section 2(c) of the Act. The court observed:

Unfounded imputation of mala fides, bias, prejudice or ridiculing the performance of a Judge or casting aspersions on his integrity-as has been done by the appellant in the notice in question-are always considered to mean scandalising the court and lowering the authority of his court by bringing him and his office into disrespect and disrepute. Vilification of the Judge, even in administrative matters or decided judicial matters, may amount to "criminal contempt under Sub-clause (i) of Section 2(c) as it lowers or tends to lower the authority or dignity of the court by undermining public confidence in the capacity of the Judge

to mete out even handed and impartial justice.

If the act complained scandalises the judicial officer in regard to the discharge of his judicial functions, it thereby substantially interfere or tends to interfere with the "due course of justice" which is a face of the broad concept of the "administration of justice" and as such, is punishable u/s 13.

15. In *Asharam M. Jain Vs. A.T. Gupta and Others*, , the Supreme Court held that it is the duty of the court to protect the interests of the public in the due administration of justice and that is why it is entrusted with the power to punish for Contempt of 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 to vindicate the right of the public that the administration of justice shall not be prevented, prejudiced, or obstructed or interfered with. It is a mode of vindicating the majesty of law, in its active manifestation against obstruction and outrage. The court further held that the law should not be seen to sit by simply, while those who defy it go free, and those who seek its protection lose hope. In that case, the apology tendered by the contemner was not accepted by the court. The court observed that "a contumacious disregard of all decencies, such as, that exhibited by the contemner in that case would only lead to a disturbance of the system of administration of justice, unless duly repaired at once by inflicting an appropriate punishment, which must be to send him to jail to atone for his misconduct and thereafter to come out of prison a chastened, but a better citizen. Thus, the court awarded a sentence of two months simple imprisonment.

16. In *L.D. Jaikwal Vs. State of U.P.*, , an Advocate whose client had been convicted by the Special Judge, Dehradun, was required to appear before the Judge to make his submissions on the question of "sentence" to be imposed on the accused up his being found guilty of an offence u/s 5(2) of the Prevention of Corruption Act by the Court. The Advocate appeared in a shirt and trouser outfit in disregard to the rule requiring him to appear only in court attire when appearing in his professional capacity. The learned Judge asked him to appear in the prescribed formal attire for being heard in his professional capacity. The Advocate took umbrage and left the court. Another Advocate appeared on behalf of the accused, who had been found guilty of a charge of corruption. The learned Judge imposed a punishment of four years R.I. The appellant before the Supreme Court, a Senior Advocate of long standing, made a written application to the Special Judge couched in scurrilous language making imputation that the Judge was a "corrupt Judge" and adding that he was "contaminating the seat of justice". A threat was also held out that a complaint was being lodged to higher authorities that he was corrupt and did not deserve to be retained in service. While holding that the appellant was in contempt, the Supreme Court observed that the appellant had not even tendered his apology to the learned Judge, who was scandalised and said:

We do not think that merely because the appellant has tendered his apology, we

should set aside the sentence and allow him to go unpunished. Otherwise, all that a person wanting to intimidate a Judge by making the grossest imputations against him has to do, is to go ahead and scandalize him, and later on tender a formal empty apology, which costs him practically nothing. If such an apology were to be accepted, as a rule, and not as an exception, we would in fact be virtually issuing a licence" to scandalize courts and commit contempt of court with impunity. It will be rather difficult to persuade members of the Bar, who care for their self-respect, to join the judiciary if they are expected to pay such a price for it. And no sitting Judge will feel free to decide any matter as per the dictates of his conscience on account of the fear of being scandalised and persecuted by an advocate who does not mind making reckless allegations if the Judge goes against his wishes. If this situation were to be countenanced, advocates who can cow down the Judges, and make them fall in line with their wishes, by threats of character assassination and persecution, will be preferred by the litigants to the advocates who are mindful of professional ethics and believe in maintaining the decorum of courts.

We have yet to come across a Judge who can take a decision which does not displease one side or the other. By the very nature of his work, he has to decide matters against one or other of the parties. If this fact that he renders a decision which is resented to by a litigant or his lawyer were to expose him to such risk, it will sound the death knell of the institution. A line has therefore to be drawn somewhere, some day, by someone. That is why the court is impelled to act (rather than merely sermonize), much as the court dislikes imposing punishment whilst exercising the contempt jurisdiction, which no doubt has to be exercised very sparingly and with circumspection. We do not think that we can adopt an attitude of unmerited leniency at the cost of principle and at the expense of the Judge who has been scandalized. We are fully aware that it is not very difficult to show magnanimity when someone else is the victim rather than when oneself is the victim. To pursue a populist line of showing indulgence is not very difficult-in fact it is more difficult to resist the temptation to do so rather than to adhere to the nailstudded path of duty. Institutional perspective demands that considerations of populism are not allowed to obstruct the path of duty. We, therefore, cannot take a lenient or indulgent view of this matter. We dread the day when a Judge cannot work with independence by reason of the fear that a disgruntled member of the Bar can publicly humiliate him and heap disgrace on him with impunity, if any of his orders, or the decision rendered by him, displeases any of the advocates appearing in the matter.

We firmly believe that considerations regarding maintenance of the independence of the judiciary and the morale of the Judges demand that we do not allow the appellant to escape with impunity on the mere tendering of an apology which in any case does not wipe out the mischief.

17. B. Varadha Rao Vs. State of Karnataka and Another, , the Supreme Court condemned in strong words certain averments made in the SLP and said:

We would like to express not only our disapproval but also our deprecation of certain averments made by the appellant in his Special Leave Petition. On page 31 of his petition, the appellant has stated that the High Court had not only failed to correctly interpret the observations of this Court in T.P. Nos. 120-121 of 1984 and direct the hearing of Writ Appeal No. 493 of 1983 and R.F.A. No. 409 of 1983 together, but the High Court had persuaded itself to take such a stand because of the involvement of one of the sitting Judges of the High Court as the then Special Government Pleader in O.S. and the R.F.A. We express our strong condemnation of the reckless allegation made by the appellant. The appellant's obsession with the merits of his case on the basis of wrong assumptions appears to have impelled him to make such reckless averments in the Special Leave Petition. In the circumstances, of the case, we would be justified in mulcting the appellant with costs in the appeal. Even so we think we should give an opportunity to the appellant to realise his mistake and feel contrite for his reproachable conduct especially when he has chosen to be a counsel in his own cause and has not had the benefit of advice from competent legal minds.

18. In *Conscientious Group v. Union of India* 1987 S. C. C. (Supp.) 170, the Supreme Court has held that every one is entitled to criticise the judgment of the court, but no one should attack the judges, who delivered the judgment, as that denigrates the judicial institution and in the long term impairs the democratic process.

19. In *M.B. Sanghi, Adv. Vs. High Court of Punjab and Haryana and others*, , the court found that an attack on the Subordinate Judge was made in a statement, which was disparaging in character and derogatory to his dignity and would vitally shake the confidence of public in him and that the assertions made by the appellant had the effect of scandalizing the court in such a way as to create distrust in the people's mind and impair confidence of the people in court. The court also held that the apology, which was tendered by the appellant should not be accepted, as it was not the first occasion, in which proceedings for contempt of court had been initiated against him. It was found that the appellant was addicted to using contemptuous language and making scurrilous attacks on Judges. The court further said:

Having regard to the fact that incidents of insubordination and use of improper language towards the Judges are on the increase the High Court was of the view that the appellant could not be allowed to get away by simply feeling sorry by "way of apology as the easiest way. I am unable to say that the High Court was not justified in taking this view. Taking into consideration the facts and circumstances of the case and the fact that the appellant, a fairly senior Advocate is prone to use disparaging and contemptuous remarks against Judges, I am of the opinion that this is not a case in which the apology tendered by the appellant may be accepted.

20. In *Mohd. Zahir Khan Vs. Vijai Singh and others*, , the court pointed out that the exercise of jurisdiction of contempt of court is in fact a painful duty which the

Court is called upon to perform not because of any allegation, directed against a Judge or Judges of the Supreme Court or to vindicate personal honour, but to maintain the dignity and decorum of the Court. The Court proceeded to say,

In view of the above, we come to the conclusion that the contemner is guilty of contempt. He deliberately used insulting language to overawe the Court with a view to securing a favourable order. Of late, this type of behaviour by litigants appearing in person is on the increase. Such litigants carry the wrong notion that by such behaviour a favourable order can be extracted. If such an impression is gaining ground it needs to be removed at the earliest. As stated earlier, it is a painful duty which we are called upon to "perform, more so because the contemner had no valid or good reason for the manner in which he behaved in this Court. Even the order, which we were passing was an innocuous one; Such behaviour and utterances cannot be tolerated as it undermines the court's prestige and dignity and affects the working of the court as it vitiates the atmosphere in which the court normally functions. It has a direct impact on the Court's independence, dignity and decorum. To protect the administration of public justice, we are constrained to take action as his conduct and utterances cannot be ignored or pardoned. As stated earlier, he does not regret his action, on the contrary he has filed a written reply which is not only defiant but adds insult to injury and dares the court to send him to jail. However, notwithstanding his conduct and behaviour, we do not desire to be harsh with him but at the same time, as stated earlier, we cannot overlook his unbecoming conduct and the use of insulting language.

21. In *Pritam Pal Vs. High Court of Madhya Pradesh, Jabalpur through Registrar, ,* an Advocate practising in a High Court, after having failed to wrench a decision in his favour in his own cause, which he prosecuted as party in person, has escalatigly scandalised the court by making libellous allegations against the sitting Judges of that High Court which are scurrilous, highly offensive, vicious, intimidatory, malicious and beyond condonable limit, amounts to a flagrant onslaught on the independence of the judiciary destructive of the orderly administration of justice and a challenge to the supremacy of the Rule of Law. The court found that the person concerned did not think it necessary to apologise nor express any contrition or had repented for the vicious allegations made against the learned Judges of the High Court by him, but, on the other hand, he exhibited a dogged determination to pursue the matter, come what may, and a reading of his memorandum of grounds and the written and signed arguments show that he had ventured into another bout of allegations against the High Court Judges and persisted in his campaign of vilification and his conduct aggravated, rather than mitigating his offence. In the case on hand also, we find that the respondent had chosen to aggravate the contempt by her dogged determination to pursue the matter, come what may, rather repent for her vicious allegations, and express any contrition.

22. In *R.J. Mehta v. State of Maharashtra* (1994) 2 S. C. C. (Supp.) 503, the

court held that apology is not a weapon of defence to purge the guilt of contempt of court and under all circumstances, it can be allowed and to be ignored even in special circumstances. Depending on the circumstances of the case, the court would not be bound to act, as in that case.

23. In the present case, there was no apology at any point of time and on the other hand, the respondent chose to aggravate her conduct by filing an affidavit and a petition, as stated already.

24. In the course of her arguments, the respondent urged that the decisions referred to above, do not have any bearing in the present case. According to her, in all those cases, conduct was proved and the court had to consider whether the person concerned was to be punished. In this case, according to her, there is no intention whatever on her part to disrespect the court and in the absence of any intention to disrespect the court, the court cannot punish her for contempt. It is also said that the language used by her in the memorandum of grounds is very decent and her memorandum of grounds of appeal and her petitions are based only on truth. According to her, she is only keen on insisting on the truth and nothing else. She also stated that she had filed about 15 cases in this Court, of which, 10 have already been dismissed in limine even at the stage of admission and the remaining cases are pending. She added that the staff in the posting section in the High Court are harassing her and the Hon'ble Chief Justice failed to consider her complaint against the staff.

25. She has stated that she is a Post Graduate, having passed M.A. (Sociology) and that she is carrying on business in flat promotion. In her opinion, her husband has no common sense. She said that she had approached hundred Advocates, but none of them was giving her correct advice.

26. Taking into consideration all these facts and circumstances, we are of the view that the respondent is only playing the role of "SHIKANDI" of Mahabharath. Obviously, there is somebody behind her instigating her to file these petitions and that coward does not have the courage to come before the court and answer the questions put by the court. In fact, we find that the language used in the affidavit filed by her as well as the memorandum of grounds of appeal discloses that they should have been drawn only by someone having the knowledge of courts and the procedure adopted. The affidavit filed by her in the petition (C.M.P.) has been attested by an Advocate, who had taken care not to sign his name legibly nor has he chosen to give his name in block letters. The number of Law Chambers given therein is also not clear. It is not possible to identify him from the details available in the affidavit.

27. In spite of our telling the respondent yesterday that orders will be pronounced to-day and that she must be present in Court at 2.15 p.m. to-day, she has chosen to remain absent. Probably, she is advised to be absent by someone, so that, if she is sentenced to imprisonment she could avoid the same.

28. Taking into account all aspects of the case, we are of the view that the

respondent deserves punishment.

29. As it has been held by the Supreme Court that the normal rule is to impose a fine and sentence of imprisonment is only an exception (vide Smt. Pushpaben and Another Vs. Narandas V. Badiani and Another, , we impose a fine of Rs. 2,000 (Rs. two thousand only) on the respondent, which is the maximum prescribed by the section in the Act to be paid by her on or before 23.1.1995 in the office of this Court and in default of payment of fine within the time prescribed above, the respondent shall undergo simple imprisonment for a period of two weeks. The contempt notice is disposed of accordingly.

30. Before parting with the case, we wish to place on record our deep sense of gratitude and appreciation to Shri S. Gopalratnam, Senior Advocate, who appeared as amicus curiae and helped this Court considerably in ascertaining the correct position of law by referring to all the relevant rulings on the subject.