Abdul Karim

Vs

M. K. Prakash and Others

P. Ramaswami

Vs

M. K. Prakash and Others

A. P. Parukutty Moopilamma and Another

Vs

M. K. Prakash and Others

Criminal Appeals Nos. 118

(M.H. Beg, P.N. Bhagwati, R.S. Sarkaria JJ)

30.01.1976

JUDGMENT

SARKARIA, J. -

1. These three appeals arise out of a common judgment of the High Court of Kerala holding the appellants guilty of contempt of court.

2. S. Abdul Karim, the appellant in Criminal Appeal No. 118 of 1971, was, at the material time, a Munsif Magistrate posted at Perambra. He was respondent No. 3 in the contempt petition filed in the High Court and will hereafter be referred to as R-3.

3. A. P. Parukutty Moopilamma and A. P. Achuthankutty Nair, appellants in Cr. Appeal No. 196 of 1971 were respondents Nos. 1 and 2 in the original petition before the High Court, and will be hereafter called R-1 and R-2. The appellant K. P. Ramaswami in Criminal Appeal No. 195 of 1971 was respondent No. 4 before the High Court. He will, for short, be called R-4.

4. M. K. Prakash, respondent No. 1 in all these appeals before us, was the petitioner in the contempt petition before the High Court. He will hereafter be called as 'P'.

5. The facts are these :

5A. R-1 is the owners of the Olathukki Arialakkan Malavaram in Kayanna Amson which is managed for and on her behalf by her son, R-2. On March 28, 1969 R-1 presented a petition through R-2, to the Superintendent of Police, Kozhikode alleging that the accused persons ('P' and his men) were likely to trespass into the Olathukki Arialakkan Malavaram to remove her timber. It was alleged that 'P' had collected a large number of persons and equipped them with dangerous weapons,

unlicensed guns, swords, etc.; that the sheds constructed by the petitioner and occupied by his workers and watchmen were being attacked and there was an apprehension that 'P' and his men would demolish the sheds. The Superintendent of Police appears to have forwarded this petition to the police station Kayanna where, on its basis, a case under Section 143, 147 and 506, Penal Code was registered against 'P' and others.

6. The Sub-Inspector in-charge of the police station, went to spot and took into possession the disputed timber comprising of 587 logs and entrusted the same on a kychet to two strangers. On April 22, 1969, R-1 made an application, Ex. P-3, before the magistrate (R-3) praying that the seized logs be handed over to him. Thereafter, 'P' also made an application to the magistrate claiming the timber to be his property and prayed for delivery of its possession to him. The magistrate thereupon issued notice to the police who made a report. After hearing the Counsel of the rival claimants and perusing the police report (Ext. P-17) and other material, the magistrate on April 29, 1969, passed an order, directing the Forest Range Officer to keep the logs in his custody pending further investigation by the police. Against this order, 'P' filed Cr. Revision Petition No. 176 and 1969 in the High Court. No interim order directing the magistrate to stay further proceeding or defer further action regarding the delivery of the disputed timber was issued by the High court.

7. While 'P's revision application was pending in the High Court, the police officer, R-4, after completing the investigation, obtained the opinion of the Assistant Public Prosecutor on September 20, 1969, and submitted a final report on September 24, 1969 to the magistrate (R-3). The material part of this final report runs as under :

On July 16, 1969 a petition from the complainant was received alleging that the investigation conducted by my predecessor was one-sided and biased against him and he had produced certain documents to support his contention that the property belongs to him and which were not considered by my predecessor. Based on this petition I continued the investigation and in the course of my investigation. I questioned the Divisional Forest Officer, Calicut and the Forest Range Officer, Kuttiady. They stated that the permit issued to M. K. Prakashin Kalpaidiyan Thirumudiyan Malavaram was stayed by the Government and hence not operated upon till now. They also stated that the 587 logs on timed seized by my predecessor were from Olathukki Arialakkan Malavaram in the possession and ownership of the mother of the complainant and those logs were cut by Smt. A. R. Parukutty Amma's workmen and for which proceedings have been taken against them under the M. P. P. F. Act. To the same effect the Range Officer Kuttiady had filed an affidavit before the High Court in O. P. No. 2045/96 filed by the accused in this case. In the said O. P. the accused had questioned the validity of the government order allowing Smt. Parukutty Amma to remove timber cut from the permitted and non-permitted area of Olathukki Arialakkan Malavaram and the High Court had upheld the order of the Government and the complainant's mother was allowed to transport all timber cut from the Malavaram, both from the permitted and non-permitted area. According to the Divisional Forest Officer there is no Malavaram known as Kalpaidiyan Thirumudiyan Malavaram in Pilliperuvanna Amsom as per the Registration Manual. I also questioned the complainant and his workmen and they stated that there was no trespass as such by the accused or his henchmen. They did not enter the Malavaram, nor have they intimidated any of them and as such no offence has been made out under Section 447 or 506(1) IPC.

Under the above circumstances, it is clear that Shri M. K. Prakash accused in this case was not allowed to operate his permit and the 587 logs of timber seized by my predecessor were cut by the complainant's mother and the same belong to her. These logs are now in the custody of the Range Officer, Kuttiady as per the order of the Munsif Magistrate Perambra and the same may be ordered

to be released to the mother of the complainant and the case is referred as mistake of fact.

8. Upon this report, the magistrate (R-3) passed this order :

Notice given. Case referred as mistake of fact. Further action dropped. Return timber logs to complainant.

Sd/- M. M. 26.9.1969.##

9. In pursuance of this order, the magistrate issued a letter (Ex. P-10) dated September 26, 1969, to the Forest Range Officer, Kuttiady, directing him that 587 logs seized by the Inspector of Police, Quilandy, then in his custody, be urgently released to R-1 (the mother of the complainant).

10. In compliance with the order of the Magistrate, the Range Officer symbolically handed over the charge of the timber to R-1.

11. On the preceding facts, 'P' on November 26, 1969, made a petition in the High Court complaining that R-1, R-2, R-3, R-4 and R-5 (Sri P. K. Appa Nair, Advocate) had committed contempt of the High Court within the meaning of Section 3 of the Contempt of Court Act, 1952 and prayed that the respondents be punished for committing that contempt. The High Court issued notice to R-1 to R-5 who filed affidavits in reply.

12. The magistrate (R-3) stated that he had passed the order directing delivery of possession of the disputed timber to R-1 in the bona fide discharge of his official duty, after accepting in good faith, the final report made by the police in which it was indicated that its notice had been given to the complainant, and a copy of such notice was also enclosed.

13. He further averred :

The purchase of the petitioner's rights by the first respondent referred to in the F.I.R. and Ex. P-3 petition was not denied by the petitioner. On the other band, his Counsel during the hearing of the Exts. P-3 and P-4 petitions had admitted the same even though he had a case that the petitioner was duped to sign the same and receive part of the consideration. Under the circumstances, I had no reason to reject P-6 report, it was accepted in its entirety and final orders were passed bona fide directing return of the logs to the complainant. The Criminal Revision No. 176 of 1969 itself is only against Ext. R order directing entrustment of the logs to the Forest Range Officer pending further investigation. The order in revision that may be ultimately passed by the Hon'ble Court can have reference only to what should be done with the logs pending investigation. The order in revision would not and cannot relate to the disposal of the logs after the completion of the investigation. It is therefore wrong to suggest that the final order is calculated to overreach the possible orders in the pending criminal revision petition.

14. In his affidavit, the magistrate emphasised that in Cr. Revision No. 176 of 1969, the High Court had not issued any interim order staying further proceedings.

15. R-1, R-2, R-4 and R-5, also, in their reply affidavits denied the allegations made against them by 'P' in the contempt petition.

16. The Advocate-General assisted the High Court and filed a statement of facts on February 16, 1970.

17. After considering the replies, memoranda of charges was drawn up against R-1 to R-5 on February 10, 1970. The material part of the charges served on R-3 ran as under :

That you, on receipt of the final report, even without giving notice to the petitioner, not only passed an order on September 26, 1969 on the final report directing the return of the timber logs to the complainant but also wrote a letter (copy of which is Ext. P-10) to the Forest Range Officer, Kuttiadi directing him urgently to release the timber logs to the first respondent thereby effectively defeating whatever order the Honourable High Court may finally pass in Criminal Revision Petition No. 179 of 1969 and Criminal Miscellaneous Petition No. 309/69, and that in consequences of your order the timber logs were actually handed over to the first respondent.

That in so doing :

(a) You have acted unjustly, oppressively and irregularly in the execution of your duties, under colour of judicial proceedings, wholly unwarranted by law and procedure,

(b) You have also permitted the process of your court to be abused by the other respondents and thereby diverted the due course of justice, and

(c) You have also impeded the course of justice by defeating the final orders that are liable to be passed by the High Court in Criminal Revision Petition No. 176/69 and Cr. Misc. Petition No. 309/69; thereby committing gross contempt of the Honourable High Court, to which you are subordinate.

The magistrate (R-3) submitted a further counter affidavit denying the charges.

18. The High Court rejected the magistrate's explanation and found him guilty of contempt on grounds which may be summarised as below :

> (1) "The case between the petitioner and the first and the second respondent had gained certain amount of notoriety not only in the area but also in the State". Allegations were being made "that even the then Minister of Forests was unjustly favouring R-1 and R-2. The case before the Munsif Magistrate would naturally have attracted quite a good deal of public attention".
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> (2) R-3 permitted R-1 and R-2 to approach and influence him. This inference was available from the circumstance that in his affidavit, R-3 has said that an order dated May 2, 1969, passed by the High Court in C.M.P. No. 5869/69 in O. P. No. 2405/69 was shown to him; and the certified copy of this order was obtained from the High Court only by R-1. The copy must therefore have been shown to the magistrate by R-1 or her advocate or by R-2 or his agents. "This could not have been in the open court. There was no posting of the case to April 26, 1969."
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> (3)(a) R-3 was aware that Criminal Revision No. 176/69 and Cr. M. P. No. 309/69 against his earlier order, was pending in the High Court which was seized of the matter of determining the question of custody of the timber. "His explanation that he felt that he was free to pass an order because only the question of interim custody was involved in Cr. Rev. Petition No. 176 of 1969. .. was puerile."
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> (3)(b) R-3 passed the order on the final report, directing the release of the logs,

without caring to issue notice to the petitioner (P).

(4) In the letter Ex. P-10, dated September 26, 1969 the magistrate wrote to the Range Officer that the logs should be released to R-1 urgently. "This is a very strange procedure, unheard of, and reveals an anxiety on the part of the Munsif Magistrate to help R-1 and R-2. The urgency can only be to circumvent any possible orders of stay that may be passed by (the High) Court".

19. We have heard R-1 and the Counsel for the other appellants. R-1 has argued his case in person because according to him, he has no funds to engage a Counsel. His submissions are straight and simple. He has reiterated what he had stated in his further affidavit filed in reply to the memorandum of charges in the High Court.

20. In sum, his defence is that in all the proceedings relating to the disposal of the disputed timber, including the making of the order dated September 26, 1969, the issuing of the letter, Ex. 10, of the same date, and in failing to issue notice to 'P', he acted in the bona fide discharge of his duties, that even if what he did or omitted, was wrong, it was no more than honest error of judgment on his part. In particular, it is submitted that ground No. (1) is not based on any cogent or legal evidence but on mere rumours and hearsay and it is too vague and general that even so, it was not incorporated in the charges against him. It is further maintained that the inferences of ulterior motives on the part of the appellant, vide grounds Nos. (2) and (4), drawn by the High Court were wholly unjustified. It is contended that the approach of the High Court, is not in consonance with the law laid down by this Court in Debabrata Bandopadhyay v. State of West Bengal (AIR 1969 SC 189 : (1969) 1 SCR 304 : 1969 Cri LJ 401).

21. Before dealing with the contentions canvassed by the appellant, in will be useful to recall the law on the point.

22. Clause (c) of Section 2 of the Contempt of Courts Act, 1971 merely codifies the definition of "criminal contempt" which had previously been crystallised by judicial decisions. It defines "criminal contempt" to mean publication of any matter, or the doing of any other act 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;

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

23. The broad test to be applied in such cases is, whether the act complained of was calculated to obstruct or had an intrinsic tendency to interfere with the course of justice and the due administration of law. The standard of proof required to establish a charge of "criminal contempt" is the same as in any other criminal proceeding. It is all the more necessary to insist upon strict proof of such charge when the act or omission complained of is committed by the respondent under colour of his office as a judicial officer. Wrong order or even an act of usurpation of jurisdiction committed by a judicial officer owing to an error of judgment or to a misapprehension of the correct legal position, does not fall within the mischief of "criminal contempt". Human judgment is fallible and a judicial officer is no exception. Consequently, so long as a judicial officer in the discharge of his official duties, acts in good faith and without any motive to defeat, obstruct or interfere with the due course of justice the courts will not, as a rule, punish him for a "criminal contempt". Even if it could

be urged that mens rea as such, is not an indispensable ingredient of the offence of contempt, the courts are loath to punish a contemner, if the act or omission complained of, was not wilful.

24. In Debabrata Bandopadhyaya's case, Hidayatullah, C. J. speaking for the Court elucidated the position, 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 inveterate practices in courts and tribunals. It is only when a clear case of contumacious conduct not explainable otherwise, arises that the contemner must be punished. It must be realised that our system of courts often results in delay of one kind or another. The remedy for it is reform and punishment departmentally. Punishment under the law of contempt is called for when the lapse is deliberate and is 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.

25. The judgment of the High Court is to be tested in the light of the above enunciation.

26. The main ground, as already noticed, which greatly influenced the decision of the High Court, was that this case between the parties had gained a certain amount of notoriety and allegations were being openly made that the then Minister for Forests was out to favour R-1 and R-2 against 'P'. This was a very vague, indefinite and nebulous circumstance which had no better status than any other general rumour, gossip or talk in the town. Courts have to guard against cognizance of such rumours and general allegations as they prejudice an objective treatment and a fair determination of the problems before them. In the instant case the prejudice generated by this creeping circumstance has unmistakable vitiated the approach of the High Court. It has hindered a correct appreciation of the submissions made by R-3 in reply to the charges. In his counter affidavit R-3 stated :

In the final report filed by the fourth respondent which is marked in these proceedings as P-6, there is reference to an order passed by this Honourable Court allowing the first respondent to remove the cut timber. The order aforesaid is the order dated May 2, 1969 in C.M.P. No. 5869/1969 in O. P. No. 2405/1969 wherein it is said that it is necessary that the timber should be removed from the place as early as possible. A certified copy of this order was also shown to me and that was the reason why I wrote Ext. P-10 letter to release the cut logs without delay. The reason that prompted me to pass the final orders are therefore (1) there was no stay of further proceedings pending Crl. R.P. No. 176/1969, (2) the Crl. R.P. No. itself related only to Ex. R order for custody pending further investigation, and can have no reference to the ultimate result of investigation, (3) it was admitted before me that the first respondent had purchased the alleged rights of the petitioner and part of the consideration was already paid, even though he had the case that the assignment is not valid, and (4) this Honourable Court had in C.M.P. No. 5869/1969 aforesaid directed the speedy removal of the timber from the place by the first respondent.

27. In our opinion, the above reply given by the magistrate was sufficient to dispel the suspicion that in making the order, dated September 26, 1969, in regard to the delivery of the timber to R-1, he was actuated by a motive to impede on obstruct or defeat the course of justice. The notoriety of the case looming large in their minds, the learned Judges of the High Court without due consideration, rather hastily rejected the explanation of the magistrate, that he had directed (vide his letter Ex. P-10), urgent delivery of the timber of R-1 because on seeing the copy of the High Court's order dated May 2, 1969, which was shown to him. He was of the opinion that such a course was indicated

therein. The point of substance was, whether such an order was made by the High Court and had been shown to the magistrate before he made the order for urgent delivery of the timber. It was immaterial if certified copy of that order was shown to the magistrate by R-1 or her Counsel or her agent. Ex. R-1 is a certified copy of that order, dated May 2, 1969, which was passed by the High Court in C.M.P. No. 5869/1969 in O. P. No. 2405/1969, M. K. Prakash v. R-1 to R-4. C.M.P. No. 5869/69 was petition made by 'P' before the High Court praying that the operation of the order of the then respondent No. 1 be stayed and the other respondents, including the magistrate, be directed not to cause the removal of the felled trees pending disposal of the original petition.

28. After hearing arguments of the Counsel for the parties, the High Court made an order, the material part of which reads as under :

As the rainy season is fast approaching it is necessary that the timber should be removed from the place as early as possible. Otherwise, the same would be lost to all concerned. It is seen from the counter-affidavit of the fourth respondent that "she had already given an undertaking to the Government to pay the compounding fee, if any that may be fixed by the forest authorities". In the circumstances it appears to be only just to vacate the order of interim injunction passed on this petition. Accordingly, the order of interim injunction passed on this petition is vacated and this petition is dismissed but in the circumstances without costs.

29. On reading a copy of this order, and hearing the persuasive arguments of the party or her Counsel, the magistrate might have honestly, albeit wrongly, formed the opinion that there was no need to give notice to the other party, ('P') and that it was necessary to direct the Forest Officer to deliver the timber in question urgently to R-1. We are therefore unable to agree with the High Court that by his letter Ex. P-10, the magistrate directed urgent delivery of the logs to R-1 because "there was an anxiety on his part to help R-1 and R-2 and to circumvent any possible orders of stay that may be passed by the High Court". If the magistrate had read the High Court's order, dated May 2, 1969, before making this order of urgent delivery - and this fact has not been disputed - then his explanation cannot be dubbed as wholly "puerile".

30. Rather, the order dated May 2, 1969, whereby 'P"s request for ad interim stay or injunction with regard to these logs was declined by the High Court, could have induced the magistrate to go ahead with the making of the ex parte final order in regard to the delivery of the logs to R-1.

31. It is true that the magistrate was aware that 'P"s criminal revision petition against his interim order, dated April 28, 1969, was then pending in the High Court. In such a situation, the prudent course for him was to postpone the making of any final order in regard to the delivery of this timber till the final disposal of the revision petition by the High Court. It would also have been proper for him to issue notice to 'P' and give an opportunity of being heard before making any order. That would have been the ideal. But the point for consideration is, whether the Magistrate deliberately did not follow this prudent course or whether he misdirected himself owing to an error of judgment. The stark circumstances viz. that the High Court had declined to issue any interim injunction or stay order in favour of 'P' in the criminal revision pending before it; that there was an observation in the High Court's order, dated May 2, 1969, stressing the need for speedy removal of the cut timber any the possibility of its being damaged by the incoming rainy season; that he was labouring under the impression, though wrongly, that the order, dated April 28, 1969, was merely an interim order which had exhausted itself on the completion of the police investigation and the presentation of the final report by the police in which there was a positive finding that the timber belonged to R-1 and R-2 and they were entitled to its restoration, taken in their totality, go to show that in making the

wrong order regarding delivery of the timber, the magistrate was not actuated by any improper motive or deliberate design to thwart, impede, obstruct or interfere with the course of justice or to circumvent or defeat the proceedings in revision pending before the High Court.

32. In the absence of any mens rea, the magistrate had, at the most, committed only a technical contempt of the High Court. In such a case, as was pointed out by this Court in Debabrata Bandopadhyay's case, penal action was not called for.

33. We therefore, allow R-3's appeal and set aside his conviction and sentence.

34. No conviction for contempt of court has been recorded against the appellants in the companion appeals, by the High Court. All that we would say in their (R-1 and R-2) cases is, that the High Court has made rather sweeping observations with regard to their civil rights which might prejudice them in establishing their claim by a regular suit. They shall therefore not be taken into account by any court before which the dispute with regard to this timber may come up for adjudication in due course. Similarly, any adverse remarks made against the police officer (R-4) will not by themselves be taken conclusive as to his conduct in handing this case. Subject to these observations we dismiss Criminal Appeals Nos. 195 and 196 of 1971.

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