

(1984) 11 MAD CK 0040

In the Madras High Court

Case No : Contempt Appeal No. 71 of 1984

Video Movies by Propr: Haji Rasheed Mohammed	APPELLANT
Vs	
Sri D. Ramanujam, Madras-14 and two others	RESPONDENT

Date of Decision : 09-11-1984

Acts Referred:

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

Citation : (1985) LW(Cri) 173

Hon'ble Judges : Ratnam, J;Ramanujam, J

Bench : Division Bench

Advocate : N. Chandrasekaran, for the Appellant; P. Chidambaram, N. Thiagarajan and M. Ayyakannu, for the Respondent

Judgement

Ramanujam, J.—This is a petition for punishing the Respondents herein for criminal contempt u/s 15(1) of the Contempt of Courts Act, 1971.

2. The Petitioner herein who is running a video library along with 30 others filed Writ Petition No. 753 of 1984, questioning the validity of the Tamil Nadu Ordinance No. 2 of 1984, which was later replaced by Tamil Nadu Exhibition of Films on Television Screen through Video Cassette Recorders (Regulations) Act 1984, (Tamil Nadu Act 7 of 1984.) The said writ petition was admitted on 26th January, 1984, by Sathiadev, J. and interim orders were passed staying the operation of Ss.17 and 18 of the Ordinance till 15th March, 1984. Similar writ petitions had also been filed by several other video libraries and similar interim orders have been passed therein. The writ Petitioners later sought extension of stay beyond 15th March, 1984. and Ratnavel Pandian, J. by an order dated 15th March, 1984, extended the said stay till 15th April, 1984.

3. In the meanwhile on 21st March, 1984, a programme was broadcast from the T.V. Centre of Madras. It was a television interview in which Respondents 1 and 2 herein participated. The subject of the interview was the recent video legislation. In the course of the interview reference has been made to the necessity for bringing the legislation and the pendency of the writ proceedings before the

court. The Petitioner is said to have recorded the said programme. According to the Petitioner, the Respondents, in so far as they made a direct reference to the pending writ proceedings and the nature of the orders passed by the court and gave their comments on the merits of the cases before the Court, they are guilty of gross contempt of court, and, therefore this Court should punish them for the said contempt. It is the specific case of the petitioner that both the first and second Respondents made specific reference to the pending writ proceedings and the orders passed by the court with a view to prejudice the mind of the public, that the picture given by them in their speeches is with a view to mislead the public and that as the speeches made by Respondents 1 and 2 at the interview amounted to criticism of a pending litigation and as they roused public interest against the Petitioners, they had effectively interfered with the course of justice. So far as the third Respondent, is the Director of Doordarshan Kendra, is concerned it is said that in so far as he had enabled contempt of court being committed by inviting the first and second Respondents to participate in a discussion in respect of a matter which is sub judice, he is also guilty of contempt.

4. This Contempt Application has been resisted by all the three Respondents. The first Respondent has filed a counter affidavit to the effect that as the Chairman of the All India Film Federation he was requested by Door Dharshan to participate in a discussion with the second Respondent as regards the Video legislation, that the programme was recorded on 16th March, 1984, and broadcast on 21st March, 1984, that the discussion was between the moderator and the first and second Respondents, that though he was aware that certain writ petitions had been filed in this Court concerning the validity of the video legislation, he is not party to any of the proceedings and as such, he was not aware of the details of the interim orders passed in the writ petitions, that the discussion which was broadcast on 21st March, 1984 was general in nature and related to the circumstances under which the State Government brought in the video legislation, that the discussion highlighted the mischief which was sought to be remedied by the Act, that his contribution to the discussion was to explain in simple language, the provisions of the Act and that his contribution to the discussion cannot amount to an expression of opinion on the pending writ proceedings and as such it cannot be the subject-matter of contempt proceedings. The first Respondent has further stated that he has not said anything which would scandalise or lower the authority of any court or prejudice or interfere or tend to interfere with the due course of any judicial proceeding or tend to interfere or obstruct or tend to obstruct the administration of justice in any manner and that in any event he has no reservation of any kind in tendering an unconditional apology. The first Respondent has also raised a plea that the contempt application is not maintainable since the Petitioner had not obtained the consent in writing of the Advocate General as required by Section 15(1) (b) of the Contempt of Courts Act.

5. The second Respondent who is the Minister in the Tamil Nadu Cabinet in

charge of Cinematographs, has stated in his counter affidavit that he has not committed any contempt of this Court in any way nor has he the slightest intention of disregarding or disrespecting the orders of this Court, that in the discussion programme broadcast on 21st March, 1984, he has not made any remarks or criticism about any matter pending before the court, and that he has not given expression to anything which may amount to contempt. He has also stated that the subject of the programme was intended to be a discussion on a topic of current interest, that during the discussion he explained the necessity, for and the object of the various provisions of Tamil Nadu Act 7 of 1984, and that during the course of that discussion, a casual reference was made to the pending court proceedings. There was no intention on his part to deal with the merits of the case pending before the court or to interfere with the course of justice. He has further stated that if the Court were to come to the conclusion that he is guilty of contempt, he would sincerely tender his unconditional apology.

6. The third Respondent has in his counter affidavit stated that he is not a party to the writ proceedings and as such he was not aware of the same, that the Doordarshan Kendra invited not only Respondents 1 and 2 but also a video parlour owner to participate in the discussion with a view to educate the viewers on matters of public importance and current affairs and it is only Respondents 1 and 2 who attended the programme and during the discussion they merely referred to the provisions of the statute and the necessity for bringing in such a statute and that there was no discussion about the merits of the case pending before the Court. He has also stated that the discussion is only "ad lib", i.e., a discussion without obtaining script of the discussion and that most of the current affairs and spot interviews are "ad lib" only, which is the practice of all the professional broadcasters all over the world including BBC and ABC. According to the third Respondent; Respondents 1 and 2. have not committed any contempt and even if they have committed any contempt that could not have been anticipated by him, especially when the discussion is only "ad lib" and therefore, he cannot be taken to have committed any contempt. He has also added that if the court were to hold that he is guilty of contempt, he would offer his unconditional apology for the same.

7. We shall first dispose of the objections regarding the maintainability of the contempt application raised by the first Respondent. On behalf of the first Respondent a faint argument was put forward that the contempt application is not maintainable as the consent of the Advocate General has not been obtained as contemplated in Section 15(1) (b) and reliance is placed on the decision of the Orissa High Court in B.K. Misra Vs. Chief Justice, Orissa H.C., It is no doubt true in that case the court held that no cognizance of a case of criminal contempt can be taken by the Supreme Court or of High Court, at the instance of any person unless the consent in writing of the Advocate General has been obtained. However, Section 15 enables the High Court or the Supreme Court to take action under that section on its own motion or on a motion made by the Advocate General or any person with the consent in writing of the Advocate General. The

consent in writing of the Advocate General is a requisite only for a person moving the motion for contempt. But there is no such restriction or requirement when the court wants to initiate action on its own motion u/s 15. In this case the Petitioner has brought to the notice of the court the conduct of the Respondents which according to the petitioner amounts to criminal contempt and it is for the court to take action sua motu. Therefore, for exercise of the suo motu power vested in this Court u/s 15, no consent in writing of the Advocate General is necessary. Thus the objection regarding the maintainability of the contempt application is rejected.

8. At the outset, we feel that no case for contempt has been made out against the third Respondent, who is the Director of Doordarshan Kendra, Madras. To educate the viewers on matters of current and public interest he has invited not only Respondents 1 and 2, but also one of the owners of a video parlour for participating in the discussion on the current video legislation. However, the owner of the video parlour who was invited did not come and participate, but Respondents 1 and 2 alone participated. The discussion programme being "ad lib" the third Respondent could not have anticipated what Respondents 1 and 2 would speak. Therefore, initiating a discussion and permitting Respondents 1 and 2 to discuss about the video legislation will not amount to interference with the course of justice. Admittedly the third Respondent has not actually participated in any discussion on the pending litigation. Hence, the petition for contempt as against the third Respondent has to be and is dismissed.

9. Then coming to Respondents 1 and 2, it has to be seen whether what they spoke during the discussion prejudices or interferes or tends to interfere with the due course of the judicial proceeding or interfere or tends to interfere with or obstructs or tends to obstruct the administration of justice in any manner. In this case, at the request of the parties we heard the recorded speech of both the first and second Respondents for the purpose of finding out whether their speeches border on contempt as alleged by the Petitioner. The first Respondent begins his speech by saying that he should not speak about the subject since the matter is pending in the High Court but proceeds to say that he does not know as to why the parties resorted to court, that under the video legislation the video parlours are merely asked to get permission from the owners of the films which they intend to exhibit, that only censored films should be exhibited in the video parlours, that even such exhibition should be only in places licensed under the Cinematograph Act, that such conditions are in public interest and that these conditions imposed by the legislation cannot reasonably be objected(sic) to. Thus, the first Respondent has explained the nature of the legislation and has spoken in favour of it while he was fully aware of the fact that the legislation is under challenge before the court. The second Respondent in his speech has referred to certain facts leading to the necessity for making the video legislation. He refers to a speech made by him in the legislative Assembly while piloting the bill and says that the legislation is not an encroachment on Copyright Act, that the State Government has asked the Central Government to amend the

Copyright Act to the extent necessary, that people who want to earn quick money through video sets may go to court, that the orders passed by the court so far appear to uphold the stand of the State, that the courts have not granted stay of the operation of the Act as prayed for by the Petitioners, that persons owning video libraries have gone to court and obtained stay of operation of some of the provisions of the Act relating to video libraries upto 15th March, 1984, and later, upto 15th April, 1984, that no stay had been granted in the case of video parlours and that it is better the public knows about this. Thereafter the second Respondent gives the details as to how a video parlour is run, as to how video parlours are giving five shows in a day resulting in a profit of Rs. 10,000 and why they are aggrieved by the legislation and going to court and says that the legislation has been brought in public interest. Thus both the first and second Respondents who are aware of the pendency of the writ proceedings before the court questioning the the validity of the video legislation discussed in a T.V. programme justifying the legislation and speaking about its validity and necessity. Though the learned Counsel for the Petitioner made a comment on certain statements made regarding the stay orders in their speeches saying that they are inaccurate, we are not referring to that aspect, as mere inaccuracy of factual statements will not make the person making such statement guilty of contempt. From what has been stated above, it is clear that Respondents 1 and 2 after referring to the pending court proceedings have chosen to discuss about the merits of the legislation which is under challenge before the court and justified the same. The question is whether that will amount to contempt of court.

10. "Contempt of Court" has been defined in Section 2(a) of the Contempt of Courts Act, 1971, as meaning civil contempt or criminal contempt. Section 2(b) defines "civil contempt" as wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court. "Criminal contempt" has been defined in Section 2(c) as follows:

- (i) Scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court, or
- (ii) prejudices, or interferes 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.

It cannot be disputed that there is no contempt here and the only question is whether a criminal contempt as defined in the Act has been established on the facts of this case. To find out whether Respondents 1 and 2 have committed any criminal contempt as alleged by the Petitioner, we have to see whether the speeches made by them would come under any of the Clauses, Cls. (i)(ii) and (iii) of Section 2(c). Obviously Cl. (i) does not apply to the facts of this case as there is no question of any scandalisation of any court. We have to therefore see whether the speeches have prejudiced or interfered or tend to interfere with or

obstructs or tends to obstruct the administration of justice in any manner.

11. A somewhat similar case as the one before us came up for consideration before the Supreme Court In Re: P.C. Sen, . In that case, the Chief Minister of the State of West Bengal broadcast a speech justifying the order, the validity of which was challenged and was pending consideration before the court. The question arose whether it amounted to contempt. In that case the West Bengal Government issued an order under R.125 of the Defence of India Rules, placing certain restrictions upon the right of persons carrying on business in milk products. The validity of the said order was challenged by a writ petition. After rule nisi was issued on the said petition and served on the State Government, the State Chief Minister broadcast a speech seeking to justify the propriety of the order. In answer to the contempt proceedings it was contended on behalf of the Chief Minister that he was given to understand that there was going to be a public agitation against the issuance of that order, and that with a view to avoid an agitation he considered it his duty to explain to the people the policy underlying and the reasons for promulgating that order. The High Court held that the speech amounted to contempt of court, that it was contumacious in that it was likely to have a baneful effect upon the Petitioners who had challenged the validity of the order, and their cause and upon other persons having a similar cause; and that it was likely to interfere with the administration of justice. On appeal before the Supreme Court it was contended for the Chief Minister that the speech contained no direct reference to any pending proceeding and that the Chief Minister was under a duty to make a speech to instruct the public about the true state of affairs. Rejecting the said contention advanced on appeal, the Supreme Court held that the speech was ex facie calculated to interfere with the administration of justice and observed that the question in all cases of comment on pending proceedings is not whether the publication does interfere, but whether it tends to interfere, with the due course of justice and that the question is not so much of the intention of the contemner as to whether it is calculated to interfere with the administration of justice. According to the Supreme Court, the speech broadcast by the Minister was calculated to interfere with the course of justice, and, therefore, it was liable to be declared a contempt of the court, even assuming that he had not intended thereby to interfere with the due course of justice. This decision is an authority for the proposition that a speech touching upon a pending proceeding may amount to contempt, even if the speaker did not actually intend thereby to interfere with the course of justice and the speech did not in fact interfere with the course of justice if the speech is likely to have that effect. In Halsbury's Laws of England, 4th Edn, volume 9 in paragraph-9 under the head "Tending" or "intended" to prejudice, the following passage occurs:

For a publication to amount to a contempt, it is not necessary that it should be shown actually to prejudice a fair trial(sic) or the conduct of the proceedings. The true test appears to be whether the publication is likely or tends to prejudice the trial or conduct of the action. The degree of risk of prejudice, while not material to the question whether a contempt has been committed, is a material factor in

determining what punishment, if any, should be imposed on the contemner. A publication which is intended to prejudice the fair trial or conduct of proceedings may be punished or restrained as a contempt of court even though it does not or would not have the effect intended.

12. The case in *R. v. Savundaranayagan and Walker* 1968 3 ALL E.R. 439. was also a case of television interview. In that case there was a broadcast of a television interview with one Savundaranayagan and Walker, who had been found guilty of cheating and defrauding such persons as had taken out insurance policies with certain insurance company. After conviction, both of them appealed against their conviction and sentence and in their appeals they contended that there has been a pre-trial publicity which has affected the course of justice in that there has been a broadcast of a television interview with Savundaranayagan even before the trial. Dealing with that complaint of pretrial publicity, the Court of Appeal held that the Appellant Savundaranayagan having voluntarily gone to the television interview fully knowing that he will be arrested and eventually tried, it hardly lies in his mouth to complain. Further, the interview was at a time long before the trial commenced and, therefore, the interview has not prejudiced the trial in any way. The learned Judges, however, expressed a caution with reference to the television interviews in respect of matters either pending before the court or likely to come before the court in the following terms:

The Court, however, takes a very different view of the television programme of February 1967, in which the Appellant Savundara was interviewed shortly after his return to England. At this time, it must surely have been obvious to everyone that he was about to be arrested and tried on charges of gross fraud. It must not be supposed that proceedings to commit for contempt of court can be instituted only in respect of matters published after proceedings have actually begun. No one should imagine that he is safe from committal for contempt of court if knowing or having good reason to believe that criminal proceedings are imminent, he chooses to publish matters calculated to prejudice a fair trial. On any view the television interview with the Appellant Savundara was deplorable. With no experience of television, he was faced with a skilled interviewer whose clear object was to establish his guilt before an audience of millions of people, None of the ordinary safeguards for fairness that exist in a court of law were observed, no doubt, because they were not understood. They may seem prosaic to those engaged in the entertainment business, but they are the rocks on which freedom from oppression and tyranny have been established in the country for centuries as one well-known journalist subsequently pointed out in an evening paper. On the other hand, surprisingly and regrettably, virtually the whole interview was reproduced verbatim in one of the Sunday newspapers. This Court hopes that no interview of this kind will ever again be televised. The Court has no doubt that the television authorities and all those producing and appearing in televised programmes are conscious of their public responsibility and know also of the peril in which they would all stand if any such interview were ever to be televised in the future. Trial by television is not to be tolerated in a civilized

society.

13. In *A.G. v. London Weekend Television* 1972 3 All. E.R. 1146. the question arose as to whether a television programme on the plight of children who are allegedly injured by a drug, at a time when actions had been brought against the drug manufacturers on behalf of the children amounted to contempt. The Court held that the television company is not guilty of contempt in televising the programme on the plight of the children because it has not been established that they were deliberately intending to influence the pending proceedings, and that, in the circumstances, a single showing of the programme cannot be said to create a serious risk that the course of justice might be interfered with. Brabin, J., in the course of his judgment observed-

The law of contempt of court is old, free of conflicting decision and therefore certain. This is to be expected since it concerns a power described as being coeval with the foundation and institution of the courts. The basic decision declared by Lord Goddard, C.J., to be the locus classicus and the foundation of the jurisdiction which this Court has exercised for more than 200 years is contained in the words of Lord Hardwicke, L.C. in the *St. Jame's Evening Post* case where he said-"Nothing is more incumbent upon courts of justice, than to preserve their proceedings from being misrepresented; nor is there anything of more pernicious consequence, than to prejudice the minds of the public against persons concerned as parties in causes, before the cause is finally heard.....There are three different sorts of contempt. One kind of contempt is, scandalising the court itself. There may be likewise a contempt of this Court in abusing parties who are concerned in causes here. There may be also a contempt of this Court, in prejudicing mankind against persons before the cause is heard. There cannot be anything of greater consequence ,than to keep the streams of justice clear and pure, that parties may proceed with safety both to themselves and their characters.

The test laid down in that decision is to see whether the words complained of create a serious risk that the course of justice may be interfered with. No doubt, this test must be applied in the right of the surrounding circumstances. In that case, the court actually saw the programme and found that though the programme bore many of the badges of contempt, since there was only a single showing and judging it from the standpoint of an ordinary citizen seeing it once only, the programme cannot be said to have an impact which the producer might have hoped that it will have on the viewers. The Court ultimately wound up its judgment with the following expression-That the relevant programme created a risk of interference with the course of justice cannot be doubted but in reaching our decision in this case we have reminded ourselves of the words used by Sir. George Jessel, M.R. in *Re Clements and Costs Costa Rica Republic v. Erlanger* that "being practically arbitrary and unlimited this remedy should be most jealously and carefully watched and exercised.

14. In *A.G. v. Times Newspapers Ltd*, 1978 3 All.E.R.34. the House of Lords had

to consider the question as to how far a publication of an expression of an opinion on an issue before court for determination in a pending proceeding, will amount to contempt of court. The House of Lords held that it was contempt of Court to publish an article expressing an opinion on the merits of a specific issue which was before the court for determination in circumstances such that the article gave rise to a real risk that the fair trial of the action would be prejudiced, that it was the purpose of the law of contempt to protect the public interest in the proper administration of justice and in those circumstances, that interest outweighed the public interest in discussion of the issue raised by the litigation and that a conduct amounts to contempt where it presents a real risk as opposed to a mere possibility of interference with the due administration of justice and the seriousness of the risk is relevant only to the question whether the contempt is one for which the court, in its discretion, ought to inflict any punishment and if so, what punishment it should inflict. In *R v. Duffy and others, ex parte Nash* 1960 2 All. E.R. 891. the court expressed the view, that the test for determining whether an article published in a newspaper, while criminal proceedings are sub judice, amounts to a contempt of court, is to see whether in all the circumstances existing on the date of publication of the article it was intended or calculated to prejudice the fair hearing of the proceeding, that if the article is published after trial and is not published with intent to prejudice the hearing of an appeal, the publication is a contempt of Court only if there is real risk that a fair hearing will be prejudiced, but if an article so published merely imposes on the judges, unnecessarily the task of dismissing it from minds, and is not such as to affect impartiality, it does not amount to a contempt of court.

15. In one of the earliest cases in *R. v. Hutchinson* 1936 2 All. E.R. 1514. exhibition of a news film with the caption "Attempt on the King's life" was complained of as amounting to contempt. When there was a procession in London in which the king was riding, a revolver fell close to the horse on which the king was riding. It appeared that it was either thrown by or knocked out of the hand of a man who was subsequently charged with being in unlawful possession of fire-arm. A news film of the man's arrest was shown with the caption. "Attempt on the King's life". When proceedings for contempt were taken, the court held that the said caption was liable to prejudice the accused's fair trial and was a contempt of court. While so holding, the court observed:

After what has been said by counsel for the Respondents, it is not necessary to say anything about this case except to call to the attention of the proprietors of film houses and of the exhibitors of films the fact that they are in no different position than anybody else. Their conduct will be scrutinised by the court like anybody else's if they are brought before the court. The film is no more immune from the rules regarding contempt of Court, than the newspaper is. Proprietors of cinemas and distributors of films must realise that, if they want to produce these sensational films, they must take care in describing them not to use any language likely to bring about any derangement in the carriage of justice.

16. Having regard to the preponderance of judicial opinion that if there is a real risk of a speech or article tending to interfere with the fair hearing of the pending case that may amount to contempt, we have to hold that in this case Respondents 1 and 2 who are quite aware of the pendency of the writ proceedings questioning the validity of Act 7 of 1984, have given expression to their opinion justifying the legislation which is likely to interfere with the course of justice even though they have not intended the same to have that effect, and that the facts in this case fall squarely within the ruling in *In Re: P.C. Sen*, . We have to therefore hold that Respondents 1 and 2 are guilty of contempt of court.

17. Then the question is whether the apology tendered by Respondents 1 and 2 in their counter affidavits could be accepted. Explanation to S. 12 (1) of the Contempt of Courts Act says that an apology shall not be rejected merely on the ground that it is qualified or conditional, if the accused makes it bona fide. On the facts of this case, we are of the view that the apology had been tendered bona fide by Respondents 1 and 2. They have made it clear in their counter affidavits that they never intended by their conduct to interfere with the course of justice and that if their conduct is held to be objectionable for any reason, they are tendering their sincere apology. We also feel that Respondents 1 and 2 were not quite aware of the true legal position relating to contempt and the legal consequences flowing from their speech. We, therefore, hold that Respondents 1 and 2 did not actually, by their speeches intended to interfere with the course of justice even though their speeches had that effect and that the apologies tendered by them were quite bona fide.

18. In this view of the matter, we accept the apologies tendered by Respondents 1 and 2 and close the contempt proceedings. There will, however, be no order as to costs.