

In Re: S. Durai

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Court : Chennai

Decided On : Sep-05-2002

Reported in : 2003CriLJ157

Judge : M. Karpagavinayagam, J.

Acts : [Contempt of Courts Act, 1971](#) - Sections 2, 12 and 19

Appeal No. : Suo Motu Contempt Petn. No. 746 of 2001 and Cri. M.P. No. 8285 of 2001

Appellant : In Re: S. Durai

Advocate for Pet/Ap. : V. Sairam and R. Sundarrajan, Amicus Curiae;;Arul, Govt. Adv. for P.P.

Judgement :

ORDER

M. Karpagavinayagam, J.

1. S. Durai, the contemner filed a private complaint against one Mrs. Manjula Surender, which was taken on file in C. C. No. 6091 of 1988 on the file of the II Metropolitan Magistrate, Egmore, Chennai, for the offences under Sections 279 and 427 I.P.C., alleging that on 10-8-1996, at about 12.30 noon, when he was standing by his bi-cycle, the said Manjula Surender came in a car in a rash

manner and caused damage to his bi-cycle.

2. As against the said proceedings, Manjula Surender filed a petition in this Court in Crl. O.P. No. 14310 of 1999, seeking for quashing of the same on various grounds. This Court, by order dated 12-1-2001, after hearing learned counsel for both parties, quashed the said proceedings on the ground that the complaint was barred by limitation.

3. S. Durai, the complainant in that case, instead of challenging the said order by filing an appeal before appropriate forum, sent a petition dated 18-10-2001 to the Registry of this Court, seeking for review of the said order in Crl. O.P. No. 14310 of 1999.

4. On the order passed by My Lord The Hon'ble Chief Justice, the same was placed before this Court. As directed, the said petition has been treated as review petition and numbered as Crl. M.P. No. 8285 of 2001.

5. When the matter was placed before this Court, this Court perused the petition for review which has been written in Tamil. On going through the petition, this Court found that the petitioner made allegations against this Court, criticising the final order passed by this Court on 12-1-2001 in the said Crl. O.P., which would constitute 'contempt' of this Court. Therefore, this Court, by order dated 26-11-2001, issued 'suo motu contempt notice' against the said Durai. Through the said order, the erstwhile counsel who appeared for both Durai and Manjula Surender were appointed as 'Amicus Curiae' to assist this Court and the learned Public Prosecutor was also directed to assist this Court in this matter.

6. On receipt of notice, Durai, the contemner, appeared in person. He filed an affidavit on 21-12-2001, seeking for supply of copies of papers of the case and adjournment of the case for two weeks. Accordingly, the copies of the same were directed to be supplied and the matter was adjourned to 25-1-2002.

7. Again on 25-1-2002, the said Durai requested time for filing his reply. Accordingly, the matter was adjourned. On 22-2-2002, he filed the reply affidavit, containing some more allegations constituting contempt against this Court.

8. Learned counsel, who were appointed as 'Amicus Curiae', informed this Court that the contemner is facing several proceedings before the criminal Courts at Chennai and that he used to write similar petitions against Magistrates and Judges. They would further submit that the contents of the review petition dated 18-10-2001 and the contemner's reply affidavit dated 22-2-2002 would constitute contempt of Court, and as such, he should be severely dealt with.

9. In pursuance of the said submission of learned counsel, the contemner was asked to file his statement regarding the pendency of the other cases against him. Accordingly, he filed a detailed statement on 7-6-2002, giving particulars of pendency of the cases against him. In that statement also, he made scurrilous and scandalous allegations against the Magistrates, Additional Public Prosecutor and other Advocates.

10. Having regard to the above factors, the concerned Police Officers have been asked to file their statements. Accordingly, the Inspector of Police, F-2, Police Station, Egmore, Chennai filed an affidavit dated 20-6-2002, mentioning about pendency of the case against the contemner in C. C. No. 6031 of 2000 on the file of the 14th Metropolitan Magistrate, Chennai for the offences under Sections 341 and 323 IPC.

11. The Inspector of Police, P-2 Police Station, Otteri, Chennai filed an affidavit dated 26-6-2002, regarding pendency of the case against the contemner in C.C. No. 6296 of 1997 on the file of the 10th Metropolitan Magistrate, Chennai for the offences under Sections 341 and 323 , 354 IPC.

12. Again on 28-6-2002, the contemner filed another detailed affidavit, making similar scurrilous allegations against the Inspectors of Police, who have filed affidavits before this Court as well as against the Magistrates before whom the cases are pending against him. This Court, on the request of the learned Government Advocate and the other counsel, summoned the records from various Criminal Courts at Chennai in order to verify about the statements regarding the conduct of the contemner. I have gone through the case diaries produced by the learned Government Advocate through the Police Officers concerned. On a perusal of the same, it is seen that the contemner has sent several petitions to the

Government and to the Court, making allegations against the Magistrates, Police and Prosecutors.

13. In order to have further enquiry, the matter was adjourned. On 10-7-2002, he filed an affidavit again making similar scurrilous allegations against the Commissioner of Police, Magistrates and Advocates.

14. On the basis of the above background, arguments were advanced. The contemner, though has chosen to engage a counsel before the trial Court in the earlier case as well as this Court in the quashing petition, did not choose to engage a lawyer in the review petition (Crl. M.P. No. 8285 of 2001) and the suo motu contempt petition. The Amicus Curiae counsel as well as the learned Government Advocate would state that the contemner used to threaten the Police, Magistrates, etc., regularly, by sending petitions after petitions, and this time, he had filed a petition in the name of review before this Court, making allegations against this Court itself, and therefore, he must be suitably punished under the Contempt of Courts Act (hereinafter referred to as 'the Act').

15. As a matter of fact, when the matter came up for hearing on 25-1-2002 and the contemner sought for adjournment of the case, he was asked as to whether he would repent for the allegations made against this Court in the review petition. On that day, he said that he would file an affidavit for tendering apology. On that basis, the matter was adjourned to 22-2-2002. But unfortunately, the contemner filed his reply affidavit, making some more allegations against this Court.

16. This Court wanted to give further opportunity to the contemner for realising his conduct by adjourning the matter to several dates. Till date, he has not chosen to repent for his act. On the other hand, in his various affidavits filed in Tamil, he invariably made allegations against the Police Officers, Prosecutors, Magistrates, etc., without any basis. Under those circumstances, this Court is constrained to engage in the matter and give a finding as to whether the contemner has committed any contempt by making scurrilous allegations against this Court in the review petition and reply affidavits.

17. Before dealing with the aspect of the contempt, let us first see as to whether there is any merit in the prayer for review of the earlier order on 12-1-2001 passed by this Court in the said Crl. O.P. This prayer has to be rejected on two grounds. Firstly, the order was passed by me on 12-1-2001 in the said Crl. O.P., quashing the proceedings, on the ground that the complaint for the offences under Sections 279 and 427 I.P.C. is not valid since the offence under Section 279 I.P.C. is not made out and the complaint was filed after expiry of the period of limitation. There is no valid reason given in the review petition to review the earlier order, to hold that the findings of this Court for quashing the proceedings are wrong. Secondly, under Section 362 Cr. P.C., this Court has no power either to review or recall the order earlier passed by this Court. As a matter of fact, Section 362 Cr. P.C. puts a prohibition by providing that no Court, when it has signed its judgment or final order, disposing of a case, shall alter or review the same, except to correct a clerical or arithmetical error.

18. While referring to the said Section, the Supreme Court in *Naresh v. State of U.P.*, and *Simrikhia v. Dolley Mukherjee*, , held that the High Court, even under the inherent powers conferred under Section 482 Cr. P.C., cannot set aside or review its own earlier order passed.

19. In the light of the abovesaid principles, the prayer in the review petition, namely, Cri. M.P. No. 8285 of 2001 cannot be granted, as it is not sustainable in law and the same is accordingly dismissed.

20. Let us now come to the question relating to the 'suo motu contempt proceedings' initiated by this Court against the con-temner. I have heard the counsel, the learned Government Advocate and the con-temner and perused the records.

21. This Court, as noted above, while perusing the review petition, found that there are scurrilous allegations made against this Court constituting contempt of this Court. Therefore, by order dated 26-11-2001, this Court initiated suo motu contempt proceedings against the contemner and notice was also issued on him.

22. We will now see the relevant portions of those allegations made in the review petition dated 18-10-2001, which is numbered as Cri. M.P. No. 8285 of 2001, the contents of which are in Tamil (the English translation made thereto), reads as follows :--

(Vernacular matter omitted)

'Subject:

This petition regarding request for review of this order of the High Court of Madras, which is erroneous, faulty, illegal, which does not fear for the abuse and condemnation, highly disgraceful and against law and justice and which is like an attack by the germful disease against the healthy Indian Constitution.'

(Vernacular matter omitted)

'6) The High Court of Madras did not peruse the documents in the aforesaid case showing much consideration. Hence, it has committed many wilful wrongs.'

(Vernacular matter omitted)

'Final argument :

For the reasons that the said Judgment is erroneous, faulty, not afraid of abuse, against human rights, against the goal of justice, beyond the framework of democracy, against law, disgrace to the judiciary, and shameful to those who live relying on justice, this judgment shall be subjected to review.'

(Vernacular matter omitted)

'(a) The High Court of Madras had failed to protect the petitioner, who is the part of the judiciary from the accused, thereby, High Court unlawfully helped and abetted the accused for making a false statements.' (Vernacular matter omitted)

'(e) That is, the date of occurrence is 10-8-1996. The date of filing of the complaint by the complainant in the Judicial Magistrate Court is 28-5-1998. That is, he had filed a petition within 22 months. A period of three years is allowed to file

this case as per the provisions of Section 468(2)(c) of Cr. P.C. Despite, the petitioner had filed the aforesaid case within 22 months. In the said circumstances, the Hon'ble and harmless High Court of Madras, with the intention of not rendering Justice to the affected petitioner, is stating falsehood knowingly without shame that the time limit has lapsed.'

23. After service of notice, the contemner came and asked for adjournment two times-- one on 21-12-2001 and again on 25-1-2002. Accordingly, the adjournments were granted. On the next adjourned date, i.e., on 22-2-2002, the contemner filed reply affidavit to the show cause notice. Instead of giving explanation to the said show cause notice, he again made similar allegations by adding some more statements, criticising the conduct of this Court. The relevant portions of the said allegations made on 22-2-2002, which are in Tamil (the English translation made thereto) reads as follows :--

(Vernacular matter omitted)

'This Court's observation that, I have committed the act of contempt of Court is definitely a deliberate false allegation.'

(Vernacular matter omitted)

'If I am punished against law

The President of India should have to feel sorry and shameful.

The Parliament of India should have to express its regret.

The Supreme Court should have to bear the responsibility for the damage caused to me.

The particular Judge has to answer the World Human Rights Commission in Geneva. Even if that particular Judge retires from his service, I will take to the notice of the world, the atrocities done to me. It is known that the nature taught us the lesson that, only a small seed develops into a big banyan tree and a small drop turns into an ocean.'

(Vernacular matter omitted)

'Myself and my diseases :

I am allergic to sugar, I have diabetes. I have blood pressure. I have cholesterol due to the blockade of fat in the blood vessels. If I die in the jail, not being properly treated for all these, the offence of murdering me by ill-treating will fall upon this Court.'

24. The above statements made by the contemner, both in the review petition (taken on the file of this Court as Crl. M.P. No. 8285 of 2001) dated 18-10-2001 and the affidavit dated 22-2-2002 would show that the contemner made those allegations with full understanding of the contents of the same and he would reiterate the same allegations in the second affidavit by asserting that he would not tender apology at any cost. Thus, he has not adopted, even obliquely, an attitude of contrition or a pretence of remorse.

25. On the other hand, he filed several affidavits of reply, which are not only defiant, but adds insult to the injury and threatens the Court not to send him to jail. This Court cannot overlook his unbecoming conduct on the use of insulting language. From the statements made by the contemner, constituting contempt which have been extracted in the earlier paragraphs, this Court is fully satisfied, as correctly pointed out by the Amicus Curiae counsel as well as the learned Government Advocate that they are ex facie contumacious and the scurrilous attack, which was intended to scandalise this Court within the meaning of 'criminal contempt' under Section 2(c) of the Contempt of Courts Act.

26. Even in the latest affidavit dated 13-8-2002, the contemner made several untenable allegations against the petitioner in the quashing petition-Manjula Surender and both the counsel who appeared for the parties and who are appointed in these proceedings as 'Amicus Curiae' before this Court and also against the Government Advocate. To make the matters worse, the contemner made a prayer in the latest affidavit, requesting this Court to order, directing the said persons, namely, Manjula Surender, the Amicus Curiae counsel, namely, Mr. Sairam and Mr. Sundarrajan and the learned Government Advocate, to pay

compensation to the tune of Rs. 10 lakhs to him, for having assisted this Court in the contempt petition.

27. As indicated above, this contempt petition was adjourned to several dates, hoping that at least, by the passage of time, the contemner would realise his mistake and would show the attitude of regret before this Court. Unfortunately, on every occasion, when the matter was adjourned, the contemner has filed affidavits after affidavits, making several allegations not only against this Court, but also making scurrilous allegations against the lawyers who are appearing in the contempt proceedings as Amicus Curiae counsel to assist the Court, as also the Magistrates before whom the criminal cases are pending and the Police Officers. This attitude of the contemner would show his persistent and consistent attempt to malign the institution of judiciary as well as the lawyers and the State. The offending portion of the affidavits, as detailed above, would show that the contemner accuses this Court with absurd and despicable allegations, with threat.

28. These sorts of statements, which are per se scandalous, cannot be tolerated, as they would undermine the Court's prestige, dignity and affect the working of the Court, and consequently, vitiating the atmosphere in which the Court normally functions. The conduct of the contemner has a direct impact on the Court's independent dignity and decorum. To protect the administration of public justice, this Court is constrained to take action, as the conduct and the utterances of the contemner cannot be ignored or pardoned.

29. Both the learned counsel appointed by this Court as 'Amicus Curiae' to assist this Court would cite several authorities to show that the scurrilous allegations made against this Court would amount to contempt, and as such, the contemner is liable to be punished suitably under Section 12 of the Contempt of Courts Act.

30. Let us now refer to the principles laid down by the Supreme Court in the following decisions with regard to similar contempt petitions :--

(a) In the decision reported in *Rachapudi Subba Rao v. Advocate General, A.P.*, , the Supreme Court held as follows :--

'23. We agree with the High Court that the contempt of Court committed by the appellant is serious and gross as he has recklessly imputed mala fides and lack of good faith to the judicial officer who had decided the cases against him. The imputation levelled were per se scandalous and actuated by bad faith. The appellant did not even pretend to give any reason for the alleged malicious attitude on the part of the judicial officer, either in the notice or in the counter-affidavit. Even in this Court he has not relented. He has not adopted, even obliquely, an attitude of contrition or a pretence of remorse.' (b) In the decision reported in Mohd. Zahir Khan v. Vijai Singh, , the Supreme Court held as follows :--

'6. In view of the above we come to the conclusion that the contemner is guilty of contempt. He deliberately used insulting language to overawe the Court with a view to securing a favourable order. Of late this type of behaviour by litigants appearing in person is on the increase. Such litigants carry the wrong notion that by such behaviour a favourable order can be extracted.....such behaviour and utterances cannot be tolerated as it undermines the Court's prestige and dignity and affects the working of the Court as it vitiates the atmosphere in which the Court normally functions. It has a direct impact on the Court's independence, dignity and decorum. To protect the administration of public justice, we are constrained to take action as his conduct and utterances cannot be ignored or pardoned. As stated earlier, he does not regret his action, on the contrary he has filed a written reply which is not only defiant but adds insult to injury and dares the Court to send him to jail.....' (c) In the decision reported in T. Deen Dayal v. High Court of A. P., , the Supreme Court held as follows :-- '16. We have extracted the allegations constituting contempt in the beginning of this order. We are satisfied they are ex facie contumacious and the scurrilous attack was intended to scandalise the Court within the meaning of criminal contempt under Section 2(c) of the Act. Such attack as seen above, is punishable as contempt for the reason that it tends to create distrust in the popular mind and impairs confidence of the people in Courts which are of prime importance to the litigants in the protection of their rights and liberties.....'

31. In the latest judgment reported in 'In Re, Arundhati Roy', , the Supreme Court observed as follows :--

'31.

In the offending portion of her affidavit, the respondent has accused the Court of proceeding with absurd, despicable and entirely unsubstantiated petition which, according to her, amounted to the Court displaying a disturbing willingness to issue notice. She has further attributed motives to the Court of silencing criticism and muzzling dissent by harassing and intimidating those who disagree with it. Her contempt for the Court is evident from the assertion 'by entertaining a petition based on an FIR that even a local police station does not see fit to act upon, the Supreme Court is doing its own reputation and credibility considerable harm.' In the affidavit filed in these proceedings, the respondent has reiterated what she has stated in her earlier affidavit and has not shown any repentance.....Such an attitude shows her persistent and consistent attempt to malign the institution of the judiciary found to be most important pillar in the Indian democratic set up. This is no defence to say that as no actual damage has been done to the judiciary, the proceedings be dropped.....and if such an attempt is not prevented, disastrous consequences are likely to follow resulting in the destruction of rule of law, the expected norm of any civilised society.'

32. In the light of the above observations made by the Supreme Court, it is clear that the contemner has made allegations against this Court, both in the said review petition and in the reply affidavit, which are contumacious and scurrilous intended to scandalise this Court.

33. As indicated above, this Court, on several occasions, explained the contemner about the consequences of the act committed by him. Even then, he did not show any repentance. On the other hand, he filed a reply affidavit dated 22-2-2002, containing more allegations, making scurrilous attack, without having any sense of repentance. The conduct of the contemner in reiterating the allegations against this Court as well as the Magistrates before whom the criminal cases are pending against him, and refusing to express any repentance or regret over the same, would show that the contemner is committing the act of contempt wilfully unmindful

of the punishment he would be subjected to.

34. To my utter shock and surprise, the contemner goes to the extent of stating that he would report about the order to the Supreme Court or to the Geneva Court and would not leave me, even after retirement. This conduct of the contemner, cannot be condoned.

35. As laid down by the Supreme Court, if the Court considers the attack on the Judge or Judges scurrilous, offensive, intimidatory or malacious, beyond condonable limits, the strong arm of the law, must, in the name of public interest and public justice, strike a blow on him who challenges the supremacy of the rule of law by fouling its source and stream.

36. In the light of the above factual situation, I am of the view that the contemner has committed 'criminal contempt' under Section 2(c) of the Contempt of Courts Act and is liable to be punished under Section 12 of the Act. The maximum punishment provided under Section 12(1) of the Contempt of Courts Act is six months' simple imprisonment or a fine of Rs. 2,000/-, or both.

37. In the result, this Court holds that the contemner has wilfully committed 'contempt of Court', that there is no extraneous consideration to show sympathy on him as he has never shown any remorse or tendered apology, despite several opportunities given to him.

38. Accordingly, this Court convicts the contemner for the offence under Section 2(c) of the Contempt of Courts Act and punishes him under Section 12 of the Act by sentencing him to undergo simple imprisonment for six months.

39. If the contemner feels repentant while in jail, it is open for him to file appropriate application before this Court for reduction of the remaining period of sentence, which will however be considered only after undergoing one month sentence from the date of his lodgment in prison.

40. The suo motu contempt petition is disposed of in the above terms.

41. Before parting with the case, the assistance rendered by the Amicus Curiae counsel Mr. Sairam and Mr. Sundararajan, is recorded with notes of appreciation.

42. After pronouncement of the order, an affidavit has been filed by the contemner, requesting this Court to suspend the sentence imposed for one month, since he intends to file an appeal. As per Section 19 of the Contempt of Courts Act, the contemner has got a right of appeal. This Court is of the view that the sentence imposed by this Court can be suspended for thirty days. Accordingly, the sentence imposed on the contemner is suspended for thirty days from today. If appeal has not been filed within the time stipulated, the contemner will be taken to custody to undergo the period of sentence of simple imprisonment for six months.

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