
(1996) 04 AP CK 0027

In the Andhra Pradesh High Court

Case No : Contempt Case No. 676 of 1994

The Advocate-general, Andhra Pradesh, Hyderabad

APPELLANT

Vs

A. Gopal alias Gopala Menon

RESPONDENT

Date of Decision : 02-04-1996

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 480, 482, 484
Penal Code, 1860 (IPC) — Section 175, 178, 179, 180, 228

Citation : (1996) 1 ALD(Cri) 517 : (1996) 2 ALT 70 : (1996) 2 APLJ 109 :
(1996) 1 APLJ 109 : (1996) CriLJ 3724

Hon'ble Judges : S. Parvatha Rao, J; Krishna Saran Shrivastav, J

Bench : Division Bench

Advocate : The A.G, for the Appellant; S.R. Sanku, for the Respondent

Judgement

S. Parvatha Rao, J.—This is a case of criminal contempt against the respondent, Dr. A. Gopal, on a motion made by the learned Advocate General by way of a petition dated 12-7-1994 supported by an affidavit of a section officer in the office of the Advocate General. Congizance was taken by a Division Bench of this Court on 21-12-1994 and notice to the respondent for his presence on 30-1-1995 was ordered. Notice in Form 1 u/s 17 of the Contempt of Courts Act, 1971 ("the Act" for short) read with Rule 18 of the Contempt of Courts Rules, 1980 made by the High Court of Andhra Pradesh ("the Rules" for short) was served on him personally with a copy of the petitioner and the affidavit in support of it.

2. The respondent appeared in person on 30-1-1995 and requested two weeks time for filing counter. He gave his counter dated 16-2-1995 praying for the dismissal of the contempt case "as it suffers with laches and hit by Sections 4 - 6 and Rule 9 sub-Rule (4)." The counter is not supported by any affidavit as required by Rule 22 of the Rules.

3. The facts forming the backdrop for this contempt case are as follows : One Mohd. Mumtaz Taher Khan sought eviction of A. Narayana Menon from premises

bearing Municipal No. 2-1-586 (Block No. B37/F. 1) situated at Vigyanapuri Colony, Vidyanagar, Hyderabad ("the tenanted premises" for short) under Sections 10(2)(i) and 10(3)(1)(a)(i) of the Andhra Pradesh Buildings (Lease, rent and Eviction) Control Act, 1960 by way of an eviction petition numbered as R.C. No. 167 of 1988 before the II Additional Rent Controller, Hyderabad. Mohd. Mumtaz Taher Khan claimed that he purchased the tenanted premises from its owner Mohd. Salauddin under a registered sale deed dated 24-10-1987 and that his vendor attorned the tenancy of Narayana Menon in his favour by issuing letter dated 24-10-1987 calling upon him to pay the rents from 1-11-1987 to Mohd. Mumtaz Taher Khan. Eviction was sought on the grounds of bona fide personal requirement and wilful default in the payment of rents. After detailed consideration of the matter, the Rent Controller in his order dated 24-2-1992 found that wilful default was not made out, but upheld the plea of bona fide requirement and in the result allowed the petition and directed Narayana Menon to be evicted giving two months time to him for vacating the tenanted premises. Narayana Menon preferred appeal R.A. No. 162 of 1992 before the Chief Judge, City Small Causes Court, Hyderabad and the said appeal was dismissed by the Chief Judge by order dated 23-4-1993 granting three months time for vacating. Questioning the said order Narayana Menon preferred C.R.P. No. 2427 of 1993 and the same was dismissed by J. Esawara Prasad, J. at the admission stage by order dated 30-7-1993 however granting three months time for vacating the tenanted premises. Thereafter he preferred Review Civil Miscellaneous Petition No. 13616 of 1993 in that C.R.P. for reviewing the order dated 30-7-1993 on the ground that he secured two documents to show that Mohd. Mumtaz Taher Khan was owner of another building and that he did not bona fide require the tenanted premises for personal occupation. J. Esawara Prasad, J. dismissed the same by order dated 24-9-1993 extending the time granted for vacating the tenanted premises up to 30-11-1993 observing that the documents sought to be relied upon did not form part of the record and that there was no petition for receiving the additional evidence and that under those circumstances no grounds were made out for interference with the earlier order dismissing the revision petition. Narayana Menon moved the Supreme Court by way of Petitions for Special Leave to Appeal (Civil) No. 16688-89/93 questioning the orders of this Court dated 30-7-1993 and 24-9-1993 in C.R.P. No. 2427 of 1993 and Review C.M.P. No. 13616 of 1993 respectively and the same were dismissed on 26-11-1993 staying the execution and operation of the eviction decree for a period of six months from that day subject to usual undertaking being given within three weeks. By that date Narayana Menon instituted a civil suit O.S. No. 1213 of 1993 before the learned V Additional Judge, City Civil Court, Hyderabad for declaration of his title and ownership in the tenanted premises. He filed undertaking dated 9-12-1993 before the Supreme Court stating, inter alia, that he would abide by the orders dated 26-11-1993 passed by the Supreme Court and that the said undertaking was given by him "without any prejudice to the rights adhered to the O.S. No. 1213/93 pending before the V Additional Judge, City Civil Court, Hyderabad for declaration of title and ownership." Even thereafter Narayana Menon did not

vacate the premises. Narayana Menon was finally evicted from the tenanted premises on 6-6-1994 in execution of the decree for eviction.

4. It has also to be noticed that in the appeal R.A. No. 162 of 1992 before the Chief Judge, City Small Causes Court, Hyderabad, I.A. No. 428 of 1993 was filed praying that certain documents may be received as additional evidence in the interests of justice. That I.A. was supported by an affidavit dated 15-3-1993 of Dr. Gopala Menon, the respondent herein. In the said affidavit the respondent herein stated that R.C. No. 167 of 1988 was filed for his eviction. without stating how he was related to or connected with Narayana Menon, who was in fact described as the petitioner in the said I.A. and appellant in R.A. No. 162 of 1992 and respondent in R.C. No. 167 of 1988. That petition was dismissed by the learned Chief Judge, City Small Causes Court on 23-4-1993, observing that the documents filed were "not essential in effectual adjudication of the matter" i.e. on the same day when he dismissed R.A. No. 162 of 1992.

5. The affidavit in support of the present contempt petition adverts to four incidents as giving rise to the initiation of the present contempt proceedings :

The first incident was on 20-7-1993. The respondent met the Chief Judge, City Small Causes Court at Hyderabad in his Chambers and complained that his application for certified copy of judgment in R.A. No. 162 of 1992 was returned by the Superintendent of the Copying Section and accused him of corruption. He declined to give a complaint in writing. While he was with the Chief Judge, the Superintendent of the Copying Section came into the Chambers. On being questioned, he stated that the respondent herein was a third-party to those proceedings and when asked to give a third-party affidavit as per procedure therefor, the respondent declined and came to the Chief Judge to complain. What happened thereafter, is stated as follows :

"When the learned Judge asked the respondent-contemnor why he did not give the requisite third party affidavit, he went on brow-beating the learned Judge stating that Hon"ble Mr. Justice Sivaraman Nair is his relation and friend, that the Acting Chief Justice Sri Lakshmana Rao is also his good friend, and that number of other High Court Judges also are his good friends and saying that he knows how to deal with the matter.

He suddenly turned against the learned Chief Judge himself stating that he dismissed the Rent Control Appeal in R.A. No. 162 of 1992 on his file on extraneous considerations, without properly and correctly appreciating the evidence, and further stated that an important I.A. No. 428 of 1993 filed to receive a crucial document in the case which was hoped to turn the scales in favour of the tenant-appellant therein was rejected without receiving the same as additional evidence. When the respondent-contemnor thus threw aspersions against the learned Chief Judge, the respondent-contemnor was asked to go out, as it was not even known how he is interested in that litigation. Thereupon, the respondent-contemnor frowned upon the learned Chief Judge, City Small Causes

Court, Hyderabad and left the place angrily, in the presence of other staff members of the Court

Those facts are stated in the report of the Chief Judge, City Small Causes Court, Hyderabad dated 9-2-1994, wherein the Chief Judge felt that on the facts stated it was a fit case for the High Court to initiate contempt proceedings against the respondent. It is stated that this intimidating and impermissible conduct of the respondent tends to lower the reputation of the Courts in the administration of justice in accordance with law and procedure prescribed therefore and amounts to gross contempt of Court.

The second incident is the respondent addressing a letter dated 28-12-1993 to the Chief Justice, Andhra Pradesh High Court, for permission to meet him in person and present a petition before him "on the mal-administration and corrupt practices of Chief Judge, Small Causes Court, Hyderabad" and alleging as follows :

"He has refused to the facts of the case. The Registrar, High Court declined to do anything : The Chief Judge and his Bench Clerk allowed forged sale deed in case No. 162/67 and helped to obtain a fraud eviction order."

The third incident is that on 28-12-1993 the respondent addressed letters to the Chief Judge, City Small Causes Court and the Chief Judge, City Civil Court alleging, inter alia, as follows :

"I wish to bring it to your kind notice that Shri Mumtaz Taher Khan, respondent in case, R.A. 162/92 disposed of on less than a year by Chief Judge, Small Causes Court on 24-4-1993 without proper examination of some vital documents filed by both the parties in the above case. The Chief Judge ignored these documents filed in I.A. 428/93 in R.A. 162/92 "not essential in the factual adjudication of the case".

It is submitted before you that counsel for the petitioner Mr. S. A. Quddus and counsel for the respondent Mr. Nissar Ahmed joined hands and misled this Court by marking this documents as unmarked

It may be appreciated that both the counsels managed the Court and got favoured the respondent in the case. Kindly examine the judgment order passed by the Chief Judge on 24-4-1993 with the document :

xxx xxx xxx xxx

The above documents are very vital in nature and the Court has to examine the genuinity of these documents filed by the petitioner and respondent but simply these cannot be classified as unmarked thus cheating the Court to win over to the side.

The respondent in case No. R.A. 162/92 with the help of Mr. S. L. M. Fakri, an employee of R.B.I., Bangalore (over-staying himself for the past four years) to grab property situated at Vigyanpuri gained access to all sections and exercised

considerable influence by misleading the Court and filed several forged documents like sale deed and other official certificates and obtained a fraud eviction order.

xxx xxx xxx xxx

It is requested to both the Courts to kindly scrutinise the above documents and get these examined and rectify the judgment order passed by the Chief Judge, Small Causes Court.

I have also filed a petition before the Chief Justice of High Court to order for Court inquiry against these forged documents of the respondent Shri Mumtaz Taher Khan"

The Fourth incident is addressing of letter dated 27-1-1994 to the Chief Justice by name as follows :

"To Nayanar Sundaram, Chief Justice, Andhra Pradesh High Court, Hyderabad.

Sub : TO LAUNCH HUNGER STRIKE INFRONT OF THE HIGH COURT OF ANDHRA PRADESH TO PROTEST AGAINST THE ATTITUDE OF CHIEF JUSTICE TO ORDER TO PROBE AGAINST THE CHIEF SMALL CAUSES COURT FOR CORRUPT PRACTICES :

Sir,

Having declined to meet me and settle the subject but trying to join hands with corrupt local judicial officials in the case No. R.A. 162/92 Before the Chief Judge, Small Causes Court, while disposing of a rental appeal case he grossly refused to examine some vital documents including ONE FORGED SALE DEED (copies of which available in) my earlier appeal before your office.

The purpose of Govt. of India's decision of posting non local man to head High Court has been misused and defeated.

Therefore I have no other go than to start an HUNGER STRIKE INFRONT OF THE COURT urging the Government of India on :

(a) TO DEPUTE A PARLIAMENTARY PROBE COMMITTEE TO HIGH COURT AND OTHER SUBORDINATE COURT TO CHECK THE CORRUPT PRACTICES OF THE JUDICIARY AND MORE PARTICULARLY the CHIEF JUDGE Small Causes Court Shri A. Venkat Reddy.

(b) ORDER A HIGH LEVEL PROBE COMMITTEE UNDER WHICH Shri A. Venkat Reddy, Chief Judge Small Causes Court in Case No. 162/93 refused to Examine Vital documents including the FORGED SALE DEED and dismissed the case as "documents not essential in factual adjudication of the case" and indulged in corrupt practices and further managed with the HIGH COURT OF ANDHRA PRADESH, wherein the High Court also PRAISED this Chief Judge in CRP 2427/93 in DISMISSING THIS VITAL DOCUMENTS.

(c) Demand immediate suspension of Shri A. Venkat Reddy, Chief Judge, Small Cause Court UNDER SUSPENSION pending ENQUIRY.

I submit the above as a NOTICE to this High Court by allowing ONE WEEKS TIME failing which AN HUNGER STRIKE WILL BE LAUNCHED SEEKING THE IMMEDIATE INTERVENTION OF THE MINISTRY OF LAW AND THE PRIME MINISTER OF INDIA.

Sd/- xxx (A. GOPAL)"

6. It is stated in the contempt petition that the respondent by his false, baseless and scurrilous remarks denigrated the honesty and integrity of a member of subordinate judiciary, i.e., the Chief Judge, City Small Causes Court, Hyderabad and even the Hon'ble Chief Justice of the High Court which had the effect of lowering the prestige and authority of Court, and that the conduct of the respondent amounted to positive interference by a third party with the administration of justice by competent Courts, and that at the interview with the Chief Judge on 20-7-1993 the respondent intimidated a judicial officer alleging oblique motives, and that all these acts constitute gross contempt.

7. In the counter dated 16-2-1995 the respondent states that he is brother of A. Narayana Menon and that his Hindu joint family obtained the tenanted premises in 1960 under a regular rental agreement. He then states how the appeal R.A. 162 of 1992 and I.A. No. 428 of 1993 were disposed of by the Chief Judge, City Small Causes Court. He further alleges as follows :

"Thus the Appellate Court (the Chief Judge, City Small Causes Court) failed to see the facts in rendering justice in the name of justice and fair play but continued to collude with the adverse party perpetrating fraud throughout by misrepresenting the facts, tampering the Court documents, cheating the Registration office, filing forged documents, incorporating false declaration; mischievous deposition, suppressing information and played fraud upon the Court and obtained orders to deprive our property.

..... It is necessary to point out the order copy of II Addl. Rent Controller in R.C. 167/88 dt. 24-2-1992 page (10) and compare with order of Chief Judge Small Court R.A. 162/93 (92 ?) dt. 24(23 ?)-4-1993 (p. 8) Circumstantial evidence prove beyond doubt that the Honorable Courts erroneously repeated the same version changing some words thus colluded with the adverse party in dismissing our valuable rights. The High Court in the revisional orders confirmed the lower Courts finding and ordered eviction."

The respondent contends that the contempt proceedings based on the incident that occurred on 20-7-1993 is barred by limitation. He also contends that the letter addressed to Chief Judge, City Small Causes Court, dated 28-12-1993 (the date of this letter does not seem to be 23-12-1993 as stated by him in his counter) has no scandalous or intimidating remarks as may be read and that "at best it was a grievance representation to Chief Judge, to rectify the errors and irregularities committed by him. In his order R.A. 167/92 dated 24-4-1993" - it is

actually order in R.A. No. 162 of 1992 dated 23-4-1993. He also contends that the letters to the Chief Judge, City Small Causes Court, Chief Judge, City Civil Court and to the Chief Justice of High Court of Andhra Pradesh amount to "overall appraisal of the order of two lower Courts, IInd Addl. Rent Controller and the Appellate Court, Chief Judge Small Causes Court, where a positive and constructive criticism in good faith which are covered under Sections 4 and 5 of CC Act 1971 ". He relies on Section 6 of the Act. He further states as follows :

"Even if the alleged letter dt. 23-7-1993 (28-12-1993 ?) addressed to Chief Judge is objected to the Chief Judge, would have acted upon as per the provision laid down u/s 9 sub (4) (Rule 9(4) of the Rules ?) by holding preliminary enquiry and issuing show cause notice. No enquiry is conducted and no show cause notice issued which would have made the Chief Judge to rectify his error in the order. But he has furnished false information in para 5 and 6 of the Affidavit which is nothing but a cock and bull story"

8. Reply affidavit dated 14-11-1995 was given by Sri K. Padmanabhan, Section Officer in the office of the Advocate General. He submits that the contempt case was admitted within the limitation period and reiterates that the respondent was not a party to the proceedings in R.C. No. 167 of 1988 and that his conduct is an interference by a third-party with the due administration of justice by competent Courts. He states that the respondent has justified his action and has not given any unconditional apology and has not regretted for his actions.

9. In the counter dated 16-2-1995 the respondent did not specifically advert to his letters dated 28-12-1993 and 27-1-1994 addressed to the Chief Justice of the High Court. When the contempt case came up for hearing on 22-11-1995, the respondent explained that he did not advert to the same because when he gave his counter he did not have copies of those letters and other material papers filed in the contempt case and that he received those papers only in July, 1995. He in fact received them on 28-6-1995. We gave him time to file a full and complete counter affidavit meeting all the allegations made against him in the contempt case, if he so desired. As he was appearing in person, we suggested to him that he may engage a counsel to represent him and to present his case. Thereafter he filed the so-called comprehensive counter-affidavit dated 5-12-1995 signing only on the last page and without any attestation as required by Rule 29 of the Rules. In that he reiterates the contentions raised by him in his earlier counter dated 16-2-1995. He states :

"The Supreme Court without application of mind confirmed the orders of IInd Addl. Rent Controller and High Court order in CRP and review CRP ignored all our submission made in SLP 16688/94."

Then referring to CRP No. 2427 of 1993 he states as follows :

"The counsel for adverse party Sri R. Subash Reddy and Raghveer Reddy. Advocates, notorious in managing things in Court manipulated the Registry and posted the matter before Justice Eswar Prasad, sitting in 9th Court, although it

was not posted before his bench (see Cause list dt. 30-7-1993) who summarily dismissed without asking for a counter from the adverse party. It is prima facie case wherein the Judge's son practising Lawyer colluded with the counsel R. Subash Reddy. Even the Review CRP 13616/93, inspite of our appeal before the Registrar (Judicial) not to post the review matter before Justice Eswar Prasad which resulted in aforesaid para 5(C) above that there is miscarriage of justice."

As regards his letter dated 27-1-1994 addressed to the Chief Justice of the High Court, he states as follows :

"His Lordship Chief Justice immediately acted upon my Grievance Representation dated 27-1-1994 and sought the explanation of the Chief Judge, Small Causes Court vide DO. No. 61/94-B. Spl. (SC) dt. 7-2-1994. In less than two days his reply No. DO. 4/94, the Chief Judge has furnished false, baseless and mischievous allegation against the respondent not expected from the subordinate Judicial Officer of Rank of District Judge. Callous and irresponsible behaviour on the part of lower Judicial Officer does not go unpunished u/s 219, I.P.C."

The respondent then enumerates what he considers as irresponsible behaviour of the Chief Judge. He alleges :

"16. The Honourable High Court represented by the Registrar (Adn) instead of making a follow up action and careful examination and scrutiny of the matter and placing the Chief Judge under suspension pending enquiry. He has handed over the records to Advocate General to file contempt case against the Respondent by supporting the invalid reasons of Chief Judge, by violation of various provisions of law.

The irresponsibility and negligence on the part of the Registrar (Adn) in filing the suo motu contempt caused the petitioner physical and mental agony.

17. Both the Chief Judge and Registrar (Adn) High Court are squarely responsible for placing the Respondent in physical and mental agony. Both are liable to be punished u/s 16 of C.C. Act correspondingly read with Sections 19, 21 and 219, I.P.C. The petitioner will be filing a Civil suit in appropriate Court claiming damages for physical and mental agony and the Honourable Court may award cost under Rule 34 of C.C. Act, 71."

He contends that the Advocate General did not follow the proper procedure in filing the present contempt case. Firstly, the affidavit filed in support of the contempt case was given by the Section Officer and attested by "P.A. to Advocate General" and not by the Advocate General and therefore is invalid in the eye of law. Secondly, the material papers were not filed along with the contempt case as required by R. 11 of the Rules; contempt case was presented on 12-7-1994 and material papers were filed on 1-11-1994. He also complains that the Advocate General did not place the entire records before the Court to decide the matter and that he filed the contempt case suo motu without complying with the

requirements of the Act and the Rules.

10. On 7-12-1995 we heard the learned Advocate General. The respondent was not represented by any counsel. On his request for time, while adjourning the matter to 19-12-1995, we observed, inter alia, as follows :

"The respondent states that in view of the number of decisions cited today, he would like to have time to go through the same and make his submissions. We once again suggested to him that it would be better for him to engage a counsel of his choice. We enquired about his present position. He states that he is now employed as Assistant Professor in the Centre for Regional Studies, which according to him, is a Unit in the Central University. He states that he is working under the Director of the said Centre, Professor M. L. K. Murthy. He also states that he has been working as Assistant Professor in the said Centre since 1984 and that prior to that, in 1980 he was posted in the said Centre as Scientist on deputation from CSIR, i.e., Council for Scientific and Industrial Research. He states that he was awarded a Ph.D. by the Osmania University and that he worked for that degree between 1973-77 and that his guide was Professor N. S. Iyengar, who was then the Dean of Economics. He also states that from 1977 to 1980 he worked as Assistant Professor in Loyala College at Madras. We apprised him that in the event we are inclined to hold that he committed contempt, we may impose sentence which may be imprisonment or fine or reprimand and in that event, his career may be affected and that he would have to keep in view the seriousness of the situation in which he is placed and in the circumstances, he would better engage a counsel of his choice to conduct the case. At his request, the matter is being posted to 19-12-1995 finally. We also made it clear to him that in the event he engages a counsel, he would have to make it very clear to the learned counsel that the matter will be definitely be taken up on 19-12-1995 and that we would not be granting any adjournment."

11. On 19-12-1995 Mr. S. R. Sanku, the learned counsel appearing for the respondent, took time for filing a detailed additional counter-affidavit. Thereafter, the respondent gave an additional counter-affidavit dated 21-12-1995 wherein he submits that in the notice dated 21-12-1994 issued to him under Rule 18 of the Rules, he was asked to answer only one alleged act of contempt said to have been committed by him on 20-7-1993 and no other, and that, therefore, the said notice is hit by S. 20 of the Act which prohibits initiation of a contempt case after the expiry of a period of one year from the date on which the contempt is alleged to have been committed. Next he submits that the contempt case is hit by another grave and incurable irregularity as well as illegality by reason of violation of Rule 9(4) of the Rules according to which, a subordinate court should, before making reference, hold a preliminary enquiry by issuing a show-cause notice to the contemnor and after hearing him should write a concise reasoned order of reference about the alleged contempt, which was not done in the present case. He also submits that the procedure under S. 17 was not followed after cognizance was taken in the present case. He submits that as the notice issued

to him in Form 1 under Rule 18 only referred to the incident of 20-7-1993 in the Chambers of the Chief Judge, City Small Causes Court and has not referred to the subsequent incidents, those cannot be dealt with in the present contempt case. He then expressed his faith in the judiciary and prays that the contempt case may be closed.

12. Thereafter the counsel for the respondent took time and by the time the matter came up for final disposal on 14-3-1996, without leave of the Court, he filed an affidavit dated 9-3-1996, inter alia, stating as follows :

"I submit that it is because of my convictions about judiciary that I felt that something went wrong in the City Small Causes Court. I felt thoroughly agitated. I submit that, because of my urge for highest standards in judiciary and because of my zeal which may be a mistaken public zeal, I gave vent to my feelings by addressing letters to the Hon'ble Chief Justice of Andhra Pradesh, which are certainly not for the reasons as tried to be projected in the affidavit filed by the learned Advocate General dt. 12-7-94. I never intended to threaten this Hon'ble Court, the gigantic constitutional institution of law. What all I did I merely did by way of writing letters peacefully but not ostensibly without allowing any body to have access to them and avoiding any type of malignant campaign against judicature.

I therefore regret very much for my spontaneous but genuine pouring out of my heart-felt and sincere feelings through my letters addressed to this Hon'ble Court which have become the subject matter of the contempt against me. In addition to what all I respectfully submitted in my counter affidavit dated 21-12-95, I do hereby tender my heart-felt regrets and unconditional apologies to this Hon'ble Court for hurting the feelings of this Hon'ble Court. I therefore pray this Hon'ble Court to exonerate me from the present contempt case No. 676 of 1994, by treating this affidavit as its part and parcel."

We will deal with this apology and regret for the so-called spontaneous out-pouring a little later.

13. We do not find any substance in the contention of the respondent that the contempt case is not maintainable because the petition is not supported by an affidavit of the Advocate General but only by that of a Section Officer in the office of the Advocate General "on the basis of the records furnished by the High Court of A.P." Exactly similar contentions were rejected by two Division Benches of this Court - one in Advocate General v. R. Subba Rao (1989) 1 ALT 55 and another in Advocate General v. Rama Krishna Reddy (1994) 3 ALT 367.

14. The main contention of the learned counsel for the respondent is that so far as the contempt case based on the first incident of 20-7-1993 is concerned, it is barred by time because cognizance was admittedly taken only on 21-12-1994, i.e., after the expiry of a period of one year from the date on which the alleged contempt was committed. We find that this objection is well taken because S. 20 of the Act clearly provides that "no Court shall initiate any proceedings of

contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed." The meaning of the words "initiate any proceedings of contempt" has been considered earlier by this Court and several other High Courts. Following the judgments of the Supreme Court in *Baradakanta Mishra Vs. Justice Gatikrushna Misra*, Chief Justice of the Orissa High Court, and *Purshotam Dass Goel Vs. Hon"ble Mr. B.S. Dhillon and Others*, , a learned single Judge of this Court in *Advocate General, A.P. v. A. V. Koteswara Rao* (1984) 1 ALT 69 : (1984 Cri LJ 1171) held that "initiation of a contempt proceeding is the time when the court applied its mind to the allegations in the petition and decides to direct, under S. 17 the alleged contemner to show cause why he should not be punished" and that "the date of filing of the petition is not the date of initiation of a contempt proceeding". This view has been upheld by a Division Bench of this Court in *Kishan Singh Vs. Honourable Mr. T. Anjaiah, Chief Minister and Others*, and has been confirmed by another Division Bench of this Court in *C.V.L. Subrahmahyam Vs. K. Venkateshwarlu and Others*, after considering the matter in greater detail, and by yet another Division Bench of this Court in *S.J.G.M. High School Vs. The Director of School Education Government of Andhra Pradesh and Others*, : wherein it has been further held that a mere direction for "notice before admission" will not tantamount to initiation of proceedings within the meaning of S. 20 of the Act. Therefore, mere presentation of a contempt petition on 12-7-1994 one year before the date of 20-7-1993, the date of the first incident, does no save limitation.

15. But, this bar of limitation under S. 20 of the Act is not attracted to the remaining three incidents referred to earlier. As regards these three incidents, the learned counsel for the respondent advances an ingenious argument based on the notice dated 21-12-1994 in Form 1 issued to the respondent under Rule 18 of the Rules. He contends that in the said notice no reference whatsoever was made to the other three incidents and therefore the contempt case cannot be proceeded with in respect of those incidents. We do not find any substance in this contention. The counsel is not right in saying that the said notice does not make any reference to the other three incidents. The relevant portion of the notice reads as follows :

"Whereas your attendance is necessary to answer the charge of Contempt of Court, viz., making scandalous and scurrilous allegations which tend to lower the prestige and authority of Courts, i.e., both the Courts of Chief Judge, City Small Causes Court, Hyderabad as well as the High Court and causing intimidation of a Judicial Office, purposely indulging in with oblique motives when the contemnor met the Chief Judge, City Small Causes Court, Hyderabad in his chambers on 20-7-1993."

It will be noticed that the first portion of the charge specifically refers to making of scandalous and scurrilous allegations which tend to lower the prestige and authority of the Court of Chief Judge, City Small Causes Court, Hyderabad as well

as the High Court - this obviously is in respect of the other three incidents of 28-12-1993 and 27-1-1994 : the second and fourth incidents of 28-12-1993 and 27-1-1994 relate to addressing of letters to the Chief Justice of the High Court of Andhra Pradesh; and the third incident relates to addressing of letter dated 28-12-1993 to the Chief Judge, City Small Causes Court and the Chief Judge, City Civil Court, Hyderabad. Moreover, a copy of the contempt petition together with the affidavit in support of it were received by the respondent along with the said notice. Admittedly, all the material papers were also received by him subsequently on 28-6-1995. It cannot be said that the respondent did not have full notice of all the facts mentioned in the contempt petition and the affidavit in support of it. Thus, the petitioner had ample notice and opportunity to meet the case against him as made out in the contempt petition. The essence of the matter is whether the respondent has notice of the case against him and whether he is given reasonable and fair opportunity to meet the same. This is not a case of contempt in the face of the High Court committed in its presence or hearing and therefore S. 14 of the Act is not attracted to the facts of the present case. This is a case which has arisen on a motion made by the Advocate General under S. 15 of the Act. Section 17 of the Act requires that notice of every proceeding shall be served personally on the person charged and that it shall be accompanied "in the case of proceedings commenced on a motion, by a copy of the motion as also copies of the affidavits, if any, on which such motion is founded". There is no mention of any material papers in this. Rule 18 of the Rules mentions that notice of every contempt case shall be in Form 1 and "shall be accompanied by one set of all papers filed in the case and the said notice with all enclosures shall be served personally on the alleged contemner, unless the court otherwise directs for reasons to be recorded". We are of the view that Section 17 and Rule 18 are procedural - the heading of Section 17 itself is "procedure after cognizance". When there is substantial compliance with these procedural requirements, the respondent can have no grievance. In the present case the respondent has been given full and fair opportunity to meet the contempt case made against him and he cannot have any complaint in that regard. As laid down by the Supreme Court in *Sukhdev Singh v. Teja Singh*, C.J. AIR 1954 SC 186 : (1954 Cri LJ 460), "All that is necessary is that the procedure is fair and that the contemner is made aware of the charge against him and given a fair and reasonable opportunity to defend himself". In *Pritam Pal Vs. High Court of Madhya Pradesh, Jabalpur through Registrar*, the Supreme Court held that the contentions raised by the appellant before it challenging the procedure followed by the High Court "do not merit any consideration since the appellant has been served with a notice of contempt and thereafter permitted to go through the records and finally has been afforded a fair opportunity of putting forth his explanation for the charge levelled against him".

16. The contention of the learned counsel for the respondent that sub-rule (4) of Rule 9 of the Rules was not followed and therefore the contempt case is liable to be dismissed as misconceived. As already pointed out by us, the present

contempt case is on a motion made by the Advocate General under S. 15 of the Act. Sub-section (2) of S. 15 provides that "in the case of any criminal contempt of a subordinate court, the High Court may take action on a reference made to it by the subordinate court or on a motion made by the Advocate General" Thus, High Court may take action in the case of any criminal contempt of a subordinate court not merely on a reference made by the subordinate court but also on a motion made by the Advocate General. In the present case action is taken on a motion made by the Advocate General and not on a reference made by any subordinate court. In such a case, sub-rule (4) of Rule 9 is not attracted.

17. The contention of the learned counsel for the respondent based on the proviso to S. 10 of the Act is also without any merit. The proviso states that "no High Court shall take cognizance of a contempt alleged to have been committed in respect of a court subordinate to it where such contempt is an offence punishable under the Indian Penal Code". The learned counsel is unable to state how the contempt alleged against the respondent in the present case is an offence punishable as contempt under the Indian Penal Code. Exactly similar provision in S. 2(3) of the Contempt of Courts Act, 1926 was considered by a Constitution Bench of the Supreme Court in *Bathina Ramakrishna Reddy Vs. The State of Madras*, . The Supreme Court held in that case that that provision excluded the jurisdiction of the High Court only in cases where the acts alleged to constitute contempt of a subordinate court were punishable as contempt under specific provisions of the Indian Penal Code but not where these acts merely amounted to offences of other description for which punishment had been provided for in the Indian Penal Code. The Supreme Court further held in that case as follows (para 9) :

"What these cases are, need not be exhaustively determined for purposes of the present case, but some light is undoubtedly thrown upon this matter by the provision of S. 480, Criminal Procedure Code, 1898 (S. 345 of the Code of Criminal Procedure, 1973), which empowers any civil, criminal or revenue Court to punish summarily a person who is found guilty of committing any offence under Ss. 175, 178, 179, 180 or S. 228, Penal Code in the view or presence of the Court" Offences under Ss. 175, 178, 179, 180 may also, as S. 480, Criminal Procedure Code shows, amount to contempt of Court if the "public servant" referred to in these sections happens to be a judicial officer in a particular case. It is well known that the aim of the contempt proceeding is "to deter men from offering any indignities to a Court of Justice" and an essential feature of the proceeding is the exercise of a summary power by the Court itself in regard to the delinquent. In the cases mentioned in S. 480, Criminal Procedure Code, the Court has been expressly given summary powers to punish a person who is guilty of offending its dignity in the manner indicated in the section. The Court is competent also under S. 482, Criminal Procedure Code to forward any case of this description to a Magistrate having jurisdiction to try it, if it considers that the offender deserves a higher punishment than what can be inflicted under S. 480. Again the Court is entitled under S. 484, to discharge the offender on his

submitting an apology, although it has already adjudged him to punishment under S. 480 or forward his case for trial under S. 482. The mode of purging contempt by tendering apology is a further characteristic of a contempt proceeding. It seems, therefore, that there are offences which are punishable as contempt under the Indian Penal Code and as subordinate Courts can sufficiently vindicate their dignity under the provisions of criminal law in such cases the legislature deemed it proper to exclude them from the jurisdiction of the High Court under S. 2(3), Contempt of Courts Act, but it would not be correct to say that the High Court's jurisdiction is excluded even in cases where the act complained of, which is alleged to constitute contempt, is otherwise an offence under the Indian Penal Code."

18. As regards the second, third and fourth incidents, the respondent seeks to defend his action relying on Ss. 6 and 13 of the Act. Section 6 provides that a person shall not be guilty of contempt of court in respect of any statement made by him in good faith concerning the presiding officer of any subordinate court. Section 13 provides that notwithstanding anything contained in any law for the time being in force, no court shall impose a sentence under the Act for a contempt of court unless it is satisfied that the contempt is of such a nature that it substantially interferes, or tends substantially to interfere with the due course of justice. As regards complaints against presiding officers and judicial officers in general the law has been clarified by a five Judges Bench of the Supreme Court in *Brahma Prakash Sharma and Others Vs. The State of Uttar Pradesh*, . The Supreme Court held in that case that allegations made in general terms that certain officers did not state facts correctly when they passed orders and that they were discourteous to the litigant public did not amount to scandalising the court. The Supreme Court further observed as follows (para 19) :

"..... where the question arises as to whether a defamatory statement directed against a Judge is calculated to undermine the confidence of the public in the capacity or integrity of the Judge, or is likely to deflect the court itself from a strict and unhesitant performance of its duties, all the surrounding facts and circumstances under which the statement was made and the degree of publicity that was given to it would undoubtedly be relevant circumstances."

In *Rama Dayal Markarha Vs. State of Madhya Pradesh*, , the Supreme Court held that if the criticism of judicial officers "is likely to interfere with due administration of justice, or undermine the confidence which the public rightly repose in the courts of law as courts of justice, the criticism would cease to be fair and reasonable criticism as contemplated by S. 5 but would scandalise courts and substantially interfere with administration of justice". In *In Re: Roshan Lal Ahuja*, : the Supreme Court held as follows :

"However, when from the criticism a deliberate, motivated and calculated attempt is discernible to bring down the image of the judiciary in the estimation of the public or to impair the administration of justice or tend to bring the administration of justice into disrepute the courts must bestir themselves to

uphold their dignity and the majesty of law. No litigant can be permitted to overstep the limits of fair, bonafide and reasonable criticism of a judgment and bring the courts generally in disrepute or attribute motives to the Judges rendering the judgment. Perversity, calculated to undermine the judicial system and the prestige of the court, cannot be permitted for otherwise the very foundation of the judicial system is bound to be undermined and weakened and that would be bad not only for the preservation of rule of law but also for the independence of judiciary. Liberty of free expression is not to be confused with a licence to make unfounded, unwarranted and irresponsible aspersions against the Judges or the courts in relation to judicial matters. No system of justice can tolerate such an unbridled licence. Of course "justice is not a cloistered virtue; she must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men", but the members of the public have to abolish from imputing improper motives to those taking part in the administration of justice and exercise their right of free criticism without malice or in any way attempting to impair the administration of justice and refrain from making any comment which tends to scandalise the court in relation to judicial matters."

In that case the Supreme Court also observed that "merely because a party chooses to appear in person, it does not give him a licence to indulge in making such aspersions as have the tendency to scandalise the court in relation to judicial matters". A Full Bench of this Court in Advocate General, Andhra Pradesh, Hyderabad Vs. Rachapudi Subba Rao, : observed as follows (at pp. 636-37 of Cri LJ) :

"Any attack on the competence and integrity of a Judge, whether of a superior Court or a subordinate Court, amounts to scandalising the Court itself. If an apprehension is created in the public mind about the integrity, ability or fairness of a Judge, it is a contempt of Court. Affirmatively it need not be proved that there is an interference with the administration of justice. An individual occupying a judicial office cannot be treated apart from his office in respect of the work he does in the Court."

19. Applying the tests laid by the Supreme Court and this Court and examining the allegations made against the Chief Judge, City Small Causes Court and the Chief Justice of the High Court by the respondent in his letters dated 28-12-1993 and 27-1-1994, we find that they are not made in good faith and that they tend to scandalise and lower the authority of the Court and therefore amount to criminal contempt. Allegations of mal-administration and corrupt practices of the Chief Justice and that counsel managed the Court and got a favoured order do tend to bring down the reputation of the Courts. The respondent persisted in that endeavour and also alleged that the Chief Justice of this Court decline to meet him and settle the subject "but trying to join hands with corrupt legal judicial officers" He made general allegations of corrupt practices of judiciary with particular reference to the Chief Judge of Small Causes Court and he demanded

enquiry against the Chief Judge and his immediate suspension and made appeals in that regard to the Ministry of Law and the Prime Minister of India.

20. We are of the view that all these acts amount to criminal contempt under S. 2(c) read with S. 12(1) of the Act.

21. The apology tendered by the respondent at the fag end is not really an apology. We do not find any sincerity in it. In *Mulkh Raj Vs. State of Punjab*, the Supreme Court held that unless the apology is offered at the earliest opportunity and in good grace it is shorn of penitence. Therefore, we are not inclined to accept the so-called apology of the respondent.

22. In the result, we convict the respondent for criminal contempt under S. 2(c) read with S. 12(1) of the Act and sentence him to undergo simple imprisonment of two weeks and to pay a fine of Rs. 1,000/- (Rupees one thousand only), in default simple imprisonment for two weeks. The contempt case is accordingly allowed.

23. Order accordingly.