

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL CONTEMPT PETITION NO.10 OF 2012

Seems Dilip Giyanani and ors.

...Petitioners.

vs.

Advocate General,
State of Maharashtra and ors.

...Respondents.

Mr.Charanjeet Chandrapal for the Petitioner.
Mr.Dinesh Adsule, APP. for State.

**CORAM : S.C. DHARMADHIKARI
AND
SUNIL P. DESHMUKH, JJ.
DATE : 18TH FEBRUARY 2015**

PC:

We have heard Mr. Chandrapal appearing in support of this application. This criminal contempt petition is by four petitioners and the alleged contemnor is respondent no.2. The second respondent filed a complaint in the Court of Metropolitan Magistrate at Mumbai. That Magistrate passed an order under Section 156(3) of Cr.P.C. directing the concerned Police Station to investigate the complaint and file a report. Aggrieved by the same, a revision application was preferred in City Civil and Sessions Court at Mumbai against the present petitioners and others. That Criminal Revision application has been allowed. During the course of allowing it, the learned Additional Sessions Judge commented on the conduct of the complainant in not producing the relevant documents and material before the Magistrate and suppressing it, the learned Additional Sessions Judge has termed this conduct as an abuse of process of law.

2) It is based on these observations of the learned Additional Sessions Judge, this criminal contempt petition had been filed. It is alleged that the original complainant mis-represented and suppressed material facts, thereby he perpetrated a fraud on the Court. This amounts to scandalizing the Court in any event is a interference with the course of justice. Therefore, the ingredients of Section 2(c) of the Contempt of Courts Act,1971 are attracted.

3) Upon a query, Mr. Chandrapal fairly states that an application was made under Section 15 of the said Act for seeking consent of the learned Advocate General of the State, which is a condition to be fulfilled in terms of sub section (1) (b) of the Contempt of Courts Act, 1971 to enable the High Court to take cognizance of criminal complaint in other cases. The High Court can take action on its own motion or on the motion made by the Advocate General or any other person with the consent in writing of the Advocate General. In the present petition, it is not in dispute that such consent was sought. On 8/5/2012, the Advocate General has refused the same.

4) Our attention has been invited to series of Judgments of the Hon'ble Supreme Court including Bal Thackrey Vs. Harish Pimpalkhute and another 2005 Cri. L..J. 659 .

5) Mr. Chandrapal further submits that despite the consent refused by the Advocate General, this Court can take note of the allegations in the petition and initiate suo motu contempt proceedings. Therefore, if consent not been granted that will not prevent this Court

from acting upon the information or the complaint of the present petitioner.

6) Having perused this Judgment and in the light of the admitted legal position, we are of the view that this is not a fit case for initiating any action. The consent sought by the original complainant from the Advocate General has been refused and he has assigned reasons. Secondly, this Court has admitted the Criminal Revision Application by the original complainant against the order of the Additional Sessions Judge. In the circumstances and when there are proceedings pending in Civil and Criminal Courts, there are rival versions, we do not see any basis for entertaining this application or petition. The parties have made allegations against each other of abuse of the process of Court. Unless and until this Court determines as to whether the complainant is really guilty of suppression and misleading the court, it would be futile to proceed and take any action. In the event, this Court finds no substance in the criminal revision application nothing prevents it in law from initiating proceeding including taking note of the allegations that are made. By keeping this course open, we dismiss this petition. The order passed today shall not in any manner prevent the petitioners or the original complainant from raising such contentions as are permissible in law either to oppose or to support the findings of the Additional Sessions Court.

(SUNIL P. DESHMUKH, J.)

(S.C. DHARMADHIKARI, J.)