

Antony Vs. Rana

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Court : Kerala

Decided On : Nov-05-2004

Reported in : 2004(3)KLT1010

Judge : N.K. Sodhi, C.J. and; A.K. Basheer, J.

Acts : Contempt of Courts (High Court of Kerala) Rules, 1971 - Rules 6, 9, 10, 12, 13, 14 and 16

Appeal No. : C.C. Nos. 807/2003 and 854/2004

Appellant : Antony

Respondent : Rana

Advocate for Def. : T.P. Kelu Nambiar, Sr. Adv. and; George George Poonthottam and;

Advocate for Pet/Ap. : George Abraham and; N.N. Sugunapalan, Adv.

Disposition : Petition dismissed

Judgement :

N.K. Sodhi, C.J.

1. Whether the Division Bench before which the contempt petition is posted after a Single Judge has found that a prima facie case is made out against the

respondent, is bound to proceed with the trial or can it dismiss the petition at that stage and drop the proceedings is the question which arises in the two contempt cases (civil) Nos. 807 of 2003 and 854 of 2004 which are being disposed of by this order. Since the question has to be answered in the light of the Contempt of Courts (High Court of Kerala) Rules (hereinafter referred to as 'the Rules'), it is not necessary at this stage to refer to the facts of either of the two cases.

2. Rr. 6,9,10,12,13, 14 and 16 are relevant for our purpose and these may first be noticed.

'6. Taking cognizance:- Every proceeding for contempt shall be dealt with by a Bench of not less than two Judges.

Provided that a proceeding under Section 14 of the Act shall be dealt with by the Judge or Judges, in whose presence or hearing the offence is alleged to have been committed and in accordance with the provisions thereof.

Provided further that where civil contempt is alleged in respect of the judgment, decree, direction, order, writ or other process of a Single Judge, the matter shall be posted before that Judge who shall hold the preliminary enquiry in the matter. The Judge, if satisfied that no prima facie case has been made out, or it is not expedient to proceed with the matter, may dismiss the petition. If a prima facie case is made out and unconditional apology is not tendered by the respondent and accepted by the Court, the Judge may direct that the matter be posted before the Bench dealing with contempt matters.

Provided that where the Judge concerned is not available, the Chief Justice may direct the application be posted before some other Judge for orders.

xxx xxx xxx9. Preliminary hearing and notice.- (1) Every petition, reference, information or direction shall be placed for preliminary hearing before the appropriate Bench.

(2)(a) The Court, if satisfied that a prima facie case has been made out, may direct use of notice to the respondent, otherwise it shall dismiss the petition or drop the proceedings.

(b) The notice shall be in Form No. 1 and shall be accompanied by a copy of the petition, reference, information or direction and annexures, if any, thereto.

10. Service of notice.- Service of notice shall be effected in the manner specified in the rules of the High Court or in such other manner as may be directed by the Court.

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12. Appearance of the Respondent.-The respondent shall appear in person before the High Court on the first day of hearing and on such subsequent dates to which the same stands posted, unless, exempted by an order of the Court.

13. Reply by the respondent. The respondent may file his reply duly supported by an affidavit on or before the first date of hearing or within such extended time as may be granted by the Court.

14. Hearing of the case and trial:- Upon consideration. of the reply filed by the respondent and after hearing the parties,

(a) If the respondent has tendered an unconditional apology after admitting that he has committed the contempt, the Court may proceed to pass such orders as it deems fit;

(b) If the respondent does not admit that he has committed contempt, the Court may-

(i) proceed to frame the charge (subject to modification or addition by the Court at any time) if it is satisfied that there is a prima facie case; or

(ii) drop the proceedings and discharge the respondent, it is satisfied that there is no prima facie case, or that it is not expedient to proceed,

(c) the respondent shall be furnished with a copy of the charge framed, which shall be read over and explained to the respondent. The Court shall then record his plea if any-

(d) if the respondent pleads guilty, the Court may adjudge him guilty and proceed to pass such sentence as it deems fit;

(e) if the respondent pleads not guilty, the case may be taken up for trial on the same day or posted to any subsequent date as directed by the Court.

xxx xxx xxx16. Procedure for trial:- (i) Except as otherwise provided in the Act and these rules, the procedure prescribed for summary trials under Chapter XXI of the Code shall, as far as practicable, be followed in the trial of cases of contempt.

(ii) The Court may, at its discretion, direct that evidence be produced in the form of affidavits.

(iii) The Court may, either suo motu or on motion for that purpose, order the attendance or cross-examination of a person whose affidavit has been filed in the matter. .

(iv) The Court may, at its discretion, direct that any person be examined as Court witness.

(v) The Court may make such order as it deems fit for the purpose of securing the attendance of any person to be examined as a witness and for discovery or production . of any document'.

Rule 6 as produced above is in the amended form. This Rule as it originally stood prior to its amendment on October 21, 2000 read as under:

'6. Taking cognizance.-- Every proceeding for contempt shall be dealt with by a Bench of not less than two Judges:Provided that a proceeding under Section 14 of the Act shall be dealt with by the Judge or Judges, in whose presence or hearing the offence is alleged to have been committed and in accordance with the provisions thereof.

Rule 6 as it originally stood provided that every proceeding for contempt shall be dealt with by a Bench of not less than two Judges. Even in cases where civil contempt was alleged in respect of a Judgment, decree, direction, order, writ or other process of a Single Judge, the matter was being posted before a Division

Bench. It was thought that in such cases, the Single Judge should first look into the matter and if he finds that there is prima facie case against the respondent then alone should the case be placed before the Division Bench to take cognizance in the matter. Rule 6 was then amended and the second and third provisos thereto were introduced. Now, in cases where civil contempt is alleged, in respect of a Judgment, decree, direction, order, writ or other process of a Single Judge, the matter is placed before that Judge who holds a preliminary enquiry. After that enquiry if he is satisfied that no prima facie case is made out or it is not expedient to proceed in the matter, he may dismiss the petition. If, however, he comes to the conclusion that a prima facie case is made out and the respondent has not tendered an unconditional apology or if tendered, is not accepted by the Court, then the Single Judge may direct that the matter be posted before the Bench dealing with contempt petitions. It will be noticed that when the matter is posted before the Division Bench, the learned Single Judge has only held a preliminary enquiry to find out whether there is or not a prima facie case. He has not taken cognizance in the matter. If he finds that a prima facie case is made, out, he directs that the matter be posted before the Bench because it is only a Division Bench under the Rules which can take cognizance of a contempt petition. Now, when the Single Judge directs that the matter be posted before the Division Bench, the contempt petition is placed before a Division Bench for a preliminary hearing. This is what is provided in Rule 9(l) of the Rules. When the Division Bench is seized of the matter, sub-rule (2) of Rule 9 provides that it has to satisfy itself whether a prima facie case has been made out against the respondent. If it is satisfied that such a case is made out, it shall direct issue of notice to the respondent. If it is not satisfied about the prima facie case, it has to dismiss the petition or drop the proceedings. Where the Court decides to issue notice to the respondent, the same shall be served in the manner specified in the Rules of the High Court or in such other manner as may be directed by the Court. On service of notice, Rule 12 requires that the respondent shall appear in person before the Court on the first day of hearing and on such subsequent dates when the case stands posted unless he is exempted by an order of the Court. When notice is served on the respondent, he is required to file his reply supported by an affidavit on or before the first date of hearing or within such extended time as the Court

may grant. If the respondent has filed his reply, the Division Bench shall consider the same. If the respondent has tendered an unconditional apology after admitting that he has committed the contempt, the Court may, after hearing the parties, proceed to pass such orders as it deems proper. If the respondent does not admit that he has committed contempt of Court, the Division Bench may proceed to frame charge against him only after satisfying itself that there is a prima facie case. Rule 14 requires the Court to again satisfy itself that there is a prima facie case against the respondent before it frames the charge and if, on a consideration of the matter including the reply filed by the respondent the Division Bench finds that no prima facie case is made out or it is not expedient to proceed further in the matter, it can drop the proceedings even at this stage and discharge the respondent. Of course, if the charge is framed, it shall be read over and explained to the respondent and the procedure for trial as provided in Rule 16 shall be followed.

3. From the scheme of Rules as discussed above, it is clear that it is the Division Bench alone which has to take cognizance of the contempt petition and the Single Judge in the case of a civil contempt has only to hold a preliminary enquiry to find out whether a prima facie case is made out or not. The second proviso to Rule 6 enables the Single Judge to drop the proceedings if, according to him, no prima facie case is made out against the respondent. But, if he finds that there is a prima facie case, the matter will have to be posted before the Division Bench for a preliminary hearing which alone will take cognizance of the contempt petition. It need not issue notice to the respondent and could dismiss the petition at the preliminary hearing and even where notice is issued, the petition could be dismissed and proceedings dropped after considering the reply of the respondent. It is, thus, clear that the Division Bench is not bound to proceed with the trial merely because the learned Single Judge, after holding a preliminary enquiry, has found a prima facie- case against the respondent. What is contended by the learned counsel for the petitioners is that when the learned Single Judge issued notice to the contemner, the proceedings for contempt had been initiated and he having come to the conclusion that a prima facie case had been made out, the Division Bench is not sitting in appeal over the decision of the learned Single Judge and, therefore, the contemnors have to be tried in accordance with the

procedure prescribed in Rule 16. He cited a Full Bench judgment of this Court in Babu Premarajan v. Superintendent of Police, 2000 (3) KLT 177 and Purshotam Das Goel v. Hon'ble Mr. Justice B.S.Dhillon and Ors., (1978) 2 SCC 370 in support of his contention. The argument is, indeed, fallacious and cannot be accepted, When the learned Single Judge issued notice to the contemner, it was only for the purpose of holding a preliminary enquiry to find out whether there was a prima facie case to proceed against the contemner. The issuance of that notice did not amount to initiation of contempt proceedings. Rule 6 clearly stipulates that every proceeding for contempt has to be dealt with by a Bench of not less than two Judges. It is, thus, clear that it is only the Division Bench which can initiate contempt proceedings and if it finds that no prima facie case is made out or it does not agree with the view expressed by the Single Judge in this regard, it can dismiss the contempt petition and drop the proceedings. Babu Premarajan's case (supra) does not deal with the contempt of court rules. The provisions of Section 3 of the Kerala High Court Act came up for consideration before the Full Bench and the question which has arisen before us did not arise before the Full Bench; This judgment does not advance the case of the petitioners. Similarly, Justice B.S.Dhillon's case (supra) does not deal with the issue that arises for consideration before us. In that case, it was held that no appeal would lie as a matter of right from any kind of order made by the High Court in the proceedings for contempt. It is true that it was observed that proceedings for contempt are initiated by issuance of a notice, but their Lordships were not dealing with provisions similar to the Rules framed by the Kerala High Court. It was held that an order merely initiating the proceedings without anything further was not appealable under Section 19 of the Contempt of Courts Act. This judgment also does not advance the case of the petitioners. Some other judgments were also cited which are on an entirely different set of facts and do not throw any light on the issue which has been canvassed before us. In this view of the matter, the question posted in the earlier part of the judgment has to be answered in the negative.

4. Now, we shall deal with the facts of the two cases which are being disposed of by this order.

Cont Case (C) No. 807 of 2003

5. Agatti. Island forming part of Lakshadweep has four madrassas for imparting religious education. A committee, 'Thanveerul Islam Madrassa Committee' was formed to manage the madrassas. This Committee, has adopted its own constitution and bye-laws for its functioning. It decided to affiliate the madrassas to the Samastha Kerala Islam Madha Vidhabhyasa Board (for short 'the Board') having its headquarters at Chelari in Kerala. This Board prescribes syllabus and curriculum to be followed by the madrassas affiliated to it. A dispute arose between two leaders of the Board and a group of persons under the leadership of one A.P.Aboobacker formed a new Board. Both the Boards prescribed separate syllabus for madrassas registered with them. The two warring groups have been described as 'A' party and 'B' party by the Executive Magistrate, Agatti. 'B' party wanted the old syllabus to continue whereas the 'A' party was introducing a new syllabus. 'A' party has filed a suit in the Court of District Judge seeking an injunction against the other from interfering in the conduct of madrassas. A temporary injunction was issued by the District Judge which was later vacated and the suit is pending for trial. Against the order vacating the temporary injunction, a Civil Miscellaneous Appeal has been filed in this Court which is pending. While dismissing the application for the grant of ad interim injunction, the District Judge observed that the plaintiffs/petitioners ('A' party) were not entitled to run the madrassas to the exclusion of the 'B' party and their men. It was also observed that the 'A' party had failed to show prima facie that it was representing a properly constituted committee for the management of the 'Dhanveerul Islam Madrassa' and that it was entitled to an injunction as prayed for.

6. The SHO Agatti Police Station filed a report regarding the law and order situation. He mentioned in his report that the two rival groups had made all arrangements for taking possession of madrassas and their properties by force. The Executive Magistrate was of the view that if that happens, then there was very possibility of clash between 'A' and 'B' groups and their supporters and in that event, peace and public tranquility would be disturbed. He was of the opinion that the dispute was likely to cause breach of peace concerning madrassas and in order to maintain the law and order, he initiated proceedings under Section 145 of the Code of Criminal Procedure (hereinafter referred to as 'the Code') in respect of the madrassas and their properties. Both the groups were issued notices to

appear before the Executive Magistrate in person or by Pleader to put in written statement of their respective claims as to the actual possession of the madrassas. This order was passed by the Executive Magistrate on 19.10.2002. On the following day, the Executive Magistrate learnt that both the groups and their supporters had made arrangements to trespass into the properties of madrassas so as to establish their possession over the disputed properties. He was of the view that if the disputed properties were not attached by exercising powers under Section 146 of the Code, there was very chance for the destruction of the buildings and other properties. He found that the madrassa buildings had remained closed for the last five months and one of the groups had made attempts to trespass into the premises and made an attempt to take possession. It was also found that both the groups were conducting separate classes in the buildings or sheds situated more than 100 meters away from the madrassa buildings. In order to maintain law and order, he exercised powers under Section 146 of the Code and attached the madrassa buildings. It was ordered that the buildings shall be kept under lock and key after preparing an inventory of the articles kept inside. There were some coconut trees standing in the land owned by the Madrassa Committee and, therefore, he appointed Amin, Agatti for collecting the nuts from those trees. The Manager, Syndicate Bank was directed not to disburse the disputed amount to anybody until further orders. This order was passed on 20.10.2002.

7. Both the orders dated 19.10.2002 initiating proceedings under Section 145 of the Code and the order of attachment dated 20.10.2002 were challenged by the 'A' group in this Court by filing CrI.M.C. No. 10236 of 2002. This petition came up for hearing before a learned Single Judge, who by his order dated April 7,2003, quashed both the orders dated 19.10.2002 and 20.10.2002 observing as under:

'In the present case, O.S. 1/2002 is pending on the file of the District Judge, Kavaratti and it is seen from Annexure-A6 plaint that the possession of the properties and the institutions of madrassa is under consideration of the Civil Court. The parties to the proceedings are in a position to get interim orders granting injunction and also appointment of receiver in the Civil suit which is pending and in such circumstances, allowing to continue parallel proceedings under Section 145 of the Criminal Procedure Code is not justifiable. Annexures A4

and A5 orders are liable to be quashed.

This petition is allowed on quashing Annexures A4 and A'5 orders made by the Executive Magistrate, Agatti'.

The learned Single Judge did not record a finding as to which of the two groups was in possession of the disputed properties belonging to the madrassas. It is also to be noticed that while allowing the aforesaid petition, the learned Single Judge did not give any direction to the Executive Magistrate for delivery of possession to either of the two groups.

8. After the orders passed by the Executive Magistrate had been quashed, the petitioners in Crl.M.C.No. 10236 of 2002 approached the Executive Magistrate seeking possession of the properties in dispute. The Executive Magistrate refused to deliver possession to the petitioner observing that either of the two warring groups could take possession on production of an appropriate order from a Civil Court as was observed by this Court while disposing of the petition. It was then that the petitioners filed the present contempt petition alleging that the learned Magistrate wilfully disregarded the order passed by this Court while disposing of Crl.M.C.No. 10236 of 2002.

9. On receipt of notice issued by this Court, the respondent has filed his reply by way of an affidavit stating therein that he had committed no contempt of this Court since there was no direction to him to deliver possession to either of the two groups. He also submitted that he was ready to comply with any further direction that this Court may issue in regard to the disputed properties. The learned Single Judge examined the matter by holding a preliminary enquiry. He sent for the records and after examining the same came to the conclusion that the possession of the madrassas had been taken by the Executive Magistrate from 'A' party and, therefore, his refusal to hand over possession back to the same party was a violation of the order by which the criminal case was disposed of. He found a prima facie case against the respondent and has ordered the case to be placed before this Bench. This is how the matter has come up before us.

10. We have gone through the records and after hearing the learned counsel for the parties, are clearly of the view that the respondent has not violated any direction issued by this Court. As already observed, when the Criminal case filed by 'A' group was disposed of by the learned Single Judge, he did not record any finding as to which of the two groups was in possession of the properties in dispute. Not only this, the Court did not give any direction to the respondent to deliver possession to either of the two groups. The respondent was not sure as to which of the two groups was in possession at the time when the order of attachment was issued under Section 146 of the Code. It has been stated in the order of attachment that both the groups were conducting separate classes in the buildings more than 100 meters away from the buildings in dispute and that both were making attempts to take forcible possession of the disputed properties of the madrassas. The respondent also found while passing the order of attachment that the disputed buildings were lying locked. The learned Single Judge while disposing of the petition filed by 'A' group had observed in his order as under:

'On going through Annexure A1 judgment, it is not possible to see that any adjudication was made in respect of right over the property or the right to be in possession of the properties of madrassas'.

Again, in the same paragraph, the learned Single Judge observed: '

'In the light of the reliefs sought for in O.S. 1/2002, the question whether the plaintiffs in that suit are having the right to be in possession of the properties and the institutions of madrassas is under consideration of a Civil Court. The submission made by the learned counsel appearing for the petitioner is that since the matter is being considered by the Civil Court the Executive Magistrate would not have made Annexures A4 and A5 orders. The submission is that proceedings under Section 45 of the Criminal Procedure Code should not be initiated in respect of properties the right over and possession of which are under consideration of the Civil Court'.

More over, the District Judge, while dismissing the application for the grant of temporary injunction, has clearly observed that the 'A' party is not entitled to run the madrassas to the exclusion of the 'B' party and that it has failed to show that it

represents a properly constituted committee for the management of the 'Dhanveerul Islam Madrassa'. We are, therefore, satisfied that there was no direction issued by the learned Single Judge which the respondent has violated much less willfully. No case is, thus, made out to proceed against the respondent. Consequently, the petition is dismissed and the proceedings dropped.

Cont. Case (C) No.854 of 2004

11. W.P.(C) No.23010 of 2003 was disposed of by the learned Single Judge on 29th November, 2003 with the following observations::

'The only obstacle which cannot be got over in spite of the attitude of the parties is that the Departmental Promotion Committee has to be convened before a decision is to be taken. The counsel for respondents submits that hopefully within a period of one month, such meeting will be convened. It is stated that petitioner will not be subjected to any discrimination and there was no attempt to discriminate him at any time. Except to note the above and to record the admirable roles played by the counsel M/s. George Abraham and George Poonthottam, I do not think that any further orders are to be passed.

The Writ Petition is closed accordingly'.

The petitioner alleges that the respondents have violated the undertaking given to this Court and, therefore, they are guilty of contempt of Court. The learned Single Judge found that a prima facie case for initiating action against the respondents had been made out and he directed the case to be posted before a Division Bench for initiating contempt proceedings. This is how the matter has been placed before us. The respondents have filed a counter affidavit denying the allegations.

12. Having heard the learned counsel for the parties and after going through the records, we are of the view that there is no disobedience much less wilfull on the part of the respondent and that the undertaking given to this Court on the basis of which the Writ Petition was disposed of has been complied with. A perusal of the order passed by the learned Single Judge disposing of the Writ Petition would show that the learned counsel appearing for the respondents therein had

undertaken that the Departmental Promotion Committee would meet hopefully within a month. It is not in dispute that the Departmental Promotion Committee met on 29th March, 2004 and not only considered the claim of the petitioner for promotion to the post of Private Secretary but also promoted him. It is, thus, clear that the undertaking given to the Court had been complied with and there has been no disobedience much less willfull. If the petitioner is not satisfied with the order of promotion, it is open to him to challenge the same in accordance with law but no proceedings for contempt can, however, be initiated. We are, therefore, satisfied that there is no prima facie case against the respondents and, therefore, the petition is dismissed and contempt proceedings dropped.

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