

**SUPREME COURT OF INDIA**

M.D.Jain

Vs.

Bhagyavathi

CrI.A.No.2133/2009

(Kurian Joseph and R.Banumathi,JJ.,)

26.07.2017

**JUDGMENT**

**Kurian Joseph,J.,**

1. The appellant is before this Court aggrieved by the denial of discharge in a pending contempt proceedings. The Respondent No.1, who is the former wife of the appellant, made a complaint that the appellant in collusion with the Court staff had tampered with the documents.

2. On that basis, it appears, there was also inquiry by the C.B.I. as ordered by the High Court. In the Court monitored investigation, the C.B.I. has filed final report dated 13.04.2005 in which the C.B.I. has reported as follows:-

"To conclude, there is no evidence even circumstantial against A1, A2 and A3 as alleged in the matter of removal of Ex.P1, 12 and 13 and in the matter of removal, tampering and substitution of Ex.P.43. It is found that Sh. Venkatachalam (A3) custodian of case files did not take proper care in the safety and security of case files which facilitated in the removal of the documents. It is also found that the complaints raised by Smt. Bhagyawathi Jain and Advocate Sunderasha were found to be false in the matter of the identity of Ex.P.43, P.12 and P.13 and that presumably they made this allegation purposefully as these alleged documents are incriminative in nature against Sh. M.D. Jain (A1) and as such a suspicion could be effectively created, that he (M.D. Jain) is the person who could have removed these documents from the case file. Therefore, it is found that they have knowingly and purposefully made false complaint in the Family Court and also before the Hon' ble High Court. However, the evidence available may not be sufficient to establish beyond reasonable doubts that the tampering and removal of document in question were done by Smt. Bhagya Jain and her advocate or at their instance. Similarly, the circumstantial evidence available is also not sufficient to prove the offence of making false complaint against Smt. Bhagya Jain or her advocate. On completing the investigation of the case a

report was submitted before the Hon' ble High Court of Karnataka on 27.6.2003 to which the Hon' ble High Court of Karnataka passed an order dated 9.3.2005 in CrI.CC No.18/2002 (copy enclosed) directing the office of the Registrar of Hon' ble High Court of Karnataka to return the report filed by the CBI, to the CBI counsel and directed the CBI to take necessary steps in accordance with law. In compliance to the said Hon' ble High Court of Karnataka order and as the investigation did not disclose any cognizable offence made out against the accused or any other person/persons, this Final Report is filed before this Hon' ble Court. It is therefore prayed that this Hon' ble Court may be pleased to accept this final report as there is no offence appears to have been committed by the accused persons or any other persons, and thus pass appropriate orders. Pertaining to the lapses on the part of the following court staffs, Departmental Action has already been initiated against (1) Shri Venkatachalam, Pending Clerk for his failure in keeping the case files properly and safely, which facilitated the removal of Ex.P.1, 12 and 13 and the removal of Ex.P.43 from the case files, (2) Shri Lokesh, Bench Clerk (A2) for the failure on his part in the preparation of list of exhibits properly and (3) Shri Shivananda, SDA for taking/keeping the case files of the family court in his house without the permission of Judge and without proper accounting."

2. Based on this Report the appellant sought discharge.

There were other contentions as well.

3. Be that as it may, in the impugned order, the High Court was of the view that C.B.I. inquiry was directed only against the Court staff, as stated in paragraph 6, which reads as follows:-

"On the other hand, the CBI enquiry was directed as to the conduct of the Court staff in helping the accused to the alleged disappearance of the Court records. Though both are criminal in nature one is a penal offence, the other is committing contempt of Court and hence both are distinguishable. Any way, the filing of the "B" report can be used by the accused at the time of final hearing of the case after the evidence is completed and arguments are addressed. As such, it is not necessary to close the case only on the ground of CBI filing "B" report.

4. This appears to be a mistake of fact. As can be seen from the Report, which we have extracted above, the appellant herein was accused No.1 in the case investigated by the C.B.I. In the Report, the C.B.I. has specifically concluded that there was no material or even any circumstantial evidence to show that the appellant was involved in the alleged missing or tampering of documents.

5. In that view of the matter, the impugned order is set aside and the appeal is allowed. We request the High Court to consider the matter afresh having regard to the Report filed by the C.B.I. exonerating the appellant.

