

Madegowda Vs. State of Karnataka

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SooperKanoon Citation : sooperkanoon.com/384652

Court : Karnataka

Decided On : Sep-06-1985

Reported in : ILR1985KAR3945

Judge : Doddakale Gowda, J.

Acts : [Code of Civil Procedure \(CPC\) 1908](#) - Sections 141 - Order 39, Rule 2A; [Constitution of India](#) - Article 226; Code of Criminal Procedure (CrPC) - Sections 145; Contempt of Court Act

Appeal No. : I.A. No. II in W.P. Nos. 11221 and 11222 of 1983

Appellant : Madegowda

Respondent : State of Karnataka

Advocate for Def. : Dattu, HCGP for 3rd Opponent

Advocate for Pet/Ap. : G.S. Visweswara, Adv.

Judgement :

ORDER

Doddakale Gowda, J.

1. Interim order, dated 11-8-1983 made on I.A.I reads thus:-

'I am satisfied that the petitioner is in lawful possession of the property and Respondents 3 and 4 without any lawful cause are interfering with his possession. I, therefore, allow I.A.I and issue an injunction restraining Respondents 3 and 4 from interfering with the possession of the petitioner in respect of the land referred to in the schedule to I.A.I.'

2. In I.A. II applicant complaining of disobedience of interim order of injunction by respondents 3 to 5 (opponent 4 being deleted) has requested this Court to take suitable action for wilful disobedience of injunction order. In para 4 of the application, after referring to request made to Police to render necessary help for protection of his possession and to give effect to the order of this Court, states that on account of counter complaint by opponents 1 and 2, 3rd opponent has registered two criminal cases in Crime No. 89 of 1983 and 93 of 1983 against kiths and kins of applicants. Para 6 which narrates the incident and how third opponent, as Sub-Inspector of Police has conducted, reads thus:-

'Opponent Nos. 3 and 4 along with Respondents 3 and 4 came near the lands in question at about 1.00 p.m. with a police van having full police constables. Opponent No. 4 came in the Police Van with a number of police constables in the van. Even at that stage, the petitioner showed the certified copy of the injunction order passed by this Hon'ble Court and he also gave complaint that his possession of the lands in question is being interfered with and suitable action may be taken against Respondents 3 and 4 and that he has raised jowar crop on the lands in question and that he was never dispossessed from the possession of the lands in question and further stated that he has obtained an order of stay and an order of injunction from the Hon'ble High Court of Karnataka. In fact, the certified copy of the injunction order was shown to Opponents 3 and 4. After seeing the certified copy of the order, opponent No. 3 said that So saying he threw the certified copy of the order on the face of the petitioner. At that time one Mahadevappa was with the petitioner and one Sri Y. P. Nagaraj was with the petitioner. Those two persons insisted that there was an order from the Hon'ble High Court and that the Sub-Inspector of Police was bound to obey that order and he cannot throw the order in that insulting way. They further insisted that the Sub-Inspector of Police should give an endorsement in respect of the complaint made by the petitioner. Then

Opponent No. 3 wrote an endorsement in his own handwriting at the spot and gave it to the petitioner. True copy of the endorsement is produced at Annexure 'F'. The original endorsement given by opponent No. 3 is produced before this Hon'ble Court in C.C.C. 175/1983.'

and further proceeds to say that on account of such protection opponents 1 and 2 were able to remove the jola crop standing in an extent of 3 acres of land in dispute.

3. Opponents 1 and 2 have neither moved for vacation nor resisted the prayer made in this I.A. It is only third opponent, Sub-Inspector of Police, has tried to justify his action. Relevant portion of objection statement reads thus:-

'6. I am the jurisdictional Police Officer of Antharasanthe village, H. D. Kote Taluk. I received a complaint lodged by the applicants in I.A. No. 2 on 18-8-83 inter alia alleging disturbance to their peaceful possession and enjoyment of the property in dispute from opponents 3 and 4. On receiving such a complaint, I made necessary enquiries and investigation and after coming to the conclusion that allegations made by the complainant is baseless, I issued an endorsement to the complainants and closed the Petition.

7. I also received a complaint lodged by opponents 3 and 4 on 27-8-83. In the said complaint, Respondents 3 and 4 had requested me to give them protection from disturbance from applicants in I.A. No. 2. I registered the case in Crime No. 80 of 1983 against one Chikkanna, the younger brother of the applicant.'

(underlining is mine)

Referring to the incident, dated 3-9-1983 (date typed as 5-9-1983 in first sentence of para 8, appears to be an error), he states that:-

'Both the parties were not in a mood to listen to my sincere advise, I received a complaint from opponents 3 and 4 and lodged a case against applicants in I.A. No. 2 who were trying to assault and enter forcibly into the lands which were in possession of opponents 3 and 4. At that juncture, applicants insisted that I should issue an endorsement to the effect that I cannot give any protection to them

inspite of their being an order of injunction issued by this Court in their favour. The true position that was prevailing on 3-9-83 was that opponents 3 and 4 were inpossession of the lands and applicants in I.A. No. 2 were trying to enter into the land and disturb the peaceful possession and enjoyment of theopponents. Taking note of the factual situation and circumstances existing on that particular day, I issued an endorsement to the applicants to the effect that I am not in a position to give police protection to them.'

4. Armed with authorities Sri Dattu, Learned Government Pleader, formulated four points to justify the action viz. (i) persons not enjoined by an order of Court cannot be punished for violating an injunction order; (ii) in the absence of specific prayer either for attachment of property or detention in civil prison of person disobeying an order of injunction for disobedience, no order can be made under Order 39 Rule 2(A) of C.P.C. (iii) breach, if any, is bona fide and done in 'good faith'; not liable for punishment; and (iv) person who aids or abets the disobedience of order of injunction can only be proceeded under Contempt of Court Act and not under Order 39 Rule 2(A) of C.P.C. as he is not a party to the order.

5. For proper appreciation, relevant portion of Endorsement dated 3-9-1983 issued by Sub-Inspector of Police (3rd opponent), who will hereinafter be referred to as '3rd opponent', reads thus :-

6. Incidentally, it is necessary to mention, C.C.C. No. 175 of 1983 initiated by applicant has been dismissed with following observation:-

'We do not find any reason to admit. The complainant may approach the Learned Single Judge with his grievance. So rejected.'

7. Necessity of examining nicety of those points would have been arisen if only he was not a public officer enjoined with a sense of responsibility to honour orders of High Court, especially as an Officer in-charge of maintenance of law and order. Instances where a Court has directed to take police help to take possession after breaking open the lock or for delivery of possession or to give effect toinjunction orders are not wanting. Sri Dattu, Government Pleader concedes this proposition, but what he contends is that in the absence of a specific direction by Court he was

not under an obligation to honour its verdict, which means either he could have acted upon it if desired or may ignore or even act contrary to it. This is demonstrated in answers recorded below. In other words, what he contends is that he could have acted as he pleased.

8. Next, it is contended that in the absence of prayer either for attachment or detention in civil prison of a person who has disobeyed the injunction order, no action can be taken under Order 39 Rule 2(A) of C.P.C. and application itself is not maintainable. This is a proceeding under Article 226 of the [Constitution of India](#). While considering the merit of main relief, incidental or ancillary orders are made in aid of main relief. Writ proceeding though not civil proceeding as per explanation to Section 141 of C.P.C., still certain provisions of C.P.C. are made applicable which are not inconsistent with Writ Rules framed by the High Court. Hence, it does not mean, if proper relief is not prayed for in application now filed, Court would be denuded of its power to pass such orders as it deems fit to secure compliance of its order. Government Pleader, in fact, fairly conceded that Court can mould the relief without strict adherence of technicalities of pleadings. Even after it has come to the notice of the Court that there is disobedience of interim order of this Court, it cannot keep mum without taking such action as is permissible under law and perpetuate its illegality on the ground that there is no proper prayer in the application. Court has got inherent power to act or to do a real and substantial justice for administration of which it exists. Exercise of inherent power is 'in addition to and complementary to the powers expressly conferred under C.P.C.' as per the dictum of Supreme Court.

9. Whether, third opponent has acted in 'good -faith' or 'bona fide', as he claims it to be, will be considered after considering the merit of justification for his act.

10. It is not a case of ignorance of interim order of injunction. Applicant has produced a certified copy of interim order of injunction, sought for police protection and reference to injunction order in Endorsement, dated 3-9-1983 (Annexure-F) puts this issue beyond doubt.

11. In Annexure-F, portion extracted above, third opponent in an unequivocal terms recorded a finding that the other party is in possession of the property

pursuant to a mahazar written by Revenue Inspector or delivery pursuant to impugned order and states that in view of such conclusion, it is not possible to give any assistance despite injunction order of this Court. I am afraid in the guise of maintaining law and order or preventing breach of peace he could not have usurped the jurisdiction to decide whether applicant is in possession of the property or other party is in possession. I doubt very much as to whether there was any necessity to go on an enquiry and investigate as to who is in possession of the property in dispute. As a prudent Officer, as a law abiding citizen, and in all fairness he should have directed the parties to get the interim order suitably varied and to reap the standing crop thereafter, instead of venturing to decide the issue for himself. If both parties were unwilling to yield to his advice, best course open to him was to take steps for imposition of prohibitory order not to enter upon the land or to see that a receiver is appointed under Section 145 of the Code of Criminal Procedure or to take such other preventive measures as are permissible under Cr.P.C. By Annexure-F, Sub-Inspector of Police has neutralised the effect of interim order of injunction recording a positive finding that the party against whom an injunction order is operating is in possession of the property. Short of telling that interim order of this Court is wrong or incorrect or not binding on him, he has said the rest. Repeatedly, drawing the attention of Government Pleader to passage extracted above, Court intended to know whether third opponent could decide the correctness or otherwise of an interim order of this Court or act contrary to the order of this Court, at least, if not willing to aid its implementation. In paras 6 and 7 of objection statement action is justified on the ground that that was the actual position as on that day. As a last resort to know whether he would change his attitude or not, volley of questions were put through Government Pleader but stuck to his gun at times, giving vague answers though aware of the factual position. Questions and answers typed separately are incorporated in full, in this order for appreciation of his defence and attitude. They are :

ANSWERS GIVEN ON INSTRUCTIONS FOR CERTAIN QUERIES OF THE COURT READ THUS :

Q : - Assuming for the sake of argument that there is no specific direction by the Court to render help to persons who have obtained an interim order, as an Officer

in-charge of maintenance of law and order, were you not required to help or assist persons in whose favour there was an interim order by this Court and could you have flouted Orders of this Court as a Public Officer?

A :- In the absence of a specific direction by Court, Officer was helpless in the situation and he could not do anything to both the parties. After a pause, Sri Dattu, Learned Government pleader, submitted that it is very difficult to answer this question immediately.

Q : - Even after looking into the certified copy of the interim order of this Court, whether fourth opponent could have embarked upon himself to decide which party was in possession of the property and which party was not in possession of the property?

A : - Factual position as on 3-9-1983 was opponents 1 and 2 were already on the lands when he visited the spot with Constables. Endorsement given indicates only the factual position of the parties as on that day. As an Officer, I cannot decide the title of the parties to the land.

Q:- If you cannot decide, what prevented you from giving effect to the order of this Court ?

A : - In the absence of any specific direction by this Court, I could not give any protection to the parties.

Q : - The Portion which reads thus :

in the endorsement given by you indicates that you have extended protection to the other side?

A:- No.

Q : - Were you called upon to decide who was in possession of the property?

A : - No.

Q : - What made you to decide that the other party was in possession of the property ?

A : - Taking into factual position and records, he arrived at the conclusion that the other party was in possession of the property.

Q:- Assuming for the sake of arguments that the records placed before you disclosed that the other party was in possession of the property, Don't you think that by not giving effect to Court Order, you are giving a go-bye to interim injunction granted by this Court ?

A : - Now, I say, I am not competent to decide whether the order of injunction granted by this Court is right or wrong. Even then, taking into consideration the factual position, I decided that the other party was in possession of the property.

Q : - Since how long are you in service as Sub-Inspector ?

A : -Entered into service as Sub-Inspector in the year 1979.

Q : -Are you aware of Sections 107 and 112 of Cr. P.C. ?

A :- I am aware of the provisions like Sections 107 and 112 Cr. P.C.

Q : - Could you not have proceeded under Sections 107 and 112 Cr. P.C. if you had anticipated any breach of peace on account of fighting between the parties at the spot ?

A : - I have taken action under Section 107 Cr. P.C.

Q : -Why you excluded opponents 1 and 2, if there was a breach of peace ?

A : -I did not take action against opponents 1 and 2 as they did not indulge themselves to create breach of peace, but persons whose names are indicated in the charge-sheet alone indulged. It may contain names of his supporters also.

Q : -Whether a complaint was made by petitioner complaining interference with his peaceful possession and enjoyment or not ?

A : -There was no written complaint.

Q : -Are you aware of Section 144 Cr. P.C. ?

A : - Yes.

Q:-Did you take steps for issuance of prohibitory order under Section 144 Cr. P.C. restraining both parties from entering upon the land so as to avoid breach of peace if any ?

A:- Tahsildar and Circle Inspector of Police, who are present at that juncture, instructed me not to initiate proceedings under Section 144 Cr. P.C.

Q :- Did they instruct you to initiate proceedings as against petitioner and his party alone ?

A :- Yes. Inspector of Police instructed me to initiate proceedings against petitioner and his supporters only.

Q :- Have you anywhere stated in statement of objections that you have acted as per the instructions of Circle Inspector of Police ?

A :- In statement of Objections filed, it as nowhere stated that I acted on the instruction of Circle Inspector of Police.

Q :- Did you show the certified copy of the injunction order either to Inspector of Police or Tahsildar?

A :- I informed them orally about the interim order.

Q :- What was the reaction of Tahsildar and Circle Inspector of Police ?

A :- At this distance of time, I am not able to recollect what transpired.

Q :- At least, now, can you offer your explanation as to why you did not mention in statement of objections that you acted in accordance with the instructions of Circle Inspector of Police ?

A :- As there was no allegation in the complaint to that effect, I have not stated anything on this aspect.

Q :- Despite all these materials referred to above, do you still plead that you have acted bona fide ?

A :- Yes.

Q :- Do you know the definition of 'good-faith' and ' bona fide' ?

A :- I have understood to mean

Q :- Are you aware of instructions given by Inspector General of Police that protection should be given to persons in whose favour there is an interim order by the Court?

A :- I do not remember.

Q :- Have you got anything else to say ?

A :- Whatever I have done, done only with bona fide belief and not disobeyed the orders of this Court.

Utterance of words is not denied in statement of objections. Intention of third opponent to defy the authority of Court issuing injunction order is apparent. Despite the knowledge of injunction order, he holds that other party is inpossession of the property thereby actuates them or aid them to commit breach. When an Officer who is expected to honour or implement the order of this Court has himself recorded a contrary finding that has strengthened the hands of the other party who have suffered injunction to commit breach or disobey the injunction order. But by recording of contrary finding, refusal to render assistance to person who has obtained a favourable order and registration of criminal cases as against kiths and kins of applicant, it would not have been possible for the otherside to remove jola crop stood in an extent of 3 acres of land out of disputed property.

12. Is it possible, under these circumstances, to come to the conclusion that he has not wilfully disobeyed the interim order of injunction of this Court I am afraid not.

13. Lastly, may be, either realising the error or with a view to exculpate himself from the blemish attempted to throw the responsibility on Tahsildar and Circle Inspector stating that he acted as per their instructions who were also present at that juncture on the spot. That is not the stand taken in statement of objections. Even then, I am sure that they would not have ventured to support the commission of breach or to violate the order of this Court or advise the Sub-Inspector of Police to take action only against one party in case there was apprehension of breach of peace. I feel, this is only an afterthought for which no credence can be given.

14. Recording a finding that other party is in possession of property despite an order of injunction against them, the way in which he has dealt with parties - taking action against one party allowing other party to violate injunction order and asserting what he has done is correct will not establish that what he has done, has been done with 'good-faith' or 'bona fide'. His conduct establishes beyond doubt that he has neither respect nor regards for the orders of this Court. If such avert acts or deeds are not dealt with properly in accordance with law, Courts will be contributing to lawlessness in the name of administering justice. Very rarely proof of this nature will be available for taking action for violation of order of this Court or breach of injunction order granted by this Court.

15. In view of the above conclusion there is no other go except to take action as is permissible under law. Court may, in its discretion, having regard to the gravity of offence committed, may either attach the property of a person who has disobeyed the injunction order or order detention in a civil prison. As I have come to the conclusion that third opponent lacked bona fides and has intentionally and wilfully disobeyed an order of injunction of this Court and encouraged opponents 1 and 2 to remove the crop standing on the land, I feel ends of justice would be met by ordering his detention in Civil Prison for a period of two months. Ordered accordingly.