

K. Ramakrishnan Vs. M.M. Rajendran

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Court : Chennai

Decided On : Sep-07-1994

Reported in : 1995CriLJ3959

Judge : S.M. Ali Mohamed, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 200; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 204, 205, 317 and 482

Appeal No. : Contempt Appln. No. 240 of 1994

Appellant : K. Ramakrishnan

Respondent : M.M. Rajendran

Advocate for Def. : N. Natarajan, Counsel for P. Kumaresen

Advocate for Pet/Ap. : M. Ravindran, ;Sr. Counsel for P. Mohanarajan

Judgement :

ORDER

1. This petition is under Sections 2(c) and 12 of the Contempt of Courts Act, 1971, hereinafter referred to as 'the Act' and to punish the respondent for committing alleged offence of Contempt of Court.

2. The petitioner herein K. Ramakrishnan filed a complaint against respondent herein M. M. Rajendran for the alleged offence under Section 200 of Indian Penal

Code before the Court of Judicial Magistrate, Aruppukottai in C.C. No. 92 of 1994. The respondent, M. M. Rajendran was Chief Secretary to Government of Tamil Nadu, during the period February, 1988 to January, 1991. He was also Chairman of SPIC from 20-4-1990 to 19-1-1991. He also served as Chairman of Tamil Nadu Electricity Board and Chairman of Tamil Nadu Planning Commission. At the time of retirement on 20-5-1993, he was Secretary to Government of India, Ministry of Parliamentary Affairs. The learned Magistrate took cognizance of the complaint and issued process to the accused/respondent. The respondent filed petition under Section 482 of Criminal Procedure Code to quash proceedings in C.C. No. 92 of 1994 in Crl.O.P. No. 3075 of 1994 before this Court and same was admitted on 28-4-1994 and in Crl.M.P. No. 2785 of 1994 stayed all further proceedings for a period of eight weeks on 28-4-1994 and dismissed Crl.M.P. No. 2786 of 1994 and declined to dispense with personal appearance. It is stated that as respondent was ill, that necessary petitions were filed before the learned Magistrate under Section 317 of Criminal Procedure Code to condone the absence of the respondent and also a petition under Section 205 of Criminal Procedure Code to dispense with personal appearance. The learned Magistrate allowed the petition under Section 317 of Criminal Procedure Code, but however dismissed the petition under Section 205 of Criminal Procedure Code and directed respondent to appear before Court on 3-6-1994.

3. The applicant, K. Ramakrishnan, has taken up the contempt proceedings. In the affidavit filed in support of the Contempt application, the applicant has stated that the respondent, viz., M. M. Rajendran, suppressed and has not disclosed certain relevant facts before this Court in his petition in Crl.M.P. No. 3306 of 1994 filed on 23-5-1994 for dispensing with his personal attendance on all further hearings dates in C.C. No. 92 of 1994, on the file of Judicial Magistrate, Aruppukottai, pending disposal of quashing petition in Crl.O.P. No. 3075 of 1994. In the affidavit filed in support of the Contempt application, it is stated as follows :-

'I submit that in the aforesaid petition, Crl.M.P. No. 3306 of 1994, the respondent did not say anything in respect of the dismissal of Crl. M.P. No. 2786 of 1994, praying for dispensing with his appearance before the trial Court by this Hon'ble Court, on 28-4-1994. In para-3 of the petition in the last five lines, he had stated as

follows :-

On this, the Hon'ble Court was pleased to admit the quash petition in the above CrI. O. P. No. 3075 of 1994, and this Hon'ble Court was also pleased to stay all further proceedings of the case in CrI. M.P. No. 2785 of 1994 on 28-4-1994, till the disposal of the quash petition.' The above statement made in the petition is totally incorrect and contrary to the truth. The respondent is bound to state only the truth in judicial proceedings.

I submit that in para 7 of the petition in CrI. M.P. No. 3306 of 1994, the respondent had stated, 'The petitioner submits that if he does not appear on 3-6-1994, as directed by the Learned Magistrate, a non-bailable warrant for his appearance will be issued. Therefore, the petitioner has no other alternative except to approach this Hon'ble Court. The petitioner undertakes to appear before the Judicial Magistrate, Aruppukottai, if necessary arises and is directed by the Hon'ble Magistrate'. The aforesaid statements stated in the petition in CrI. M.P. No. 3306 of 1994 are contrary to truth. The observation by the learned Magistrate in M.P. No. 1614 of 1994 dated 20-5-1994 is that the 'accused did not appear in spite of directions. The accused says, he is not well, he should appear on the next hearing day. Otherwise the same will be informed to the High Court for further action under law'. This will clearly establish that the respondent was directed to appear on 3-6-1994, but he did not appear. There was no threat by the trial Court that non-bailable warrant will be for his appearance. Therefore, the statements by the respondent herein are not true, I submit that the respondent herein did not even whisper as to why the learned Magistrate dismissed the petition under Section 204, Cr. P. C. in M.P. No. 1615 of 1994 on 20-5-1994. The entire order of the learned Judicial Magistrate, Aruppukottai, is stated in para-4 of this affidavit. It will establish that the respondent's averments in his petition is totally incorrect. The learned Magistrate has given a clear finding as to why he dismissed the petition under Section 205 of Criminal Procedure Code filed by the respondent. I submit that the respondent did not say anything about the dismissal of his petition in CrI. M.P. No. 2786 of 1994 on 28-4-1994 and he had totally suppressed this fact in his petition in CrI. M.P. No. 3306 of 1994. Further, he did not mention about the order dated 20-5-1994 in M.P. No. 1614 of 1994 passed by the learned Magistrate, in

the petition in Crl. M.P. No. 3306 of 1994. But he had misled this Hon'ble Court saying that non-bailable warrant will be issued for his appearance.'

4. The contemner has appeared before this Court and filed an affidavit wherein he has stated that he is a responsible and law-abiding person, who held the high office of Chief Secretary to the Government of Tamil Nadu and he has the highest respect to the Court. He has pointed out in his affidavit that as he was sick, and was not keeping good health, he gave necessary instructions to his counsel Mr. Elango. He has stated in his affidavit as follows :-

'I have requested Mr. Elango to engage a senior lawyer. I am given to understand from Mr. Elango on 28-4-1994 that Mr. N. Natarajan, senior counsel appeared on my behalf before this Hon'ble Court. Upon hearing this arguments, this Hon'ble Court was pleased to admit the quash petition in the above Crl. O. P. No. 3075 of 1994, and this Hon'ble Court was also pleased to stay all further proceedings of the case in Crl. M.P. No. 2785 of 1994 on 28-4-1994 for a period of eight weeks. I was also informed by my counsel that the petition to dispense with my appearance was dismissed as I have not moved the lower Court earlier for such dispensation. I have informed my counsel that necessary follow-up action must be taken with regard to the proceedings pending before the learned Judicial Magistrate, Aruppukottai, and I was informed by my counsel that necessary steps were taken in this regard and that a senior lawyer of Madurai Bar, Mr. S. Rajagopal was contacted and requested to look after the case. From time to time, I was informed by phone and by letters, of the development of the case. For filing all those petitions, I have given instructions to my counsel on my instructions and after going through the connected papers sent to him had filed necessary petitions in this Hon'ble Court and arranged to file petition before the learned Judicial Magistrate, Aruppukottai.

I understand from my counsel that Mr. J. S. Murali, junior to Mr. S. Rajagopal appeared on 29-4-1994 before the learned Magistrate and filed a copy of the order of stay granted by this Hon'ble Court. I also understand that Mr. Murali also filed a petition under Section 317, Cr. P. C. to condone my absence in that Court. I was given to understand that the learned Magistrate, was pleased to allow this petition

and directed me to appear before the Court on 20-5-1994. My counsel contacted me and wanted me to appear on 20-5-1994. In view of my fragile health, I told him that I will not be able to appear before the Court and that he may explain this to the Hon'ble Court. I understand that on 20-5-1994, my counsel had filed a petition under Section 317, Cr. P. C. to condone my absence expressing my inability to appear before the learned Magistrate due to ill-health. He had also filed a petition under Section 205, Cr. P. C. to dispense with my personal appearance and permit me to appear through pleader. The learned Magistrate was pleased to allow the petition filed under Section 317, Cr. P. C. with a direction to appear before him on 3-6-1994, but, however, the learned Magistrate was pleased to dismiss the petition filed under Section 205, Cr. P. C. I understand that Mr. Rajagopal, who appeared in the lower Court conveyed this information to my counsel at Madras over telephone. It is learnt from my counsel that Mr. Rajagopal, cautioned that my non-appearance on the next hearing date (3-6-1994) will possibly lead to issuance of a non-bailable warrant against me. When my counsel Mr. Elango communicated to me over phone, I requested him to file necessary petition before this Hon'ble Court to dispense with my appearance once again as in view of ill-health. I will not be in a position to go to Aruppukottai. In view of the urgency to file the petition and as I am living in Delhi, it was not possible for me to go through the petition or sign it.' Mr. Elango, counsel for Contemner has also filed an affidavit and has stated as follows :-

'I submit that considering the seriousness of the matter, and the availability of the senior advocate whom we have engaged in this matter and also considering the fact that this Hon'ble Court hears urgent petitions only once in a week during vacation we have decided to file a second dispensing with petition before this Hon'ble Court on 23-5-1994 itself.

I submit Crl. M.P. No. 3306 of 1994 was directed against the order dated 20-5-1994 made in Crl. M.P. No. 1615 of 1994 passed by the learned Judicial Magistrate, Aruppukottai. As this Hon'ble Court has directed the respondent to approach the lower Court first, while dismissing the Crl. M.P. No. 2786 of 1994 and since Crl. M.P. No. 3706 of 1994 was filed against the dismissal of Crl. M.P. No. 1615 of 1994 and since the entire records relating to the quash petition are

going to be placed before this Hon'ble Court, did not think it is imperative that I should mention the fact in the second dispensing with petition about the dismissal of the earlier dispensing with petition.'

He has further stated as follows :-

I submit the limited stay granted by this Hon'ble Court was in operation till 28-6-1994. I have filed Crl. M.P. No. 3306 of 1994 on 23-5-1994. The order was passed in Crl. M.P. No. 3306 of 1994 on 24-5-1994. On that day, the stay granted by this Hon'ble Court in Crl. M.P. No. 2785 of 1994 was in operation. While I moved the petition in Crl. M.P. No. 3306 of 1994 all the connected records, namely in Crl. M.P. No. 2785 of 1994, and Crl. M.P. No. 2786 of 1994 and Crl. O. P. No. 3075 of 1994 were placed before this Hon'ble Court and formed back papers to the petition in Crl. M.P. No. 3306 of 1994. The order dated 28-4-1994 granting stay for eight weeks in Crl. M.P. No. 2785 of 1994 was also placed before this Hon'ble Court. It is the practice of this Hon'ble Court to grant limited stay for a particular period and renew it later from time to time, since it is likely to be renewed by this Hon'ble Court later I was under a mistaken impression that it may not be necessary to mention the limited stay specifically in the second dispensing with petition i.e. Crl. M.P. No. 3306 of 1994. I submit that there is no motive for me to hide the fact of limited stay and no purpose will be served by hiding this fact. I submit it is true that an error had crept in omitting to state the limited nature of stay order and this is because of inadvertence. Since the matter was moved hurriedly in the vacation, this error has crept in and there was no deliberate or intentional misstatement of facts with any kind of ulterior motives. Therefore, I request that I may be excused for this inadvertent error.'

It is further stated as follows :-

'I filed the petition before this Hon'ble Court during vacation on 23-5-1994. At that time, I was not in possession of the Order of the lower Court. Hence, I was not able to mention the details of the order of the learned Magistrate in Crl. M.P. No. 3306 of 1994, the second dispensing with petition filed before this Hon'ble Court.'

5. Mr. N. Natarajan, learned Senior Counsel appearing for respondent/Contemnor, contended that the respondent is a law-abiding person who in his career as a civil servant held high offices and was also Chief Secretary to Government of Tamil Nadu and he has highest respect towards Court and as he was residing at Delhi and was ill, he gave necessary instruction to his counsel Elango to make appropriate proceeding to quash complaint filed by the Applicant, under Section 200 of Indian Penal Code in C. C. No. 92 of 1994 and he had no intention to suppress any materials before the Court and he is not responsible for any inadvertent omission made by his counsel and in any event, the respondent tenders apology to the Court.

6. On the other hand, Mr. M. Ravindran, learned Senior Counsel appearing for petitioner, reiterated the allegations in the petition for Contempt.

7. The point for consideration is whether the respondent has committed contempt of Court under Section 2(c) of the Act.

8. Section 2 of the Act reads as follows :-

'2. Definitions :- In this Act, unless the context otherwise requires :-

(a) 'Contempt of Court' means civil contempt or criminal contempt;

(b) 'Civil contempt' means 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;

(c) 'Criminal contempt' means the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise of any matter or the doing of any other act whatsoever which

(i) scandalises or tends to scandalise, or lowers or tends to lower the authority of any Court; or

(ii) prejudices, or interferes, or tends to interfere with, the due course of any judicial proceedings; or

(iii) interferes or tends to interfere with, or obstructs or tends to obstruct; the administration of justice in any other manner;

(d)

The facts stated in the instant case in Contempt Petition will come under abuse of process of the Court that tends to interfere with administration of justice. In Halsbury's Laws of England - Volume 9 (4th Edition) at page 27, para 38, it is stated as follows :-

'38. Abuse of process in general.

The Court has power to punish as contempt any misuse of the Court's process. Thus the forging or altering of Court documents and other deceits of like kind are punishable as serious contempts. Similarly, deceiving the Court or the Court's officers by deliberately suppressing a fact, or giving false facts, may be a punishable contempt.'

9. Thus abuse of process of Court by deliberate suppression of a fact amounts to offence against justice, extending its influence beyond parties to the action and is punishable as a contempt of Court. In the instant case, is there deliberate suppression of fact by respondent M. M. Rajendran

10. Both the contemner, as well as his counsel have filed additional counter-affidavits unconditionally tendering their apology.

11. In the instant case, it is clear from the affidavit filed by the contemner, M. M. Rajendran and his counsel Elango that the contemner was in Delhi during the material time and he was not keeping good health. Therefore, he was not in a position to personally appear before the learned Magistrate, Aruppukottai in criminal proceedings. He has also stated that he has given necessary instructions to his counsel to bring the facts to the Court and engage a senior Counsel to get necessary orders for dispensing with his personal appearance. Elango, in his affidavit also stated that the contemner has given necessary instructions to him. However, he moved before the vacation Court and as he was in a hurry, and that certain facts were not stated. In his affidavit, he has stated that an error had crept

in omitting to state the limited nature of stay order and the same was due to inadvertence. He has further stated that he was not able to mention the details of the order of the learned Magistrate in Crl. M.P. No. 3306 of 1994, the second dispensing with petition as he was not in possession of order of the lower Court. He has also tendered his unconditional apology. In the instant case, it is clear that the junior counsel for the applicant has failed to bring to the notice of this Court certain facts in the petition which he has stated was due to inadvertence. The Contemner also stated that he has instructed his counsel to place all the facts, but certain facts were omitted to be mentioned by inadvertence. However, on this account, the contemner cannot shift the responsibility only to the counsel. He is equally responsible for the statement given on his behalf by the counsel on his instructions and authority. On the other hand, Mr. N. Ravindran, learned Senior Counsel appearing for the applicant was fair in his sub-missions that since omission had happened due to inadvertence of a junior counsel, he is not pressing the matter with vigour. In the instant case, as the above omissions were due to bona fide inadvertence and the same was not deliberate and the contemner M. M. Rajendran, as well as the junior counsel Elango have tendered unconditional apology before this Court, this Court records the unconditional apology tendered by the respondent M. M. Rajendran as well as junior counsel Elango and dispose of the above Contempt Application. Accordingly, this Contempt Application is closed.

12. Order accordingly.