

In Re: M. Balakrishnan and anr.

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Court : Chennai

Decided On : Mar-22-2000

Reported in : 2000CriLJ3446

Judge : K.G. Balakrishnan, C.J. and ;K. Govindarajan, J.

Acts : [Contempt of Courts Act, 1971](#) - Sections 12, 15 and 17; Code of Criminal Procedure (CrPC) ; [Constitution of India](#) - Articles 129 and 215

Appeal No. : Cont. A. Nos. 4 and 5 of 2000 and C.M.P. Nos. 4252 and 4253 of 2000

Appellant : In Re: M. Balakrishnan and anr.

Advocate for Pet/Ap. : S. Pavanandam, Adv.

Disposition : Appeal dismissed

Judgement :

K.G. Balakrishnan, C.J.

1. The appellant in Cont. A. No. 5/2000 is the son Of the appellant in Cont. A. No. 4/2000. These two appellants have been found guilty by a learned single Judge in suo motu contempt application No. 1/2000 and they have been sentenced to undergo simple imprisonment for two weeks.

2. The facts in short are as follows:- One V.G. Loganathan was in occupation of a portion of the building owned by the appellant in Cont. A. No. 4/2000 as a tenant. The premises was bearing the old Door No. 48 and new Door No. 44 Nethaji Street, Ponnammanmedu, Chennai-110 and he was conducting a rice mill. He was paying a rent of Rs. 7000/- per month. The said tenant filed O.S., No. 1421/97 before the District Munsif-cum-Judicial Magistrate, Tiruvotriyur alleging that he had already surrendered possession of a portion of the building used for rice mill to the appellant Balakrishnan and is in possession of only a portion of the building and the appellant Balakrishnan had been trying to evict the plaintiff therein from that portion of the house occupied by him.

3. The plaintiff Loganathan filed an application to transfer the suit to City Civil Court alleging that the District Munsif-cum-Judicial Magistrate, Tiruvotriyur had been compelling him to enter into a compromise with the appellant Balakrishnan. The appellant Balakrishnan received notice in the transfer application as well as in the suit. Pursuant to the endorsement made on the transfer petition, the suit was transferred to the file of city Civil Court, Madras as per the order of a learned single Judge of this Court dated 10-3-1999. The said suit was renumbered as O.S. No. 4302/99 on the file of city civil Court, Madras. In that suit, the plaintiff Loganathan moved an application for injunction and the appellant Balakrishnan filed a counter affidavit wherein he admitted and stated as follows :-

I submit that a rice mill with the office attached to it at Old No. 48, New No. 44 Nethaji Street, Ponnammanmedu, Kanakkan Chatram, Chennai-110 was initially let out to one Mr. P. Mani in the year 1989. The petitioner was an employee under P. Mani. The licence granted to P. Mani was for only one year and for the purpose of removing the husk from the paddy and to polish the rice. The petitioner herein was granted such a licence after his employer Mani left the suit premises. Along with the rice mill, there is an office building which is part and parcel of the rice mill. The petitioner herein handed over, possession of the rice mill alone on 7-7-1997 but has not surrendered the office building which is part and parcel of the rice mill. The rice mill could not be let out to any third party therefore the petitioner is bound to pay Rs. 7000/- per month from July, 1997 onwards. The rent due from the petitioner up to February, 1998 is Rs. 56,000/-. The petitioner is misusing the

office building which is the suit property for his residential purposes. The amount of Rs. 500/- by way of D.D. sent by the petitioner was adjusted towards the arrears of rent due from the petitioner. The petitioner has suppressed all the material facts.

4. The appellant Balakrishnan had also filed a written statement and therein also he admitted possession of the portion of the house by the said Loganathan.

5. Thereafter, the appellant Balakrishnan filed O.S. No. 140/99 before the District Munsif-cum-judicial Magistrate, Tiruvotriyur. His son Murugesan, appellant in Cont. A No. 5/2000, was arrayed as the first defendant. In the said suit O.S. No. 140/99 the appellant Balakrishnan prayed for mandatory injunction directing the defendant, his men and agents or any other person including V.G. Loganathan and his family members to leave the suit premises morefully described thereunder by removing all movables including the household articles lying therein and thereby surrender vacant suit premises to the plaintiff. Three applications were filed by the appellant Balakrishnan along with the suit, one for mandatory injunction, another for surrendering possession of the property i.e. 36' x 13' residential portion and the first floor bearing Old Door No. 48. He has also prayed for police protection to implement the order of injunction.

6. The District Munsif-cum-Judicial Magistrate, Tiruvotriyur allowed all the three interim applications. Though the appellant Murugesan received notice in the suit, he remained ex parte. The tenant Loganathan was not made a party to the proceedings. Pursuant to the order passed by the learned District Munsif, the appellant Balakrishnan with the help of the police, got eviction of the tenant Loganathan. The tenant Loganathan filed Civil Revision Petition challenging the order passed by the learned District Munsif. When the matter came up before Justice Subramani, J. the grave irregularities committed by the District Munsif and the false representations made by the appellant Balakrishnan came to light and so suo motu contempt proceedings were issued and the appellants were given notice as to why contempt proceedings should not be issued against them. Ultimately after hearing the parties, the impugned order was passed. The learned single Judge held that the appellant have committed contempt of Court by making false representations before the Court and obtained orders affecting the rights of others.

7. We heard the counsel for the appellants.

8. Counsel for the appellants submitted that these two appellants have submitted their unconditional apology in their affidavit filed and the learned single Judge should have accepted the same and the counsel for the appellants prayed that the sentence imposed on the appellants may be set aside and fine if any may be imposed.

9. In the instant case, the appellant in Cont. A. No. 4/2000 admitted in O.S. No. 1420/99 that the disputed property was in possession of his tenant Loganathan and knowing fully well that the tenant could not be evicted, except under due process of law, he filed the false suit implicating his son as the sole defendant and he filed the suit with the intention to evict the tenant Loganathan from the premises by the orders of the Court. All material facts were suppressed by the appellant Balakrishnan when he filed O.S. No. 140/99. The appellant Balakrishnan has cleverly alleged in that suit that his son has been in possession of the property and that Loganathan had been supporting the illegal claims of his son. It was not mentioned in that suit that the tenant Loganathan was in fact the real tenant in possession of the disputed property. The fact that Loganathan had also filed a suit and the same is pending before the city civil Court, Madras also was not mentioned and the appellant in Cont. A. No. 5/2000 though received notice in that suit, remained ex parte. It is clear that there was conspiracy between the father and the son to see that the tenant Loganathan must be evicted from the premises unlawfully.

10. The counsel for the appellants contended that no contempt proceedings were initiated by Loganathan or any other person and the learned single Judge was not justified in taking suo motu contempt. It was also contended that the appellants were not given effective opportunity and the summary procedure adopted by the learned single Judge was not proper and was not in accordance with law. This High Court being a Court of Record, has got inherent power to initiate contempt proceedings against persons who scandalise the Court or interferes with the course of justice. The object of such proceedings is not to afford protection to Judges personally from imputations to which they may be exposed as individuals;

it is intended to be a protection to the public whose interests would be very much affected if by the act or conduct of any other party, the authority of the Court is lowered and the sense of confidence, which the people have in the administration of justice, is weakened. In *Pritam Pal v. High Court of M. P.* : 1992 CriLJ1269 , it was held that the power conferred upon the Supreme Court and the High Court, being Courts of Record under Articles 129 and 215 of Constitution respectively is an inherent power under which it can deal with contempt of itself; the jurisdiction vested is a special one not derived from any other statute but derived only from Articles 129 and 215; therefore, the constitutionally vested right cannot be either abridged, abrogated or cut down, by any legislation including the Contempt of Courts Act; therefore, the submission of the contemner that the impugned order is vitiated on the ground of procedural irregularities and that Article 215 is to be read in conjunction with the provisions of Sections 15 and 17 of the Act, cannot be countenanced; nor can they be controlled or limited by any statute or by any provision of the Code of Criminal Procedure or any rules; the caution that has to be observed in exercising this inherent power by summary procedure is that the power should be used sparingly that the procedure to be followed should be fair and that the contemner should be made aware, of the charge against him and given a reasonable opportunity to defend himself.

10-A. It has been held in *Dhananjay Sharma v. State of Haryana* : [1995]3SCR964 as follows paras 40 and 55 of AIR :

Any conduct which has the tendency to interfere with the administration of justice or the due course of judicial proceedings amount to the 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. Filing of false affidavits or making false statement on oath in Courts aims at striking a blow at the rule of law and no Court can ignore such conduct which has the tendency to shake public confidence in the judicial institutions because the very structure of an ordered life is put at stake.

It is no defence for the contemner to say that he so acted on account of the fear of the police and that he had been 'tutored' by police officers to make a false statement and file a false affidavit in this Court. He should have known better....

In *Secretary, Hailakandi Bar Asscn. v. State of Assam* : 1996 CriLJ2518 , the Superintendent of Police suppressed true facts and filed a false report to mislead the Court. It was pleaded by the contemner that he had no personal knowledge of the sequence of events. That explanation was not accepted and it was held that as a responsible police officer, it was his duty to make proper investigation and to give a proper report to the Court. In that case, the Supreme Court held :

The contemner deliberately forwarded an inaccurate report with a view to mislead the Court and thereby interfered with the due course of justice by attempting to obstruct the Court from reaching a correct conclusion. He is, therefore, guilty of contempt of Court under Article 129 read with Section 12 of the Act. The belated apology tendered by him cannot be accepted because it has not been given in good faith. He has tendered his apology only after his report was found to be misleading and his affidavit was found to be false. Having regard to the gravity of the case, the contemner is sentenced to undergo simple imprisonment of three months.

11. From the above decisions, it is clear that the High Court has got inherent power to deal with the contempt matter as a summary procedure. Here the appellants were given reasonable opportunity of being heard. There is no violation of the principles of natural justice. By filing false affidavit, the appellant Balakrishnan tried to mislead the Court and attempted to obstruct the course of justice. His son Murugesan was also equally responsible. He joined hands with his father and even after the receipt of summons from the Court, he remained *ex parte* to enable his father to get eviction of the tenant Loganathan. The conduct exhibited by the appellants is highly reprehensible and it is clearly established that these two appellants have committed grave acts of contempt of Court and obtained orders from the Court by suppressing all material facts.

12. The learned single Judge was perfectly justified in holding that these appellants have committed contempt of Court. We see no reasons to interfere with

the order passed by the learned single Judge. Considering the gravity of the offence committed by these appellants, the sentence imposed on them cannot be said to be harsh or severe. These two Contempt Appeals are without any merits and they are dismissed. The appellants are directed to surrender before the authorities to undergo the imprisonment as ordered by the learned single Judge. Consequently, C.M.P. Nos. 4252 and 4253 of 2000 are also dismissed.

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