State of A.P. Vs. O.P. Jalan and Another

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Court : Andhra Pradesh

Decided On : Jul-19-2000

Reported in : 2000(5)ALD238; 2000(6)ALT710

Judge : Ramesh Madhav Bapat and;D.S.R. Varma, JJ.

Acts : Contempt of Courts Act, 1971 - Sections 15(2); Indian Penal Code (IPC), 1860 - Sections 186, 187, 188, 202, 204, 466 and 477

Appeal No. : SMCC No. 1292 of 1999

Appellant : State of A.P.

Respondent : O.P. Jalan and Another

Advocate for Def. : Mr. Y.V. Ratnakar, Adv.

Advocate for Pet/Ap. : Advocate-General

Judgement :
ORDER

D.S.R. Varma, J

1. This contempt case is suo motu taken up by this Court on the basis of the reference, dated 1-3-1999, passed by the III Senior Civil Judge, City Civil Court, Secunderabad, in IA No.483 of 1995 in OS No.230 of 1992.

2. IA No.483 of 1995 in OS No.230 of 1992 was filed by the petilioners by name M/s. Deccan Syntex Ltd., represented by its Managing Director, Sanjay Jalan, for punishing the respondent Nos.1 and 5 i.e., the repondents herein for criminal contempt.The respondents in IA No.483 of 1995 are in all six in number.

3. It was stated by the 2nd petitioner in the affidavit filed in support of IA No.483 of 1995 that he is the Managing Director of the 1st petitioner company; that he filed IA No.828 of 1992 for appointment of Commissioner to search and seize the records of the company lying in the premises No.5-2-175/1, R.P. Road, Secunderabad and accordingly one Sri Raghu was appointed as Commissioner for the said purpose. The said Commissioner seized the records from the custody of the 1st petitioner company lying in the said premises and placed them in a corner of the room in the first floor of the same premises under his lock and key and at that time the Commissioner also shifted two almirahs, file keeper and book vase inside the said room as the respondents did not produce the keys to open them and that it was a wooden panel room with AC duct and other furniture. It was further stated that the said Commissioner returned his warrant after completing the inventory except the files in the 'file cabinet box' and later the Court below appointed Sri M. Devender Reddy, Advocate, as Commissioner in the place of Sri Raghu, Advocate and the latter Commissioner Sri M. Devender Reddy opened the room in connection with execution of his warrant on 9-9-1994 and locked it again and affixed the paper seal with his signature across the key hole. It was futher stated that the petitioner gave a requisition to the Advocate-Commissioner for inspection of the said records by the Commercial Tax Department authorities on 13-3-1995 and the Commissioner fixed the date 16-3-1995 for inspection. It was further alleged that on 16-3-1995 the petitioner, his advocate, one Seetharam, Senior Assistant of the Commercial Tax Officer, and the 5th respondent went to the room and found the paper seal tampered and on opening the room, they found the furniture 'AC' ACswitch board, cup-boards, almirahs and inside paneling removed from the room and the roof ceiling in broken condition and they also found that the records were not in the same position as they were kept by the Advocate-Commissioner. It was also staled that the respondent Nos.1 and 5 had access to the premises and to the said room where records are kept and they have deliberately meddled with the seal and having gained entry into the room,

committed theft of the files which are not recorded in the inventory list. Finally it is stated that the respondent Nos.1 and 5 have committed offences under Sections 186, 187, 188, 202, 204, 466 and 477(a) of the Indian Penal Code and prayed the Court below to punish them for the guilty of criminal contempt and refer to the High Court under Section 15(2) of the Contempt of Courts Act to the High Court.

4. In the counter-affidavit filed by the 1st respondent it was stated that the learned Commissioner allowed the supporters of the 2nd petitioner into the premises and the records under the inventory were kept in a room under his lock and key and therefore tampering with the records does not arise. It was further stated that one of the Directors of the Company by name S.K. Jalan had not been coming to Hyderabad and, therefore, his furniture and air conditioner were shifted and made use of by the company. It was also stated that the records relating to the company were kept in a filing cabinet and the said cabinet contain the old files belonging to the company and the key of which was lost. It was further specifically stated in the counter-affidavit that the said cabinet was never lodged along with records in the said room. The further case of the respondents is that no panchanama was conducted at the time when the seal was found tampered and the 1st petitioner does not own any furniture, AC and, therefore, the application has no merits. With theabove averments the 1st respondent sought for dismissal of the application.

5. Upon considering the relevant statements of both the parties and having taken into account the statement made in the respective affidavits and also on the basis of the material available on record, the lower Court allowed the said IA and ordered reference to the High Court under Section 15(2) of the Contempt of Courts Act for the offences under Sections 204 and 477 IPC. Upon such reference, this Court has taken up the case suo motu,

6. Upon registering the matter as suo motu contempt case, this Court appointed Sri V. Raghu, Advocate as Commissioner and directed him to report within fifteen days, the following:

(a) Whether the articles in the said room are there as per the inventory made by him earlier; and

(b) Whether there are any changes as per the inventory made by him earlier.

7. Accordingly, the learned Commissioner executed the warrant and submitted his report dated 27-3-2000.

8. The material on record reveals that originally the Advocate-Commissioner Sri V. Raghu submitted two interim reports on 23-7-1992 and 9-11-1992. That apart he filed a final report on 14-11-1992. Again the subsequent Advocate-Commissioner Sri M. Devender Reddy also filed a report dated 9-9-1994. He also filed a memo dated 16-3-1995 in the Court. Since the interim reports 1 and 2 filed by the Advocate-Commissioner Sri Raghu were during the process of inventory, much significance need not be attached to them. But it is necessary to took into the final report No.3 dated 14-11-1992, wherein it was stated by the Commissioner that:

'the Commission commenced its work by 10 a.m., the balance inventory workwas taken-up, I was well assisted by both the Counsels i.e., Sri A. Ramanarayana, Advocate, .Counsel for petitioner as well as Sri E.D.L Nirmal Kumar, Advocate, Counsel for respondents along with staff members of both parties. The work continued till 2 p.m. The books/files/ records/papers have been properly accounted for as shown in separate sheets enclosed herewith. With today's work the entire material has been properly accounted for except for a file cabinet. The file cabinet box would not be taken into account as the same was locked and the staff of respondents pleaded ignorance of whereabouts of keys. Except for this file cabinet all other materials have been properly accounted for.'

9. Sri M. Devender Reddy, the Advocate-Commissioner who was appointed subsequently, filed a memo dated 16-3-1995 in the lower Court. In the said memo, it was stated that as per the requisition given by the petitioner for inspecting the records of M/s. Deccan Syntex Limited by the Commercial Tax Officers, he went to the premises where the records were kept under lock and key. After opening the lock, he found that the paper seal which was affixed across the door after locking the door was broken and on entering the room, he found the furniture, AC, AC switch board, cup boards, almyrahs and inside paneling removed from the room and roof ceiling in broken condition and that cement was plastered where electric pipe was there and it appears to be very recently plastered and that files were also

not found as kept earlier. Therefore, in view of lot of changes found in the room in his, absence, he deferred the inspection of records. At the time of opening the lock, it was stated by the learned Commissioner that Sri A. Rama Narayana Advocate, Sri Sanjay Jalan plaintiff in the suit, Sri V.K. Chamaria defendant No.5 in the suit, Sri ChandraMoult and Sri Sitaram,. Senior Assistant Commercial Tax Department were present. Thereupon it appears he filed a complaint to the Station House Officer, Mahankali Police Station, Secunderabad complaining about the theft of furniture, AC inside wooden paneling, cup boards and other fittings in the premises bearing No.5-2-175/1, R.P. Road, Secunderabad. Basing on the complaint, the SHO registered a case in Crime No.83 of 1995 under Sections 457 and 380 IPC and took up the investigation.

10. On the strength of the above complaint, the petitioner-company represented by its Managing Director Sanjay Jalan filed IA No.483 of 1995 under Section 15(2) of the Contempt of Courts Act for punishing respondents 1 and 5 for the Criminal contempt. The Court below after perusing the entire material available on record, allowed the IA and referred to this Court under Section 15(2) of the contempt of Court Act against respondents 1 and 5 for the offences under Sections 204 and 477 IPC.

11. After the contempt case was taken on file, as stated above, this Court passed an order appointing Sri V. Raghu, Advocate as Commissioner and directed him to report within fifteen days whether the articles in the said room are there as per the inventory made by him earlier and whether there are any changes as per the inventory made by him earlier. Accordingly after executing the warrant he filed the report dated 27-3-2000. In the report, the Commissioner referred to several items, which were already mentioned in the inventory earlier conducted by him. He also referred to some mistakes made in the abbreviations and other typographical errors. The learned Commissioner while complying with the direction of this Court, stated the following in his report:

'I have visited the place and taken reinventory of all the items available in the room. I have compared the samewith the inventories made by me earlier i.e., by comparing with the list of inventories, interim reports and final report (which were obtained from the trial Court). The items as per the inventory list are available in the room except for certain mixes-ups, etc. However the cabinet approximately of 3 feet height (metallic) is not available in the room.'

It is further stated that-

'Nearly 1293 items were taken-inventory by me earlier, they are all available in the room except for certain mix-ups. However the cabinet which was found locked and which could not be taken inventory of was then available in the room, the same was noted in my proceedings as well as on the final report submitted by the learned III SCJ CCC, Secunderabad on 14-11-1992. The said item is not available in the room. I have not included the said item in inventory list, as the keys were not furnished to me so as to open cabinet and to take inventory thereof. However the same was mentioned in the proceedings as well as the final report made by me earlier.'

The above report submitted by the Commissioner before this Court when compared with the report submitted by him earlier on 14-11-1992 discloses that a file cabinet approximately 3 feet height (metallic) which was available at the time of his earlier inventory and which could not be opened by him because of non-availability of the keys is not available during the present inventory. It is also stated that he ensured that all the doors were closed. This clearly shows that the said box was very much there in the room along with all the other items enumerated in the inventory list. But whereas the present report of the Commissioner discloses that the said file cabinet was missing in the room. It is thespecific version of the Commissioner that the file cabinet box, which he had already mentioned in the earlier final report, was kept in the room and it was not left out side. Therefore from the latest report it is clear that the said file cabinet it missing from the room and in such circumstances, the only inference that could be drawn is that respondents 1 and 5, who have access and in whose premises the items of the inventory along with the file cabinet box were kept, have meddled with the room.

12. It is also necessary in this regard to refer to the report of the Advocate-Commissioner Sri M. Devender Reddy made to the police as well as to the lower Court.

13. According to him he found that furniture, AC inside wooden paneling, cupboards and other fittings removed. He also stated specifically that the records have to be verified in order to know whether any of them were missing. It was his specific complaint that he found the paper seal affixed by him earlier, broken. It indicates that no further investigation subsequent to the said report was conducted with regard to the missing of the specific items including the files. After that only for the first time the Advocate-Commissioner V. Raghu, appointed by this Court verified the said room and reported the Court that all the items mentioned in the earlier inventory were present except the small mix-ups. But he specifically stated that the file cabinet box, which he had referred to in the earlier final report though not included in the items of inventory, was missing. So a comparison of the reports furnished by the earlier Advocate-Commissioner Sri M. Devender Reddy and the present Commissioner appointed by this Court Sri V. Raghu reveals that there were some missing items in the room and that file cabinet box was conspicuously missing fromthe room, which was kept under lock and key of the Commissioner all through. With regard to the missing items of AC and other furniture, there is no much clarity, since the Advocate-Commissioners in any reports did not refer to those things. But the fact remains that irrespective of the number of items and their significance in adjudicating the suit, there were some missing items, of which some were noted in the list of inventory, some were specially reported to the Court in the final report though not noted in the inventory list and some not at all reported to the Court about their existence in any of the reports. The file cabinet box is one of the items, which is conspicuously noted as missing.

14. At this stage the learned Counsel for the respondents 1 and 5 submits that the file cabinet box was not one among the items noted in the inventory and, therefore, it cannot be said that the same was missing because of removal by the respondents. We cannot accept this submission for the reason that though this item was not shown as one of the items in the inventory list, but the fact of its presence in the room along with the other items was brought to the notice of the Court by way of filing report dated 14-11-1992 and the reason for not accounting the same was also explained by the Commissioner in his final report. Hence, it has to be treated that the filing cabinet box was also one among the various items irrespective of its non-inclusion in the list of items in the inventory, and the

Advocate-Commissioner kept the same along with the other items under the lock and key.

15. Much cannot be said about the mix-ups of the files as pointed out by the learned Commissioner in his report, inasmuch as he stated that all the items that were noted in the earlier inventory were present. The said mix-ups may be dueto various reasons as stated by the Commissioner himself in his report. It has also to be noted that earlier Commissioner Sri M. Devender Reddy opened the room to facilitate the Commercial Tax Officials to verify the records and that might also be one of the reasons for mix-ups, though not certain.

16. It appears that the learned Second Commissioner Sri Devender Reddy subsequently found missing some other items like AC furniture etc. But nowhere in the earlier reports it was stated about their presence in any manner. Hence, we cannot attach much significance to the missing of the said items, which were mentioned by the Commissioner Sri Devender Reddy in his complaint to the police as well as to the Court, though it might be correct. Nonetheless the fact remains that one important item namely the file cabinet box was found missing prominently. Therefore, it could safety be concluded that an attempt was made to open the room as reported by the second Commissioner Sri Devender Reddy, which led to the missing of the filing cabinet box, for which respondents 1 and 5, who have access and in whose premises the room is situated, should be held responsible. Merely because it is a case of missing only, one item, the act of irresponsibility on the part of respondents 1 and 5 cannot be ignored and such an act though appears to be trivial, does not absolve them from their liability under the contempt of Courts Act. Therefore, we hold that the respondents 1 and 5 i.e., the contemnors herein have committed offence punishable under the Contempt of Courts Act.

17. In view of the foregoing reasons, as the missing item is only one, as reported by the Commissioner, we impose a fine of Rs.500/- each on the contemnors. The said fine amount shall be deposited within one week from the date of receipt of copy ofthis order, in default the contemnors shall undergo simple imprisonment for a period of two weeks. The reference is accordingly answered.