

**Three Cheers Entertainment Pvt. Ltd. and ors. Vs. C.E.S.C. Ltd.**

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**Court :** Kolkata

**Decided On :** Jul-22-2008

**Reported in :** AIR2008Cal209,2009(1)CHN39,2008CriLJ4138

**Judge :** S.S. Nijjar, C.J. and; Pinaki Chandra Ghose, J.

**Acts :** Contempt of Court's Act, 1971 - Section 2

**Appeal No. :** A.P.O. No. 163 of 2008

**Appellant :** Three Cheers Entertainment Pvt. Ltd. and ors.

**Respondent :** C.E.S.C. Ltd.

**Advocate for Def. :** Jayanta Mitra, Sr. Counsel,; Dhruva Ghosh,; G. Khaitan and; L.K. Poddar, Advs.

**Advocate for Pet/Ap. :** L.C. Behani, Sr. Counsel,; Atarup Banerjee and; Sabyasachi Roy Chowdhury, Advs.

**Disposition :** Appeal dismissed

**Judgement :**

**Pinaki Chandra Ghose, J.**

1. This appeal is directed against an Order dated 14th March, 2008 passed by the Hon'ble First Court holding the respondent's guilty for committing contempt of

Court.

2. The facts of the case briefly are as follows:

A suit for defamation was instituted against the appellants and the pro forma respondent on 13th May, 2004 for telecasting programme against the CESC Ltd. in news Magazine under the name and style of 'Khoj Khabar'. In the said suit an interlocutory application was filed and the following reliefs were prayed as follows:

Injunction be passed restraining the respondents and each one of them by themselves or by their servants, agents or otherwise from publishing or causing to be published by broadcasting/telecasting any defamatory programmes similarly to that as telecast on March 12, 2004, March 29, 2004 and April 30, 2004 contained in Annexures 'A' and 'B' hereto or otherwise in any manner whatsoever.

3. On May 17, 2004, an order was passed by the Court in terms of prayers (a) and (b) of the said petition till 21st June, 2004 with a liberty to apply for extension of the said order. Subsequently, the order was directed to be continued and on 30th November, 2005, an order was passed by the Hon'ble Court, inter alia, appointing the Joint Receivers and directed them to take possession to all materials and documents, films and materials connected with the said programme of 'Khoj Khabar' telecasted on March 12, 2004; March 29, 2004 and April 30, 2004 respectively at 10.00 p.m. and also copies of CD. if they are available at the defendants' office. The said order was passed in ex parte according to the appellants and came within the knowledge of the appellants as contended on 11th of January, 2006. It is further the case of the appellants that four persons came to the office of the appellant No. 1 and identified themselves as CESC employees and produced a copy of the order dated 30th of November, 2005 and the appellant No. 3 along with the co-employees, namely, Shri Sankar Saha, Shri Ratan Das, Shri Rabi Sankar Saha and Shri Sambhu Ghosh duly complied with the Hon'ble Court's order by handing over the D.B. Cassette in connection with the said matter after making an entry in their telecast register.

4. The said fact was intimated to the learned Joint Receivers when they visited the office of the appellant No. 1. It is the case of the Joint Receivers submitted that

they did not authorize any person to collect the same. The Joint Receivers thereafter duly filed report before the Court. After perusing the report, His Lordship was pleased to direct the appellant No. 3 to file an affidavit and thereafter the matter was sent to 'Trial on Evidence' and thereafter a contempt application was filed against the appellants by the CESC Ltd. for deliberate wilful violation of the order passed by His Lordship on 30th November, 2005, After hearing the said application, His Lordship was pleased to issue a rule upon the appellants and the rule was made returnable on 16th March, 2007. On 14th March, 2008, His Lordship was pleased to pass the order and the appeal is directed against the said order.

5. Mr. Behani, Learned Senior Advocate, appearing in support of this appeal strenuously urged before us to contend that his client did not commit any contempt and if at all there is any, that should have been held by the Court as a criminal contempt in terms of Section 2(c)(iii) of the said Act and not Under Section 2(b) of the Contempt of Court's Act, 1971.

6. He drew our attention to Section 2(c)(iii) of the said Act. The said Section is reproduced hereunder:

Section 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) scandalizes or tends to scandalize, 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 proceeding; or

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

(d) 'High Court' means the High Court for a State or a Union territory, and includes the Court of the Judicial Commissioner in any Union territory.

7. He pointed out that the meaning of the 'criminal contempt' is to interfere or tend to interfere with, or obstruct or tend to obstruct, the administration of justice in any other manner. According to him, if there is any contempt at all created by the appellants that should have come and should have been treated Under Section 2(c)(iii) of the said Act and not Under Section 2(b) of the said Act as it has defined the 'civil contempt'.

8. He submitted that the definition of 'civil contempt' under the said Act 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, but in case of 'civil contempt' it should be an interference or an obstruction in the administration of justice. Therefore, according to him, His Lordship had no jurisdiction to pass any order sitting singly and His Lordship should have held that the 'criminal contempt' has been committed and should have referred the matter before the Hon'ble Division Bench. Since, according to him, in 'criminal contempt', only the Division Bench has jurisdiction to deal with the matter.

9. Mr. Behani in support of this application relied on Oswald's Contempt of Court of pages 76 and 77 and submitted that if anybody interferes with the possession of a Receiver, then it would be a contempt of Court and would come within the purview of criminal contempt.

10. He relied upon a decision, reported in AIR 1934 Bombay 452 (Kilachand Devchand and Co. v. Ajodhyaprasad Sukhanand) and submitted that before a party could be held liable in contempt it has to be shown that the order of appointment of Receiver was served on him and thereafter the Receiver called

upon him to deliver the possession of the materials and if he does not comply with the order, then only the question of contempt arises. In other words, the contempt would consist in not obeying an order of the Court. Therefore, according to him, since the order was not served it cannot be said that the appellants have committed any contempt.

11. He also relied upon the decisions, reported in : AIR1954 Ori167 (The State v. V. Adilakshmi Amma); (Jai Prakash Beni Pershad v. Ram Sarup) and : AIR1958 Cal474 (Dulal Chandra Bhar v. Sukumaar Banerjee) and submitted that his client did not commit any contempt, if there be any, that also cannot be treated as civil contempt. Therefore, the Hon'ble First Court had no jurisdiction to pass such order.

12. He further relied upon the decisions reported in : AIR 1991 SC2150 (Delhi Judicial Service Association, Tis Hazari Court, Delhi v. State of Gujarat); : 1993 CriLJ50 (Tarun Bharat Sangh, Alwar v. Union of India); : 1998 CriLJ4603 (Dr. L.P. Mishra v. State of U.P.) and 1991 (2) All ER 398 (Attorney General v. Times Newspapers Ltd.) where the Court held that without show-cause notice or giving an opportunity to the appellants to explain the alleged contemptuous conduct, the Court should not pass any order. The minimum requirement of the procedure prescribed by law had been overlooked by the Trial Court and, hence, he submitted that the Trial Court should not have passed the said order.

13. On the contrary, Mr. Jayanta Mitra, Learned Senior Advocate supported the decision passed by the Hon'ble First Court and drew our attention to Oswald's Contempt of Court at pages 35 and 36 respectively and relied on the following passage:

The distinction between contempts of a criminal nature and contempts of a nature not criminal has been dealt with in several cases (e). A contempt to be criminal must be so in its nature or by its incidents; and must be an offence which 'savours of criminality' (f) Contempt which is not criminal has been well defined as follows : 'When a man does not obey an order of the 'Court made to some civil proceedings, to do or abstain from doing something -- as where an injunction is granted in an action against a defendant, and he does not perform what he is

ordered to perform, and then a motion is made to commit him for contempt -- that is really only a procedure to get something done in the action, and has nothing of a criminal nature 'it' (g). And, generally, the distinction between contempts criminal and not criminal seems to be that contempts which tend to bring the administration of justice into scorn, or which tend to interfere with the due course of justice, are criminal in their nature; but that contempt in disregarding orders or judgments of a Civil Court, or in not doing something ordered to be done in a cause, is not criminal in its nature.

14. Mr. Mitra further contended that in the case of Dulal Chandra Bhar : AIR1958 Cal474 (supra) there could not be any civil contempt committed by the said appellants and he drew our attention to the following passage:

The line between civil and criminal contempt can be broad as well as thin. Where the contempt consists in mere failure to comply with or carry out an order of a Court made for the benefit of a private party, it is plainly civil contempt and it has been said that when the party, in whose interest the order was made, moves the Court for action to be taken in contempt against the contemner with a view to an enforcement of his right, the proceeding is only a form of execution. In such a case, there is no criminality in the disobedience and the contempt, such as it is, is not criminal, If, however, the contemner adds defiance of the Court to disobedience of the order and conducts himself in a manner which amounts to obstruction to or interference with the course of justice, the contempt committed by him is of a mixed character, partaking as between him and his opponent of the nature of a civil contempt and as between him and the Court or the State of the nature of criminal contempt. In cases of this type, no clear distinction between civil and criminal contempt can be drawn and the contempt committed cannot be broadly classed as either civil or criminal contempt. There is, however, a third form of contempt which is purely criminal and which consists in conduct tending to bring the administration of justice to scorn and to interfere with the course of justice as administered by the Courts. Contempt of this class is purely criminal, because it results in an offence or a public wrong, whereas contempt consisting in disobedience of an order made for the benefit of a private individual results only in a private injury. To put the matter in other words, a contempt is merely a civil

wrong where there has been disobedience of an order made for the benefit of a particular party, but where it has consisted in setting the authority of the Courts at naught and has had a tendency to invade the efficacy of the machinery maintained by the State for the administration of justice, it is a public wrong and consequently criminal in nature.

15. Mr. Mitra further relied on the decisions reported in (1995) 1 All ER 135 (Director General of Fair Trading v. Pioneer Concrete (UK) Ltd.) and 0065/1972 : 1972 CriLJ643 (R.L. Kapur v. State of Tamil Nadu) in support of his contention.

16. After analysing the decisions cited before us and the facts and circumstances of the case after going through the materials on record placed before us, we are of the opinion that the Court has power to come to the conclusion that whether the contempt has been committed by the contemnors. The party in whose interest the order issued, if affected by any action which comes within the purview of Section 2(c)(iii), he has a right to move the Court for action to be taken for the contempt against the contemnors with a view to enforce his right.

17. It is well-known fact that the proceeding is only a form of execution and it appears to us that on the given facts, there is no criminality in the disobedience and the contempt, such as it is, is not criminal but the contemnors, in our opinion, excepting the appellant in APOT No. 126 of 2008, Krishna Kishore Mukhopadhyay, we hold that the Hon'ble First Court correctly assessed the facts of the case and held that they have committed contempt of Court.

18. Hence, we do not find that there is any reason to interfere with the order so passed by the Court and after analysing the decisions cited before us, we have not been able to find out any clear distinction between 'civil' and 'criminal' contempt and the contempt committed by the contemnors on the given facts cannot be broadly classified as criminal contempt.

19. Therefore, in our considered opinion, we do not accept the submission made by Mr. Behani and we do not find any irregularity or illegality in respect of the order so passed by the Hon'ble First Court.

20. Hence, we uphold the said order and dismiss this appeal, save and except, in our considered opinion, on the facts of the case and the materials on record as placed before us, we hold that a contempt in respect of the Krishna Kishore Mukhopadhyay cannot be proceeded with, since on the given facts, with utmost respect to His Lordship we come to the conclusion that the said Krishna Kishore Mukhopadhyay, being the appellant in the other matter (APOT No. 126 of 2008), cannot be said to be responsible to hand over the materials to the Joint Receivers, since we are of the opinion that he had acted only on the date of presentation of the said news telecasted on the said date and, therefore, on the date of visit of the Joint Receivers at the said premises to collect the mother cassette, no role had to play by him to hand over the said cassette to the Joint Receivers.

21. Accordingly, we must come to the conclusion that he had no obligation to hand over the materials as held by the Hon'ble First Court.

22. Hence, we hold that the order so passed by the Court against him is set aside and his appeal (APOT No. 126 of 2008) is allowed.

23. For the reasons stated hereinabove, the appeals filed by the other contemnors are hereby dismissed.