

Rachapudi Subba Rao

Vs

Advocate General, Andhra Pradesh

Criminal Appeal No. 172 Of 1975

(R. S. Sarkaria, O. Chinnappa Reddy JJ)

10.12.1980

JUDGMENT

SARKARIA, J. -

1. This appeal by Rachapudi Subba Rao is directed against a judgment, dated April 23, 1975 of the High Court of Andhra Pradesh, whereby the appellant was convicted for committing gross contempt of court under Section 12 read with Sections 10 and 15 of the Contempt of Courts Act, 1971 (hereinafter referred to as 'the Act') and sentenced to undergo one month's imprisonment. It arises out of these facts :

2. The appellant filed Original Suit 101 of 1973 in the Court of the Subordinate Judge, Vijayawada, against five persons for declaration of his title and for injunction in respect of a building. The 1st defendant in that suit instituted Original Suit 375 of 1972 in the same court against the appellant for possession of the same building and for recovery of damages for use and occupation. The First Additional Subordinate Judge, Vijayawada, heard the two suits together and by a common judgment, dated October 31, 1974, dismissed the appellant's suit and decree holder filed petition for execution of his decree against the appellant. The latter filed an application for stay of the execution.

3. When the execution and the appellant's application for stay were pending, the appellant on December 25, 1974 issued notice to the additional Subordinate Judge, who had decided the suits against him. In that notice which a lengthy document, he inter alia made these allegations against the judge :

3. In the said judgment (O. Ss. 101 of 1973 and 275 of 1972) Your Honour created new facts by making third version without evidence as detailed below among others.

4. Your Honour has intentionally, with bad faith and maliciously, disordered the existing oral and documentary evidence with a view to help plaintiff in O. S.. 275 of 1972 causing damage and injury to me.

5. Your Honour has maintained different standards in the same judgment with regard to Exs. B-9, B-10, B-13, and A-15 to A-19 and A-20 to A-22 and B-11 and B-12 in para 25.

6. Your Honour has maintained different standards even with regard to self-serving statements.

16. Your honour has side-tracked the binding direct decisions of the High Courts and the Supreme Court disordering the contents of the said decisions.

18. So under these circumstances it cannot be said that these acts done by your goodself in the discharge of Your Honour's judicial duty within the limits of Your Honour's jurisdiction in god faith; for the above said acts themselves prove that Your Honour has done these acts with mala fide exercise of powers without jurisdiction.

4. In the concluding paragraphs of the notice, he stated :

Your Honour has done these acts in excess of jurisdiction knowing the law regarding your own powers and duties. So, your honour is liable in tort to pay damages for the heavy monetary loss incurred by me and for the injury.

Hence, I request Your Honour to pay a sum of Rs. 30,000 by way of damages for the heavy monetary loss incurred by me and for the injury within a reasonable time, or else I will be compelled to seek legal redress for the same.

I hereby reserve my right to take available legal actions against your Honour under the other enactments.

5. After receiving this notice, the First Additional Subordinate Judge sent it to the High Court for necessary action. The High Court requested the Advocate General to institute contempt proceeding. The Advocate General then filed a Contempt Petition 14 of 1975, supported by an affidavit and prayed that the appellant be committed for contempt of court of the Additional Subordinate Judge, Vijayawada and be punished under Section 12 read with Sections 10 and 15 of the Act.

6. In his counter-affidavit filed before the High court, the appellant not only tried to justify the issuance of the notice to the Subordinate Judge, but also asserted that the notice was intended to uphold the purity of administration of justice and to safeguard the interests of the litigating public. The High Court found that the passages extracted above were perse scandalous and scurrilous and the notice was undoubtedly a deliberate and determined attempt on the part of the appellant "to scandalise the Judge and the Court for having held against him, by imputing lack of good faith and mala fides to a judicial officer in the discharge of his judicial duties", that it was also an attempt to frighten the judicial officer by threatening to file suit for damages for Rs. 30,000 and to undermine his self-confidence in dealing with causes that might come up before him for trial in future, The High Court concluded that what the appellant has stated in the notice in question, is clearly and squarely 'criminal contempt' as defined by Section 2 (c) of the Act. Is negated the defences raised by the appellant and convicted as aforesaid.

7. Before us, the appellant has argued his case in person. He has also submitted written arguments which he has orally elaborated and supplemented. As before the High Court, here also, the appellant intransigently maintains that there is nothing scandalous in the contents of the notice. In the written arguments he reiterates the imputation, that the subordinate Judge had deliberately delivered a dishonest judgment ' against him and the Judge was 'guilty of serious misbehavior in the performance of his duties'; that the allegations of 'bad faith', malice', etc. in the notice were facts constituting the cause of action, which were essential to be stated under file against the subordinate Judge; that the giving of the notice containing such statements of material facts being a mandatory requirement of Section 80 of the Code of Civil Procedure, the issuance of such notice to the

Subordinate Judge could not be characterised 'scandalous' so as to constitute contempt of court.

8. The contention is clearly unsustainable. Section 1 of the Judicial Officers Protection Act, 1850 provides :

No. Judge, Magistrate, Justice of the peace, Collector or other person acting judicial shall be liable to be sued in any Civil Court for any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction :

Provided that he at the time, in good faith, believed himself to have jurisdiction to do or order the act complained of; and no officer of any court or other person, bound to execute the lawful warrants or orders of any such Judge, Magistrate, Justice of the peace, Collector or other person acting judicially shall be liable to be sued in any Civil Court, for the execution of any warrant or order, which he would be bound to execute, if within the jurisdiction of the person issuing the same.

9. As pointed out by this Court in *Anwar Hussain v. Ajay Kumar Mukherjee* the section affords protection to two broad categories of acts done or ordered to be done by a judicial officer in his judicial capacity. In the first category fall those acts which are within the limits of his jurisdiction. The second category encompasses those acts which may not be within the jurisdiction of the judicial officer, but are, nevertheless, done or ordered to be done by him, believing in good faith that he had jurisdiction to do them or order them to be done.

10. In the case of acts of the first category committed in the discharge of his judicial duties, the protection afforded by the statute is absolute, and no enquiry will be entertained as to whether the act done or ordered to be done was erroneous, or even illegal, or was done or ordered without believing in good faith.

11. In the case of acts of the second category, the protection of the statute will be available if at the time of doing, ordering the act, the judicial officer acting judicially, in good faith believed himself to have jurisdiction to do or order the same. The expression 'jurisdiction' in this section has not been used in the limited sense of the term, as connoting the 'power' to do or order to do the particular act complained of, but is used in a wide sense as meaning 'generally the authority of the judicial officer to act in the matters. Therefore, if the judicial officer had the general authority to enter upon the enquiry into the cause, action, petition or other proceeding in the course of which the impugned act was done or ordered by him in his judicial capacity, the act, even if erroneous, will still be within his 'jurisdiction', and the mere fact that it was erroneous will not put to beyond his 'jurisdiction. Error in the exercise of jurisdiction is not to be confused with lack of jurisdiction in entertaining the cause or proceedings. It follows that if the judicial officer is found to have been acting in the discharge of his judicial duties, then, in order to exclude him from the protection of this statute, the complainant has to establish that (1) the judicial officer complained against was acting without any jurisdiction whatsoever, and (2) he was acting without good faith in believing himself to have jurisdiction.

12. In the instant case, the subordinate Judge had unquestionably, the jurisdiction to try and decide the suits concerned. It is further not disputed that the findings which the appellant characterises as 'wrong', 'malicious' and 'in violation of his judicial duties' i. e. within the exercise of his jurisdiction. This being the position, the acts of the Subordinate Judge, done by him in bringing an action. Nor would the fact that the appellant had the temerity to ridicule and characterise the findings and decision of the Subordinate Judge as "malicious", 'dishonest' and 'motivated' to help the plaintiff in O. S. 275 of

1972", without stating any particulars or facts on which these scurrilous allegations were founded, give him the locus to bring a civil action for damages against the subordinate Judge. In the circumstance, it is not possible to accept the appellant's contention that the notice in question, was bona fide issued by him as a preliminary lawful step to the filing of a suit against the Subordinate Judge.

13. We agree with the high Court that the tone, temper and contents of the notice, particularly of the passages extracted earlier, which impute malice, partiality and dishonesty to the Subordinate Judge in the judicial adjudication of the aforesaid suits against the appellant, constitute a deliberate attempt to scandalise the Judge, to terribly embarrass him to lower the authority of his office and the court. The act and conduct of the appellant in issuing this notice therefore, fell squarely within sub-clauses (i) and (iii) of the definition of "criminal contempt" given in Section 2(c) of the Act, reproduced below :

2. (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;

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

14. It is noteworthy, that in the categorisation of contempt in the three sub-clauses (i) to (iii), only category (ii) refers to 'judicial proceeding. Scandalising of court in its administrative capacity will also be covered by sub-clause (i) and (iii). The phrase "administration of justice" in sub-clause (iii) is far wider in scope than; course of any judicial proceedings". The last words "in any other manner" of sub-clause (ii) further extend its ambit and give it a residuary character. Although sub-clause (i) to (iii) describe three distinct species of "Criminal contempt", they are not always mutually exclusive. Interference or tendency to interfere with any judicial proceeding or administration of justice is a common element of sub-clauses (ii) and (iii). This element is not required to be established for a criminal contempt of the kind falling under sub-clause (i).

15. The next contention of the appellant is that his act in question falls within the exemption of Section 3, particularly the explanation to that section, since the suits in respect of which the notice was issued has already been decided and the execution of the decree against the appellant, though pending, did not constitute a pending matter for the purpose of availing the protection of section 3. The material part of Section 3 is as follows :

3. (1) A person shall not be guilty of contempt of court on the ground that he has published (whether by words spoken or written or by signs or by visible representations or otherwise) any matter which interferes or tends to interfere with, or obstructs or tends to obstruct, the course of justice in connection with any civil or criminal proceeding pending at the time of publication, if at that time he had no reasonable grounds for believing that the proceeding was pending.

(2) Notwithstanding anything to the contrary contained in this Act or any other law for the time being in force, the publication of any such matter as is mentioned in sub-section (1) in connection with any civil or criminal proceeding which is not pending at the time of publication shall not be deemed to constitute contempt of court.

Explanation.-For the purposes of this Section a judicial proceeding -

(b) which has been heard and finally decided shall not be deemed to be pending merely by reason of the fact that proceedings for the execution of the decree, order or sentence passed therein are pending.

16. Section 3 is in the nature of an exception to those categories of "criminal contempt" which fall under sub-clause (ii) and to certain categories of "criminal contempt" which come under sub-clause (iii) of Section 2(c), but not to that category of contempt which falls under sub-clause (i) of Section 2(c). This is clear from a comparison of the language of Section 3(1) with that of Section 2(c). The words "interfere or tends to interfere with... the course of justice in connection with any.... proceeding pending" in Section 3(1) substantially reiterate the language of sub-clause (ii) of Section 2(c). Similarly, the words "interferes or tends to interfere with, or obstruct or tends to obstruct" in Section 3(1) are a reproduction of the first limb of sub-clause (iii) of Section 2(c). The phrase "the administration of justice in any other manner 'used in Section 2(c) (iii) has been substituted in Section 3(1) by the narrower phrase 'the course of justice in connection with any civil or criminal proceeding pending at the time of publication". But there are no words in Section 3 which may be referable to that species of "criminal contempt" which would fall within sub-clause (i) of the definition given in section 2(c). Sub-section (2) of Section 2 expressly contains its operation to those categories of contempt which are referred to in sub-section (1) Section 3 (2) therefore, is not applicable to that category of contempt which falls under sub-clause (i) of section 2(c), or which is otherwise of a kind different from those mentioned in Section 3(1).

17. In the instant case, the contempt committed, though not in connection with any pending proceeding, primarily and squarely falls under sub-clause (i) though the aforesaid residuary phrase in sub-clause (iii) may also be attracted. Unfounded imputation of mala fides, bias, prejudice or ridiculing the performance of a judge or casting aspersions on his integrity as has been done by the appellant in the notice in question are always considered to mean Scandalising the court, and lowering the authority of his Vilification of the Judge, even in administrative matters or decided judicial matters, may amount to "criminal contempt" under sub-clause (i) of Section 2(c) as it lowers or tends to lower the authority or dignity of the court by undermining public confidence in the capacity of the judge to mete out even-handed and impartial justice.

18. For the aforesaid reasons, we negative this contention of the appellant.

19. The last argument urged by the appellant is that even if his act technically amounted to contempt of court, no sentence could be imposed on him in view of Section 13 of the Act which reads as follows :

Notwithstanding anything contained in any law for the time being in force, no court shall impose a sentence under this act for a contempt of court unless it is satisfied that the contempt is of such a nature that it substantially interfere, or tends substantially to interfere with the due course of justice.

20. The appellant contends, that the High Court has not given any finding in regard to this contention which was raised by him there, also.

21. The contention must be repelled.

22. The High Court has dealt with this contention. It has rightly pointed out that the amplitude of the words "due course of justice" used of Section 13 is wider than the words "due course of any judicial proceeding" or "administration of justice" used in sub-clause (ii) or (iii) of Section 2(c). We have held that the contempt of court committed by the appellant falls both under sub-clause (i) and also within the amplitude of sub-clause (iii). If the act complained scandalizes the judicial officer in regard to the discharge of his judicial functions, if thereby substantially interferes or tends to interfere with the "due course of justice" which is a facet of the broad concept of the "administration of justice ", and as such, is punishable under Section 13.

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 imputations 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.

24. For the foregoing reasons, we dismiss this appeal and maintain the conviction and sentence of the appellant.

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