

(2014) 08 BOM CK 0047

In the Bombay High Court

Case No : Criminal Contempt Petition No. 04 of 2013

U.L. Telgaonkar

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 05-08-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 306, 34
Prisons Act, 1894 — Section 24, 24(2)

Citation : (2014) 3 BomCR(Cri) 649

Hon'ble Judges : S.S. Shinde, J;P.R. Bora, J

Bench : Division Bench

Advocate : R.D. Sanap, Advocate for the Appellant; S.T. Shelke h/f M.M. Neralikar, APP and G.K. Naik Thigale, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

S.S. Shinde, J.—Present Contempt Proceedings are arising out of Reference dated 18/20th April, 2013 by the District Judge-3, Ambajogai to this Court.

(i) As per the contents of said reference, it appears that, on 8th April, 2013, the four accused namely (i) Dhammanand S/o Gangadharrao Munde, (ii) Shakuntalabai @ Sabiya Raosaheb Gode, (iii) Raju s/o. Mukund Munde, and (iv) Sudam @ Sudhakar s/o Mukund Munde, all resident of Parli-Vaijnath were convicted for the offence punishable u/s 306 read with 34 of Indian Penal Code in Sessions Case No. 81/2009. They were sentenced to suffer rigorous imprisonment for ten years and to pay fine of Rs. 1,000/- each, in default, rigorous imprisonment for 15 days. After passing the order of sentence, all the four accused were handed over to Police Head Constable Aniskhan Pathan, Railway Police Station, Parli Vaijnath, Taluka Parli-Vaijnath, Dist. Beed along with conviction warrants with direction to deposit them in the District Prison, Beed.

(ii) PHC Aniskhan Pathan has lodged only three accused in the District Prison, Beed. He has admitted one accused Dhammanand S/o Gangadharrao Munde to the District Hospital, Beed, instead of admitting him in the District Prison, Beed.

(iii) On the next day i.e. on 9/4/2013, said Aniskhan Pathan has reported this fact to the Court by his report. He has misused seal of his superior. He has affixed the seal of Police Sub-Inspector Railway Police Station, Parli-Vajnath below the report and signed himself thereon. His explanation was called as to why he has admitted the convict in to the hospital instead of District Prison, Beed without prior permission. He was also directed to submit treatment papers of convict of the District Hospital, Beed.

(iv) On 12/04/2013, PHC Aniskhan Pathan has submitted his explanation stating that, before admission to Jail, medical examination of convict was necessary. Accordingly, he admitted the convicts in hospital. Explanation given by PHC, Aniskhan Pathan is not satisfactory. PHC Aniskhan Pathan was directed to produce treatment papers of convict from the District Hospital, Beed. He has not produced any treatment papers of convict from the District Hospital, Beed, but he has produced certain medical papers of convict from Government Medical College, Aurangabad. He has also reported that, on 11/04/2013, convict was referred by the District Hospital, Beed to the Medical College, Aurangabad. The convict was shifted from Beed to Aurangabad without permission of the court or intimation to the Jail authority. As treatment papers are not produced before the Court, there was no medical test of the said convict carried out at the District Hospital, Beed. There is well equipped and renowned medical college and hospital available at Ambajogai. Instead of referring the convict to Ambajogai, the convict was referred to Aurangabad i.e. beyond the jurisdiction of Beed District. The activities of concerned Medical officer also doubtful and subject to disciplinary action against him. Referral chit does not bear any date or time when the convict was moved from the District Hospital, Beed. When notice came to be issued to the Police Head Constable Aniskhan Pathan, he has admitted the convict to the District Prison Beed and filed compliance report to the Court on 12/04/2013.

(v) Activities of PHC Aniskhan Pathan amount to Criminal contempt. He has over exercised his official powers to help the convict and helped him to get bail on the ground of sickness and not to suffer conviction order passed by the Court. PHC Aniskhan Pathan was kept the convict out of Jail for four days unauthorizedly and illegally.

(vi) If, such practice is developed then every convict will prefer to admit in the hospital instead of Jail. Hence, the reference for taking cognizance of Criminal Contempt. Necessary action may kindly be taken against all the concerned.

2. This Court on 10th July, 2013, after hearing the counsel appearing for the parties issued notice to Aniskhan Pathan, respondent No. 3, in Form I appended to Chapter XXXIV of the Bombay High Court Appellate Side Rules, 1960 as to why he should not be punished for contempt of the Court, returnable on 7th August, 2013.

3. In pursuant to the notice dated 10th July, 2013, the Respondent No. 3 has

filed his affidavit in reply. The Respondent No. 2 has also filed affidavit in reply.

4. The matter is taken up for final hearing. The learned counsel appearing for the petitioner invited our attention to the various documents placed on record and submits that, the judgment and order of conviction was passed by the District Judge-3, Ambajogai on 8th April, 2013. After passing the order of conviction, the Respondent No. 3 was deputed with conviction warrant to take all four accused namely (i) Dhammanand S/o Gangadharrao Munde, (ii) Shakuntalabai @ Sabiya Raosaheb Gode, (iii) Raju s/o Mukund Munde, and (iv) Sudam @ Sudhakar s/o Mukund Munde in Sessions Case No. 81/2009 to hand over all the accused persons to the Superintendent of District Prison, Beed on the very day. However, on 9th April, 2013, the contemnor did file application before the Sessions Judge, Beed, in the said application, it was mentioned that, the contemnor himself taken accused persons for medical checkup to the Government Hospital, Beed. It was further mentioned that, during the medical checkup, the health of accused Dhammanand was not found well and hence Medical Officer admitted accused Dhammanand in Hospital and rest of three accused were handed over to Superintendent, District Prison, Beed. According to the learned counsel, the act of the contemnor is nothing but trying to help the original accused for getting the bail by facilitating them to stay in the hospital. It is submitted that, the contemnor should have handed over the accused persons to the Superintendent of Jail and on his own he should not have referred them to the Civil Hospital, Beed. The learned counsel invited our attention to section 24(2) of the Prisons Act, 1894 and would submit that, every criminal prisoner shall also, as soon as possible after admission, be examined under the general or special orders of the medical Officer, who shall enter or cause to be entered in a book, to be kept by the Jailer, a record of the state of the prisoner's health, and of any wounds or marks on his person, the class of labour he is fit for if sentenced to rigorous imprisonment, and any observations which the Medical Officer thinks fit to add. Therefore, the learned counsel submitted that, the contemnor has shown disregard by referring the accused to the Civil Hospital, Beed instead of handing over them to the Superintendent of Jail, Beed.

5. The learned counsel appearing for the contemnor invited our attention to the affidavit in reply filed on behalf of the Respondent Nos. 2 and 3 and submitted that, as per routine practice the accused were referred to the Civil Hospital for medical check up. It is submitted that, the accused were taken to the Civil Hospital at Beed for medical examination before their lodgment in prison. It is submitted that, without report of the Medical Officer, it is practice that the Jail authorities would not accept the convicts, and therefore, on the directions of the superiors the convicts were referred to the civil hospital. Out of four convicts, three accused were handed over to the Superintendent of Jail after medical check up and one Dhammanand Mundhe was admitted in the hospital. The learned counsel invited our attention to the para 1 of the affidavit in reply filed by the Respondent No. 3 and would submit that, the respondent no. 3 has tendered an unconditional apology, which may kindly be accepted. The learned

counsel has also tendered across the bar, short affidavit of the Respondent No. 3 contending therein that, the respondent no. 3 should have intimated to the Hon"ble Sessions Court, Ambajogai, prior to medical check up of the convicts, but could not communicate as it was late in the night. Therefore, the contemnor has tendered unconditional apology for not communicating the Hon"ble Sessions Court on 8th April, 2013 itself for referring the convicts to the civil hospital, Beed. According to the learned counsel appearing for the respondent no. 3, the provisions of Section 24 of the Prisons Act, 1894 are applicable to the under trial prisoners and not to the convict prisoners.

6. The learned Additional Public Prosecutor invited our attention to the affidavit in reply filed on behalf of the Respondent No. 2 and submits that, this Court may pass appropriate orders.

7. We have considered the submissions of amicus curiae and also the learned Additional Public Prosecutor for the State i.e. Respondent Nos. 1 and 2 and also the counsel appearing for the respondent no. 3.

8. From perusal of the copy of Form No. 34 at Exhibit `A", it appears that, the Additional Sessions Judge, Ambajogai addressed a letter to the Superintendent of District Prison, Beed authorizing him to receive the accused persons convicted in Sessions Case No. 81/2009. The said warrant was handed over to the respondent no. 3. The respondent no. 3 along with the accused went to Beed so as to hand over the four accused persons to the Superintendent of District Prison, Beed. Upon perusal of Exhibit `B" i.e. the Report submitted by the P.S.I., Railway Police Station, Parli Vajinath to the Additional Sessions Judge, Ambajogai that, the four accused persons namely (i) Dhammanand S/o Gangadharrao Munde, (ii) Shakuntalabai @ Sabiya Raosaheb Gode, (iii) Raju s/o Mukund Munde, and (iv) Sudam @ Sudhakar s/o Mukund Munde were taken to the Civil hospital, Beed for medical check up. However, the Medical Officer after examination found that, Dhammanand Gangadharrao Munde is required to be treated in the hospital and accordingly, he was admitted in the hospital and custody of the remaining three accused persons was given to the Superintendent of District Prison, Beed. It is further stated in the said report that, the accused Dhammanand Gangadharrao Munde will be lodged in the District Prison, Beed on his discharge from the Civil Hospital, Beed. It further appears that, on the said report, the Additional Sessions Judge called explanation from the Respondent No. 3, as to why he has not boarded the convict in to the District Prison, Beed, as directed. He was further directed to submit all medical papers of convict along with his explanation.

9. It appears that, the concerned Court issued notice on 10.04.2013 to the respondent no. 3 asking the explanation of the Respondent no. 3 that, instead of lodging the convicts in District Prison, Beed, without permission of the Court, why he has referred them to the Civil Hospital, Beed for medical check up. The explanation was also called that, why he has signed on the report on behalf of Police Sub-Inspector, Railway Police Station, Parli Vajinath. He was asked to submit explanation within three days from the date of receipt of notice. It

appears that, accordingly, the Respondent No. 3 on 12th April, 2013 filed explanation to the said notice. It is stated in the said reply that, on receiving the convicts at 5 p.m. from the Court to take them to Beed so as to lodge them in District Prison, Beed. However, during journey from Ambajogai to Beed, the convict Dhammanand Munde complained about his health. The relevant portion from the said reply reads thus :-

10. In the said reply, the respondent no. 3 further stated that, in view of the guidelines issued in the case of D.K. Basu V/s. State of West Bengal, the person in custody of the police is required to be medically examined within 48 hours. There are also guidelines issued by the Human Rights Commission that, whenever, it is necessary medical aid should be provided to the accused. Therefore, it was incumbent on the respondent no. 3 to give medical aid to the convict Dhammanand Munde. He has also offered the explanation regarding signing for P.S.I. Police Station, Parli Vajinath that, the said Officer went for attending the meeting at Jalna and being an immediate subordinate for him, he signed for the said Police Sub-Inspector. In support of his contention that, he can sign for the said Officer, he has placed reliance on certain office instructions and also the circulars.

11. It appears that, on 15th April, 2013, the respondent no. 3 submitted report to the Sessions Judge, Ambajogai in compliance of the directions of the Court to submit report/medical papers of the convict Dhammanand Munde. From perusal of Exhibit 'E' Colly, it appears that, the copies of the medical papers in respect of convict Dhammanand Munde are placed on record before the concerned Court.

12. In pursuant to the notices issued in this proceedings, the respondent No. 2 has filed the affidavit in reply. The paragraph nos. 5 to 7 of the said affidavit in reply read thus :-

5. I say that, upon receipt of the notice from this Hon"ble Court in the aforesaid contempt petition, a say was called from the respondent no. 3 by the Superintendent of Police, Railway, Nagpur. Pursuant thereto, the respondent no. 3 has submitted his say on 28.08.2013 wherein he has explained the circumstances under which the accused no. 1 Dhammanand was admitted in the Civil Hospital at Beed. The respondent no. 3 has submitted that as is the practice followed, the accused were taken to the Civil Hospital at Beed for medical examination before their lodgment in the Prison. On medical examination of the accused no. 1 Dhammanand, it was found that, he was suffering from high blood pressure and diabetes related symptoms and the Medical Officer has advised further test and treatment to the said accused. The other 3 accused were found fit and were therefore, lodged in the District Prison at Beed at around 22.10 hrs. along with their medical certificates. The accused no. 1 Dhammanand was however, admitted in the ward no. 6 with instructions to the Beed City Police and entries were taken in the Guard Duty Lockup Register. The said accused was under guard of the police from the Beed City Police Station in the said hospital. The respondent no. 3 reached at Parli at 5.00 a.m. around on 09.04.2013 and

reported the matter at the Police Station and the S.H.O. has made entries in the Station Diary on the report submitted by the respondent no. 3. The matter was reported to the Sessions Court, Ambajogai on 09.04.2013 itself. I say that, having gone through the say of the respondent no. 3, the answering respondent is satisfied the conduct of the respondent no. 3 was in conformity with the standard procedure followed wherein the accused to be lodged in Prison are to be medically examined and are to be admitted in the Prison alongwith medical reports.

6. I say that, since the accused no. 1 was suffering from high blood pressure and diabetes related symptoms, the Medical Officer, Civil Hospital at Beed had thought it fit to conduct further test and for that purpose admitted the accused no. 1 in the Hospital. The accused no. 1 was thereafter referred to the Civil Hospital at Aurangabad where he was admitted.

7. I say that, from what has been submitted by the respondent no. 3 in his say dated 28.08.2013, in the opinion of answering respondent, the respondent no. 3 has acted in the course of his duties and there was no intention on his part to favour and or shield any of the accused.

13. The respondent No. 3 has also filed affidavit in reply. In para 1 of the said affidavit in reply, he has tendered unconditional apology. In para 2 he has narrated his movements alongwith the convicts after 5 p.m. on 8th April, 2013. It is stated in the reply that, the Sessions Court, Ambajogai asked him to take the said four accused into custody and accordingly, the Respondent No. 3 informed the said fact to the Officer-in-charge, Government Railway Police Station, Parli (V) by phone and requested to send two more police constables for the assistance. Accordingly, other two constables namely Mr. Khude and Mr. Jadhav were deputed. After receiving the warrant from the Hon'ble Court around 17.00 hours for the lodgment of the said convicts in the prison, they started to Beed from Ambajogai alongwith said four convicts. It is stated in paras 3 and 4 that, as per the practice followed, the convicts are to be medically examined before lodgment in the Prison. Even the Jail authorities do not receive such convicts for admission in the prison brought by the police party, if said convicts are not medically examined. Therefore, Police Officer-in-charge from the Government Railway Police Station, Parli Vajinath was informed about the same, who in turn directed the respondent no. 3 to sign the application for him, which was to be submitted to the Government Hospital on behalf of Police Sub-Inspector. Accordingly, application was submitted to the Medical Officer, Government Hospital, Beed with request to examine the four convicts. Accordingly, four convicts were examined and one convict namely Dhammanand Munde was suffering from high B.P. and diabetes, and therefore, said Medical Officer called specialist doctor for further examination. At that time, two police personnels were deputed at Government Hospital. Remaining three convicts were found to be physically fit, therefore, three convicts were taken to the District Prison, Beed and accordingly they were lodged in the District Prison, Beed at

around 22.10 hours on 8th April, 2013. In para 5, it is stated that, the convict Dhammanand Munde was examined by the Specialist Doctor and was admitted in the Prisoner Ward No. 6 of the General Hospital. Three police constables came to be posted as per the phone instructions, received from the Officer-in-charge, Police Station Parli Vajinath and the entry to that effect was also made in the City Police Guard Duty Lock-up Register and the report was also submitted to the District Prison, Beed and acknowledgment thereof was received at 12.35 hours.

In para 6, the respondent no. 3 has stated about the Station Diary entries right from taking the convicts from Ambajogai onwards. In para 8, it is stated that, his role is restricted from 8.15 hours of 08.04.2013 to 5.00 hours on 09.04.2013. He has not shifted said convict namely Dhammanand Munde to the Government Medical Hospital at Aurangabad from Civil Hospital, Beed. He was transferred by the Government Medical Hospital, Aurangabad on instruction of Medical Officer, Government General Hospital, Beed. In para 9, he has offered explanation for the steps taken by him when he reached to Beed and also the report submitted to his superior and also to the Sessions Court, Ambajogai. Some and substance of the reply of the respondent no. 3 is that, the acts done by him and in particular medical check-up of the convicts was with prior permission of the superior. There are guidelines to that effect and also practice is followed to get the convicts medically checked up before they are lodged in prison.

As already observed, the counsel appearing for the respondent no. 3 has tendered across the bar the short affidavit of the respondent no. 3 during the course of hearing on 31st July, 2014 stating therein that, he should have intimated to the Hon'ble Sessions Court at Ambajogai prior to referring the convicts to the medical check-up. However, he stated that, he could not communicate the learned Court on 08.04.2013 as it was late in 11.00 hours of night. He has tendered unconditional apology for not communicating to the learned Sessions Court, Ambajogai on 08.04.2013 itself.

14. Upon conjoint reading of the documents placed on record, in the light of reply filed by the respondent no. 3 to the notice issued by the Sessions Court, Ambajogai, the affidavit in reply filed by the respondent no. 2, affidavit in reply filed by the respondent no. 3 on 23rd September, 2013 and further affidavit filed on 31st July, 2014, it does not appear to us that, there is any willful disobedience on the part of the contemnor. It is true, and as stated by the respondent no. 3 in his affidavit dated 31st July, 2014 that, he should have informed to the concerned Court before referring the convicts for medical checkup, however he could not do so since it was 9.20 p.m. in the night and for that purpose, he has tendered unconditional apology. In our opinion, by accepting unconditional apology tendered by him, the present Contempt Proceeding deserves to be dropped/closed. It further appears from his explanation tendered to the notice that, the said convict Dhammanand Munde was taken to the Hospital at Aurangabad and on his discharge, on 11th April, 2013 at 13 hours, he was lodged to District Prison, Beed. Therefore, in the facts and circumstances of this

case, the notice issued against the respondent no. 3 stands discharged.

15. The Contempt Proceedings stands disposed of accordingly.