

Smt. Savithamma, Complainant

Vs

Cecil Naronha and Another, Accused.

Contempt Petition No. 31997 of 1987 in Civil Appeal No. 2277 of 1986

(K. N. Singh, E. S. Venkataramiah JJ)

23.08.1988

ORDER

SINGH, J. -

1. The complainant has by means of this petition claimed relief for taking action for contempt against the accused for their failure to comply with the orders of this Court dated July 14, 1986 made in Civil Appeal No. 2277 of 1986 and to punish the accused who include the Secretary and Commissioner, Government of Karnataka, Revenue Department and Tehsildar Land Reforms, Koppa, Chickmagalur District, Karnataka.
2. During the hearing we noticed that the affidavit filed by the complainant as well as the affidavit filed in reply to the contempt petition both were not in accordance with the provision of the Supreme Court Rules or Order 19 Rule 3 of Code of Civil Procedure. Smt. Savithamma the complainant has filed affidavit in support of the contempt petition. In paragraph 2 of her affidavit she stated that the statements contained in the contempt petition were true to the best of her knowledge, belief and information. In paragraph 3 she has further stated that the affidavit had been read over, translated and explained to her and she understood the contents thereof and has further stated that the same were true to her knowledge. The affidavit is clearly vague and general and it does not comply with the requirement of a valid affidavit as laid down in Order XI Rules 5 and 13 of the Supreme Court Rules. The affidavit is defective as it does not indicate as to what facts were true to her personal knowledge, information and belief. Order XI Rule 2 of the Supreme Court Rules lays down that evidence in support of an application may be given by affidavit in the Supreme Court. Rule 5 provides that affidavit shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory applications, on which statements of his belief may be admitted, provided that the grounds thereof are stated. Rule 13 provides that in the verification of petitions, pleadings or other proceedings statements based on personal knowledge shall be distinguished from statements based on information and belief. In the case of statements based on information the deponent shall disclose the source of his information. Similar provisions are contained in Order 19 Rule 3 of the Code of Civil Procedure. Affidavit is a mode of placing evidence before the court. A party may prove a fact or facts by means of affidavit before this Court but such affidavit should be in accordance with Order XI Rules 5 and 13 of the Supreme Court Rules. The purpose underlying Rules 5 and 13 of order XI of the Supreme Court Rules is to enable the court to find out as to whether it would be safe to act on such evidence and to enable the court to know as to what facts are based in the affidavit on the basis of personal knowledge, information and belief as this is relevant for the purpose of appreciating the evidence placed before the court, in the form of affidavit. The importance of verification has to be judged by the purpose for which it is required. It is only on the basis of verification, it is possible to decide the genuineness and

authenticity of the allegations and the deponent can be held responsible for the allegations made in the affidavit. In this Court evidence in support of the statements contained in writ petitions, special leave petitions, applications and other miscellaneous matters, is accepted in the form of affidavit filed by the parties concerned. It is therefore necessary that the party stating facts must disclose as to what facts are true to his personal knowledge, information or belief. If the statement of fact is based on information the source on information must be disclosed in the affidavit. An affidavit which does not comply with the provision of Order XI of the Supreme Court Rules, has no probative value and it is liable to be rejected. In a matter where allegations of mala fides or disobedience of the court's order are made against a person or party it is all the more necessary that the person filing affidavit in this regard must take care to verify the facts stated in the affidavit strictly in accordance with Rules 5 and 13 of Order XI of the Supreme Court Rules.

3. We are constrained to observe that of late affidavits are being filed in this Court in a slipshod manner without having any regard to the rules. Affidavits are being filed by persons who could have no personal knowledge about the facts stated in the affidavit. Deponents of affidavits pay no attention to verification, although this Court laid stress on this aspect as early as 1952. In *State of Bombay v. Purushottam Jog Naik* (1952 SCR 674 : AIR 1952 SC 317 : 1952 Cri LJ 1269), a Constitution Bench considering the importance of verification of an affidavit observed :

We wish, however, to observe that the verification of the affidavits produced here is defective. The body of the affidavit discloses that certain matters were known to the Secretary who made the affidavit personally. The verification however states that everything was true to the best of his information and belief. We point this out as slipshod verifications of this type might well in a given case lead to a rejection of the affidavit. Verifications should invariably be modelled on the lines of Order 19, Rule 3, of the Civil Procedure Code, whether the Code applies in terms or not. And when the matter deposed to is not based on personal knowledge the sources of information should be clearly disclosed.

4. In the instant case verification of the complainant's affidavit is defective and it would not be safe to proceed on the allegations mentioned in the contempt petition.

5. The matter does not rest here. The affidavit filed on behalf of the accused in reply to the contempt petition is shocking. The office clerk of advocate for the accused has filed affidavit on behalf of the accused in reply to the contempt petition. The deponent of the counter-affidavit has verified the affidavit saying that the statements of the case of the accused are true and correct which are based on the records maintained in the office of the advocate and based on the instruction received from the clients. Such an affidavit is wholly improper and inadmissible in evidence and liable to be rejected. What reliance can be placed on an affidavit filed by a person sitting at Delhi and that too a clerk of an advocate practising at Delhi giving reply to the allegations and facts and circumstances existing at Karnataka on the basis of records maintained in advocate's office at Delhi. The practice of clerks of advocates filing affidavits without a proper verification should be deprecated. As matters before the apex court are determined on the basis of the statements contained in affidavits it is the duty of the litigants and the lawyers to file affidavits in accordance with the rules to assist the court in administering justice.

6. Since the affidavit filed in support of the contempt petition as well as the affidavit in reply to the petition do not comply with Rules, no reliance can be placed on them and both are liable to be rejected. We accordingly reject the same and the contempt petition is liable to be dismissed on this

ground alone. But we give a chance to the parties to file proper affidavits within six weeks. List thereafter.

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