

**Contemner:** M. Babu

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**Court :** Chennai

**Decided On :** Sep-04-1997

**Reported in :** 1999(1)CTC115

**Judge :** Jagadeesan, J.

**Acts :** Contempt of Court Act, 1971 -- Sections 2 and 9

**Appeal No. :** Suo Motu Contempt Application No. 242 of 1997

**Appellant :** Contemner: M. Babu

**Advocate for Pet/Ap. :** Mr. A.K. Parthasarathy, Adv.

**Judgement :**

ORDER

1. The contemner herein filed O.P.No. 749 of 1993 for grant of Letters of Administration with a Will dated 5.8.1991 executed by R. Muni Maistry alias R. Munian. Along with the said O.P., the contemner filed consent affidavits of the other legal heirs of the deceased R. Muni Maistry alias R. Munian. By order dated 21.2.1995, this Court ordered the said O.P. and issued the Letters of Administration as prayed for by the contemner herein on his executing a personal bond for Rs. 1,000 Pursuant to the said order, the Letters of Administration was issued. Subsequently one of the Legal Representatives of the deceased R. Muni Maistry alias R. Munian by name M. Balachandran filed an application in Application No. 872 of 1997 for revocation of the Letters of Administration on the

ground that he never filed any consent affidavits in the said O.P.No.749 of 1993 and that the consent affidavit filed therein is a forged one and he did not sign may consent affidavit. On a perusal and comparison of the admitted signature as well as the signature of the said M. Balachandran in the consent affidavit, this Court found that there is lot of difference between them and allowed the Application in Application No.872 of 1997 and revoked the Letters of Administration. However this Court felt that the person who filed the forged consent affidavit before this Court and obtained an order of Letters of Administration in his favour should not be lightly dealt with. Hence, suo motu contempt proceeding has been initiated against the contemner.

2. After receipt of the notice in the suo motu contempt proceedings, the contemner has filed a counter affidavit on 31.7.1997. In the said Counter affidavit, he has stated that he has not done any offence intentionally, that he is an illiterate person, washerman by profession, that he is not aware of the consequences and seriousness of the offence in question and that he submitted his apology. He further stated that he filed the said O.P. before this Court for the issue of Letters of Administration and for the said purpose, he obtained the consent affidavit from all the other legal heirs of his father excepting the said Balachandran, that he personally requested his brother Balachandran for several times who finally agreed to give the consent, that the contemner prepared the consent affidavit and sent it to the said Balachandran for his signature, that the affidavit was returned to him after the said Balachandran signed, that the contemner bona fide thought that it is a genuine one, and filed the same into this Court, that he has not done any mischief or tried to dupe this Court by false affidavit and that the contemner pleaded for mercy, in case the Court finds that any forgery has been committed.

3. The contemner also filed another Counter affidavit on 1.9.1997 wherein he has reiterated the stand already taken in the earlier counter affidavit dated 31.7.1997. However, he further added that the property is only 264sq. ft. in Mylapore, that the said property should be shared equally six legal heirs of the deceased R. Muni Maistry, that the contemner will get only 1/6 he share in the said property, that at time of the death of his father, the said Balachandran was away from the house and the contemner allowed him to reside in the house, that taking advantage of

the possession of the house, the said Balachandran wanted to knock away the entire property and that the other Legal Representatives are financially poor and to deprive all of them including the contemner, the said Balachandran has taken the present stand that the consent affidavit has been forged by the contemner.

4. The matter was adjourned to 4.9.1997 directing the contemner to furnish the particulars of the person who obtained the signature from the said Balachandran. On 4.9.1997 the contemner was present in Court. However, he pleaded that the person who got the signature from the said Balachandran is no more. In order to ascertain whether the concerned person had met the said Balachandran and obtained the signature, this Court passed an order, directing notice to the brother of the contemner viz., Balachandran. At that stage, the contemner admitted that he forged the signature of the said Balachandran and filed an affidavit before this Court where it has been stated as follows:

'I admit that I have forged the signature of my elder brother Mr. M. Balachandran in the consent affidavit and I profusely apologize for the act committed by me. I request the Hon'ble Court to take a lenient view and pardon me for the act committed by me.'

5. Before ever the affidavit referred to above was filed in Court, the counsel for the contemner contended that the forgery committed by the contemner will not amount to contempt of Court and hence, the proceedings have to be dropped, and no action can be taken against the contemner for the contempt of Court, under the Contempt of Courts Act, 1971. The Counsel for the contemner also relied upon the Order of this Court reported in A.V. Raman Alias A. Venkataraman, 1997 (II) M.L.J., 130 Contemner wherein the learned Judges have held as follows:-

18. On going through the allegations made against the alleged contemner in the present case the only reason is that in the vakalath as well as affidavit filed in the writ appeal the signature of Palanivelu is forged. There is no imputation that it is the alleged contemner who forged the signature. Even the enquiry report only says that Advocate Palanivelu said that the signature found in the vakalath and affidavit is not his. The statement was given in the absence of the alleged contemner and no opportunity was given to him to cross-examine the witness. Unless there is a

finding that the signature was forged by the present contemner and the same scandalizes or tends to scandalize or lowers or tends to lower the authority of Court or prejudices or interferes or tends to interfere with the due course of any judicial proceedings, or interferes or tends to interfere with, or obstructs or tends to obstruct the administration of justice in any other manner, the proceedings cannot be continued. In what way, the so-called filing of the affidavit and vakalath has affected the due course of justice is not evident. It cannot be said that the alleged forgery scandalizes or tends to scandalize the authority of Court, nor can it be said that it has interfered with the due course of any judicial proceeding. It cannot also be said that the alleged act interferes or tends to interfere with or obstructs or tends to obstruct the administration of justice in any other matter. At the most, the alleged contemner may be answerable for alleged forging of signature of Palanivelu. That is not a matter which could be taken note of under the Contempt of Courts Act. The so called Act did not affect the disposal of the writ appeal in any manner and the same was also not brought to our notice at the time when the appeal was being heard.

20. In proceedings for initiating action for criminal contempt, the Court must be satisfied whether the act complained of was calculated to obstruct or had an intrinsic tendency to interfere with the course of justice and due administration of law. The standard of proof required to establish the charges of criminal contempt is the same as in any other criminal proceeding. It was held in *Debabrata. v. State*, : 1969 CriLJ401 thus:

'A question whether there is contempt of court or not is a serious one. The court is both the accuser as well as the judge of the accusation. It behoves the Court to act with as great circumspection as possible making all allowances for errors of judgment and difficulties arising from intrinsic practices in courts and tribunals. It is only when a clear case of contumacious conduct not explainable otherwise arises that the contemnet must be punished. It must be realised that our system of courts often results in delay of one kind or another in the matter of transmission of orders of the superior Courts. The remedy for it is reform and punishment departmentally. Punishment under the law of contempt is called for when the lapse is deliberate and in disregard of one's duty and in defiance of authority. To take action in an

unclear case is to make the law of contempt do duty for other measures and is not to be encouraged.'

I am unable to agree with the learned counsel for the contemner. The first reason is that, the Division Bench of this Court, without reference to the Supreme Court's decision reported in *Afzal v. State of Haryana*, : 1996 CriLJ1679 , had disposed of the matter. In the said decision, the Apex Court has held as follows:-

'31 The question then is: Whether he committed contempt in the proceedings of this Court? Section 2(b) defines 'Contempt of Court' to mean any civil or criminal Contempt: 'Criminal contempt' defined in Section 2(c) means interference with the administration of justice in any other manner. A false or a misleading or a wrong statement deliberately and wilfully made by a party to the proceedings to obtain a favourable order would prejudice or interfere with the due course of judicial proceedings. It is seen that Ahlawat, respondent No.3 to the main writ petition and incharge of the criminal administration, with his connivance caused two minor boys' wrongful detention. He made an averment in the counter-affidavit dated October 30, 1993, that they were not in wrongful detention nor are they taken into custody which was later found to be false. He first used fabricated counter-affidavit, forged by Krishnakumar in the proceedings to obtain a favourable order. But when he received adverse atmosphere to him, he fabricated further false evidence and sought to use an affidavit evidence to show that Krishna Kumar had forged his signature without his knowledge and filed the fabricated document. Thereby he further committed contempt of the judicial process. He has no regard for truth. From stage to stage, he Committed contempt of the Court by making false statements. Being a responsible Officer, he is required to make truthful statements before the Court, but he made obviously false statements. Thereby, he committed criminal contempt of judicial proceedings of this Court.'

From the above observation and on the emphasised portion, it is very clear that the Supreme Court has held that if a person files a fabricated document and on the basis of that document obtains an order in his favour from the Court, that will amount to contempt of the judicial process. Yet another latest decision on the point is reported in *Rita Markandey v. Surjit Singh Arora*, : 1997 CriLJ2503 . In the said

decision, their Lordship's of the Apex Court have categorically held as follows:

'12. Law is well settled that if any party gives an undertaking to the Court to vacate the premises from which he is liable to be evicted under the orders of the Court and there is a clear and deliberate breach thereof it amounts to civil contempt but since in the present case, the respondent did not file any undertaking as envisaged in the Order of this Court the question of his being punished for breach thereof does not arise. However, in our considered view even in a case where no such undertaking is given, a party to a litigation may be held liable for such contempt if the Court is induced to sanction a particular course of action or inaction on the basis of the representation of such a party and the Court ultimately finds that the party never intended to act on such representation or such representation was false. In other words, if on the representation of the respondent herein the Court was persuaded to pass the order dated October 5, 1995 extending the time for vacation of the suit premises, he may be held guilty of contempt of Court, notwithstanding non-furnishing of the undertaking if it is found that the representation was false and the respondent never intended to act upon it. However, the respondent herein cannot be held liable for contempt on this score also for the order in question clearly indicates that it was passed on the basis of the agreement between the parties and not on the representation of the respondent made before the Court. It was the petitioner who agreed to the unconditional extension of time by four weeks for the respondent to vacate and subsequent extension of time on his giving an undertaking and this Court only embodied the terms of the agreement so arrived at, in the order. We are, therefore, of the opinion that the respondent cannot in any way be liable for contempt for alleged breach of the above order. As regards the contention of the petitioner that by trespassing into some other portion of the house in question during the pendency of the appeal the respondent has committed contempt of Court, we are unable to accept the same; firstly because, the respondent's claim is that he has been in occupation thereof since long and this contentious issue cannot be decided solely on the basis of affidavits and secondly because the above issue does not fall within the limited scope of our enquiry in this proceeding which centres round the order dated October 5, 1995.

'13. To seek an answer to the other question as to whether by making false statements before this Court in the affidavits filed, the respondent has committed criminal contempt, we may profitably refer to the judgment of this Court in *Dhanajay Sharma v. State of Haryana*, : [1995]3SCR964 , in which one of us (justice Dr. A.S. Anand) observed P. 2828 of AIR)

'Section 2(c) of the Contempt of Courts Act, 1971 (for short the Act) defines contempt as 'the publication' (whether by words, spoken or written by signs or visible representation or otherwise) of any matter or the doing of any other act whatsoever to (1) scandalise or tend to scandalise or lower or tend to lower the authority of any Court; (2) prejudice or interfere or tend to interfere with the due course of judicial proceedings; or (3) interfere or tend to interfere with, or obstruct or tend to obstruct the administration of justice in any other manner. Thus, any conduct which has the tendency to interfere with the administration of justice or the due course of judicial proceedings amounts to commission of criminal contempt. The swearing of false affidavits in judicial proceedings not only has the tendency of causing obstruction in the due course of judicial proceedings but has also the tendency to impede, obstruct and interfere with the administration of justice. The filing of false affidavits in judicial proceedings in any court of law exposes the intention of the party concerned in perverting the course of justice. The due process of law cannot be permitted to be slighted nor the majesty of law be made a mockery of by such acts or conduct on the part of the parties to the litigation or even while appearing as witnesses. Anyone who makes an attempt to impede or undermine or obstruct the free flow of the unsoiled stream of justice by resorting to the filing of false evidence, commits criminal contempt of the Court and renders himself liable to be dealt with in accordance with the Act.'

14. The above observations dovetail into the facts of the instant case, for there cannot be any manner of doubt that by filing false affidavits the respondent had not only made deliberate attempt to impede the administration of justice but succeeded in his attempts in delaying the delivery of possession. We therefore, hold the respondent guilty of criminal contempt of Court.'

From the above two judgments of the Apex Court, it is clear that filing of a fabricated document before the Court and filing of an affidavit with false information, both will amount to contempt of Court. Apart from the said two judgments, in the decision reported in J. Sudarshan - Contemner, where the contemner there in forged the signature of the various persons and filed the writ petitions, I held that the action of the contemner therein will amount to contempt of Court. In view of the decisions of the Apex Court, it is not necessary to refer or to extract any portion from the above decision except to point out that my judgment has been confirmed by a Division Bench of this Court in Jai Sudharasan and another v. S. Srimathi and others W.A.No. 102 of 1997 dated 27.9.97.

6. Coming to the facts of this case, the contemner has filed the consent affidavit of his brother forging his signature and obtained an order of Letters of Administration. Hence, the filing of the forged affidavit in this case will amount to interference in the administration of justice. But for the consent affidavit, the contemner would not have obtained the order of Letters of Administration. Hence, it is a clear case of contempt. The Judgment of the Division Bench of this Court relied upon by the counsel for the contemner may not be of any help to him, because the learned Judges in that case have held that the alleged forged signatures did not affect the disposal of the writ appeal in any manner.

7. But before parting with the case, with great respect to the learned Judges, I want to draw a differing note in respect of the Division Bench Judgment. The learned Judges have held that the alleged forged signature of Palanivelu (Signature of the advocate alleged to have attested the Vakalath and Affidavit) did not affect the disposal of the writ appeal in any manner. I think the view taken by the Division Bench may not be correct. The learned Judges lost sight of the fact that but for the attestation, the writ appeal might not have been numbered and the papers ought to have been returned for want of necessary attestation. When once a party had forged the signature of an Advocate for the purpose of attestation of the affidavit and vakalath and invited this Court to entertain the writ appeal, the question is whether by such forged attestation, the jurisdiction of this Court had been invited to entertain the appeal, i.e., only by such forged documents, this Court had entertained the appeal. If by way of forged document or the false

affidavits, if this Court has been induced to sanction a particular course of action or inaction then it is nothing but a contempt of Court. As I already pointed out, perhaps the judgment reported in Afzal v. State of Haryana, : 1996 CriLJ1679 was not brought to the notice of the learned Judges and the later view of the Supreme Court is also reported subsequent to the disposal of the writ appeal.

8. For all the reasons stated above, I am of the opinion that a clear case of contempt has been made out against the contemner herein. Hence, I find him guilty and sentence him to undergo imprisonment till the rising of the Court and also a fine of Rs.2,500. The contemner is directed to pay the said fine within two weeks from today, failing which he has to undergo simple imprisonment for a period of three months. Suo motu Contempt Application is ordered accordingly.

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