

IN THE HIGH COURT OF KERALAAT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

WEDNESDAY, THE 11TH DAY OF MARCH 2015/20TH PHALGUNA, 1936

Con.Case(C).No. 42 of 2015 (S) IN WP(C).31081/2013

PETITIONER(S):

NISHAD M.A., SON OF ASHRAF, AGED 33 YEARS,
DIRECTOR, M/S.LULU CONVENTION AND EXHIBITION
CENTRE PVT OTD, REPRESENTING AS ITS AUTHORIZED
SIGNATORY, 34/1000, N.H.17, EDAPPALLY, KOCHI -24.

BY ADVS.SRI.K. RAMKUMAR(SR.)
SRI.C.S.ABDUL SAMMAD
SRI.T.U.ZIYAD
SMT.RAMEENA.P.K.

RESPONDENT(S):

RAMACHANDRAN N, AGED 78 YEARS,
S/O.LATE P.N.NARAYANAN PILLA, SECRETARY (LEGAL)
ASSOCIATION FOR ENVIRONMENTAL PROTECTION COUNCIL,
PARISTHITHI BHAVAN, DARSHANA ROAD, ALUVA,
KERALA -683 101, RESIDING AT ARRIYANCHERRY MADAM,
WEST KADUNGALLUR P.O., ALUVA-683 110.

R1 BY ADV. SRI.P.K.IBRAHIM
R1 BY ADV. SMT.K.PAMBIKA
R1 BY ADV. SMT.A.A.SHIBI

THIS CONTEMPT OF COURT CASE (CIVIL) HAVING BEEN FINALLY HEARD ON
11-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.R.

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.

Cont. Case (C) No.42 of 2015

Dated this the 11th day of March, 2015

JUDGMENT

Antony Dominic, J.

1.The 10th respondent in w.P(C).31081/13 has filed this petition under Article 215 of the Constitution of India read with section 12 of the Contempt of Courts Act, 1971, (hereinafter referred to as the 'Act' for short) praying that this Court be pleased to initiate suo motu proceedings under the Act against the respondent for interfering with the due course of justice.

2.The factual background in which this petition was filed is that the respondent herein filed w.P(C). 31081/13 in his capacity as Secretary (Legal) of the Association for Environmental Protection Council, Aluva, in which, the Association is the second petitioner. In the writ petition, the main prayer is to quash Exts.P7, P8, P12 and P14, which are the minutes of the Board of Trustees of the Cochin Port Trust held on 6.9.2010, the lease deed between the petitioner herein and the Cochin Port Trust dated

26.7.2011, Government Order dated 27.7.2013 and the Building Permit issued by the Corporation of Cochin in favour of the petitioner on 11.10.2013 respectively.

3. In so far as this petition is concerned, it is relevant to note that in the writ petition, an interim relief that this Court be pleased to “stay all further proceedings in pursuance to Exts.P7, P8, P12 and P14 pending disposal of the Writ Petition (Civil)” was also sought for. The writ petition was filed on 9.12.2013 and was admitted on 20.12.2013. The petitioner herein filed their counter affidavit on 19.1.2014. There is no dispute among the counsel for both sides that the writ petition was heard on different dates. But, it is a fact that this Court has not passed any interim order, either granting or declining the interim prayer made in the writ petition.

4. Subsequently, along with the reply affidavit to the counter affidavit filed by respondents 1 to 3, 5 and 10, the petitioners in the writ petition filed

I.A.2167/14 dated 3.2.2014. In this reply affidavit, the respondent herein, who has sworn to the affidavit, averred that piling work was in progress in the land in question and that soon the petitioner herein would raise the building and later would raise all sort of contentions including financial loss etc. He further stated that the activities now going on in the land have serious environmental impact and therefore it is only necessary in the interest of larger public interest to stay all further constructions in the land pending disposal of the writ petition. In I.A.2167/14 filed along with the reply affidavit, the writ petitioners prayed to stay “all construction activities undertaken in Sy.Nos.31/4 and 31/20 of Mulavukadu village in pursuance to Exts.P7, P8, P12 and P14, pending disposal of the writ Petition (Civil)”.

5.On the filing of the IA, an additional affidavit was filed by the petitioner herein, where, disputing the maintainability of the interlocutory application, it was stated that the prayer in the IA was identical with the interim petition submitted along with the

writ petition and that the stay sought for was also identical to stay of all further proceedings already sought for. According to them, since the only further proceedings pursuant to Exts.P7, P8, P12 and P14 is the construction, there is already a petition pending and therefore, filing of a petition for the same relief amounts to contempt of this Court and a clear abuse of the process of this Court. On this basis, they contended that the writ petitioners were liable to be proceeded with in contempt for having suppressed the filing of a petition for interim relief along with the writ petition.

6. Thereafter, an additional affidavit dated 25.2.2014 was filed by the respondent herein on behalf of the writ petitioners. In that affidavit, in paragraph 3, he contended that the prayer sought for in I.A.No.2167/14 was a limited one as compared to the prayer made in the interlocutory application filed along with the writ petition. Proceeding further, he stated that “However by an inadvertent omission in the affidavit, the deponent did not state as to whether he had filed any petition seeking similar

reliefs in respect of the same subject matter earlier and if so the result thereof". The affidavit concluded by stating that "This additional affidavit is filed to cure the defect as permitted by this Hon'ble Court on pointing out the omission regarding a mandatory statement required to be made in an additional affidavit seeking an interim relief".

7.It is in the above background, this contempt petition has been filed and the allegation contained in the memorandum of charges attached to the petition is that by filing two applications for the same relief, suppressing the filing of one of them and declining to withdraw the same instead of pressing two petitions, the respondent has interfered with the due course of justice in a manner affecting the dignity, prestige and authority of the High Court of Kerala and have thereby committed contempt of court as the expression is understood in terms of the Contempt of Courts Act, 1971. In this petition, the respondent herein has filed a reply affidavit in terms of Rule 13 of the Contempt of Courts (High Court of Kerala)

Rules, 1971, (hereinafter, the 'Rules', for short) denying the allegations against him.

8. We heard learned senior counsel for the petitioner and the learned counsel appearing for the respondent.

9. Section 2(c) of the Act defines 'criminal contempt' and according to the learned senior counsel, sub-clauses (ii) and (iii) of section 2(c) which provide that publication of any matter or the doing of any other act whatsoever which prejudices, or interferes or tends to interfere with, the due course of any judicial proceedings; or interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner are the provisions of the Act which are attracted in this case. Section 15 of the Act provides the manner in which cognizance of criminal contempt is taken. In terms of this section, this Court may take action on its own motion or on a motion made by the Advocate General or by any other person, with the consent in writing of the Advocate General. In so far as this case is concerned, as we have already stated, the

prayer of the petitioner is that this Court shall take action on its own.

10. Rule 7 of the Rules framed under the Act deals with the initiation of suo motu proceedings on information. As per this Rule, any information received shall, in the first instance, be placed before the Chief Justice on the administrative side and that if the Chief Justice, or such other Judge as may be designated by him for the purpose, considers it expedient or proper to take action under the Act, he shall direct that the said information be placed for preliminary hearing. The manner in which suo motu proceedings under the Act are to be initiated was considered by a Full Bench of this Court in the judgment in Rehim v. M.V. jayarajan [2010 (4) KLT 286 (FB)]. In Rehim's case (supra), overruling the judgment of this Court in Suo Motu Contempt [2009 (1) KLT 695] and confirming the principles laid down in Kallara Sukumaran v. T.M. Jacob [1986 KLT 32], this Court held in paragraph 23 thus:

" It can be seen from the above Rule that the rule prescribes that any information (obviously regarding the commission of contempt by any person) received by the High Court, except by way of a petition contemplated under R.3, is required to be placed before the Chief Justice in the first instance on the Administrative side. Such information may be examined either by the Chief Justice or by a Judge designated by him to take an administrative decision whether it is expedient or proper to take action under the Act on the basis of the said information. Such a decision making process requires consideration of various factors, like the basic trustworthiness of the information, a prima facie satisfaction that the allegations, if proved, constitute contempt of the Court and whether it is expedient or proper to take action for contempt having regard to the facts and circumstances of the case. The decision on the question of expediency or propriety, in our opinion, depends greatly on the facts and circumstances of each and every case."

11. In so far as this case is concerned, from the endorsements in the case file, we find that though the petition ought not have been numbered, still, the Registry numbered and posted the case on the judicial side before the Bench consisting of the Hon'ble the

Chief Justice, when it was ordered to be posted along with W.P(C).26435/13 and connected cases, which includes W.P(C).31081/13 also. Subsequently, an administrative order is seen to have been passed on 13.2.2014, whereby, the then Hon'ble Chief Justice ordered the case to be posted before the Division Bench of Justice T.R.Ramachandran Nair. Accordingly, the case was posted in the judicial side along with the writ petitions and finally, the Hon'ble the Acting Chief Justice passed an administrative order on 19.1.2015, posting the case before this Division Bench. It is accordingly that the case is listed before us.

12. On a query to the learned senior counsel appearing for the petitioner herein as to whether, in the light of the above facts, the procedure as contemplated in the Rules and as explained by the Full Bench in Rehim's case (supra) were complied with, learned senior counsel answered in the affirmative and also invited our attention to the judgment of the Apex Court in Amicus Curiae v. Prashant Bhushan and another [(2010) 7 SCC 592]. That was a case where

the proceedings under the Act were sought to be initiated against the respondents therein on the basis of a report submitted by the Amicus Curiae and the Bench presided over by the then Hon'ble the Chief Justice issued directions to issue notice and to post the matter before a Bench of three Hon'ble Judges. One of the contention raised on behalf of the second respondent in that case was that in view of the directions in Bal Thackery v. Harish Pimpalkhute [(2005) 1 SCC 254], the application made could have been placed only before the Chief Justice in the administrative side in chambers and not on the judicial side. Therefore, according to the counsel, in view of the deviation from the aforesaid normal procedure, the contempt proceedings were liable to be dropped. Vide paragraphs 19 and 20 of the judgment, this contention was rejected by the Apex Court by holding that the error committed by the Registry of the Supreme Court in placing the matter on the judicial side instead of placing the same before the Hon'ble the Chief justice of India on the administrative side is an administrative lapse which did not reduce the gravity of the allegations. It is

also held that the matter required further consideration and that their lordships were not inclined to hold that the contempt proceedings were not maintainable for the aforementioned allegations.

13. In the light of the above principles, we do not deem it necessary to again direct the Registry to place this petition before the Hon'ble the Acting Chief Justice on the administrative side as contemplated in Rule 7 of the Rules and as explained in *Rehim* (supra).

14. Proceedings under Articles 226 and 227 of the Constitution of India are regulated by the provisions contained in Chapter XI of the Rules of the High Court of Kerala, 1971. Rule 145 provides the form and presentation of the petitions and Rule 146 deals with the contents of the applications. In Rule 146, it is stated that every application shall set out the provision of law under which it is made, the name and description of the petitioner and the respondent, a clear and concise statement of facts, the grounds on which the relief is sought and that the application

shall be signed by the petitioner and his Advocate, if he has appointed one, as in Form No.10. This rule has a proviso which mandates that “no petition shall be entertained by the Registry unless it contains a statement as to whether the petitioner had filed any petition seeking similar reliefs in respect of the same subject matter earlier and if so, the result thereof. Rule 150 provides for interim orders. As per sub-rule (1) of Rule 150, in admitting the application, it shall be competent for the Court to pass interim order on motion made for the same so as to meet the ends of justice. In so far as it is relevant, the second proviso to this Rule also mandates that,

“no petition shall be entertained by the Registry unless it contains a statement as to whether the petitioner had filed any petition seeking similar reliefs in respect of the same subject matter earlier and if so, the result thereof”.

15.Considering the provisions of these rules, a learned Judge of this Court in Marakkar v. Government of Kerala [1998 (2) KLT 920] held that the requirement

of making a statement as contemplated in the provisos to Rules 146 and 150 is mandatory and the Registry was directed to see that the provisos are strictly complied with, not only when the writ petitions are filed along with interim applications but also when interim applications are filed in pending writ petitions as well. Subsequently, the matter was again considered in Siddique v. District Collector [2006 (4) KLT 21], where, this Court examined the requirement and the scope of the rules and held thus in paragraph 17:

"17. The proviso to Rule 146 of the High Court Rules requires that no petition shall be entertained unless it contains a statement as to whether the petitioner had filed any petition seeking "similar reliefs" in respect of the same subject matter earlier and if so, the result thereof. Similar is the effect of the proviso to R.150. R.150 of the High Court Rules also requires that no petition for interim relief shall be entertained by the Registry unless it contains a statement as to whether the petitioner had filed any petition seeking "similar reliefs" in respect of the same subject matter earlier, and if so, the result thereof. "Similar" and "same" are not same but different, though similar. To be "same", is to be identical, unchanged, unvaried. Unlike "same",

to be "similar", is to resemble, may be in content, but need not be in expression. The terms "similar reliefs" and "same subject matter" in Rr.146 and 150 have to be understood, having regard to the distinction between "similar" and "same". I say this because, in many of the Writ Petitions, including the ones in hand, the plea appears to be that "same reliefs" are not sought for in respect of the same subject matter. The provisos to Rr.146 and 150 are not framed with reference to cause of action. So much so, whatever be the different causes of action, when a person seeks relief in relation to a subject matter which was subjected to an earlier writ proceedings and if the later petition seeks relief similar to that sought for in the earlier petition, he is bound to disclose the same. To demonstrate this, a reference to WP (C).No.3483/2006 will show that it was filed seeking to quash the proceedings pursuant to the detention of the vehicle of the petitioner on ground that it was carrying unauthorised sand, though the said Writ Petition was filed, allegedly, before being served with what is produced as Ext.P2 in WP(C). No.5564/2006, wherein the petitioner seeks nothing but the quashing of the decision contained in that document. Hence, the suppression of WP(C).No.3483/2006 in WP(C). No.5564/2006 is uncalled for. Such disclosure was required in terms of Rule 146 of the High Court Rules."

16. Reading of the provisions of Rules 146 and 150 and the judgments in the cases of Marakkar and Siddique (supra) show the mandatory nature of the provisos to Rules 146 and 150 of the Kerala High Court Rules, 1971. Therefore, if a writ petition or an interlocutory application is filed without complying with the requirements of the provisos to the aforesaid Rules, the Registry is prohibited from entertaining the same and the Registry should not number the writ petition or the interlocutory application as the case may be or post the petition for orders before the court.

17. In so far as this case is concerned, admittedly, in the writ petition, an interim prayer was sought for to stay all further proceedings in pursuance of Exts.P7, P8, P12 and P14. It is also true that this prayer was neither granted nor declined by this Court. It is while so that without making a declaration as contemplated in the proviso to Rule 150 of the Kerala High Court Rules, the writ petitioners filed I.A.2167/14 with a prayer to stay all construction activities undertaken in Sy.Nos.31/4

and 31/20 of Mulavukadu village in pursuance of Exts.P7, P8, P12 and P14. Though the counsel for the respondent herein attempted to justify the failure in satisfying the requirement of declaration as contemplated under the proviso to Rule 150 by contending that the prayer made in I.A.2167/14 was a limited one as compared to the prayer made in the interim application made along with the writ petition and that and it was therefore that the declaration was not made, we do not think that such a contention absolving the respondent from the liability of complying with the mandatory requirement of the proviso can be accepted. Firstly, construction in pursuance of Exts.P7, P8, P12 and P14 is one of the activities which would have been prevented, if the petitioner had succeeded in obtaining an interim order as prayed for in the writ petition. Therefore, the prayer made by the writ petitioners in I.A.2167/14 is a relief which is similar, though not the same, to what was sought for in the interlocutory prayer made in the writ petition. Therefore, in filing IA. No.2167/14, there was a failure on the part of the writ petitioners in complying with the

requirement of the proviso to Rule 150. Such a petition filed by a litigant was a defective one and the Registry should have declined to entertain the same and should not have posted it for the consideration of the court.

18. The question is whether failure to comply with the requirements of the proviso to Rule 150 of the Rules should visit a litigant with the disastrous consequence of being hauled up for criminal contempt as defined in section 2(c) of the Act especially when such proceedings are meant to be initiated against wilful acts and for upholding the majority of law. In support of his contention, learned senior counsel for the petitioner relied on various judgments. He referred to the judgment of the Apex Court in Naraindas v. Government of Madhya Pradesh [(1975) 3 SCC 31]. That was a case where proceedings for criminal contempt were initiated based on the statement made by a Minister during the pendency of the litigation. In that judgment, the Apex Court inter alia stated that there can be no doubt that if a wrong or misleading statement is deliberately and

wilfully made by a party to a litigation with a view to obtain favourable order, it would prejudice or interfere with the due course of the judicial proceedings and would amount to contempt of court.

19. Reference was made to the judgment of the Apex Court in Advocate General, State of Bihar v. M/s.M.P.Khair Industries [(1980) 3 SCC 311]. That was a case where in a writ petition filed before the Calcutta High Court in respect of a cause of action which arose within the State of Bihar, repeated interlocutory applications were made and an order was obtained from the Calcutta High Court staying the proceedings in a money suit in the court of Subordinate Judge in Palamau. In that factual background, the Apex Court held that every abuse of the process of court may not necessarily amount to contempt of court but abuse of process of court calculated to hamper the due course of a judicial proceeding or the orderly administration of justice is a contempt of court. It was held that not a single application made to the single Judge was bonafide and that every application was a daring 'raid' on the court and each was an

abuse of the process of the court clearly showing that the parties were intended upon obstructing the due course of the proceedings in the money suit in the subordinate court and to obstruct the administration of justice by abusing the process of the court.

20.Counsel also made reference to the judgment of this Court in High Court of Kerala v. A.K.Prakash [1994 KHC 279]. That was a case where after the dismissal of an earlier appeal, a subsequent appeal was filed which led to initiation of proceedings for criminal contempt. It was held that the act of the party amounted to abuse of process of court calculated to interfere with the due course of judicial proceedings and the administration of justice amounting to criminal contempt of court of a serious nature. On that basis, the respondent was sentenced with a fine of ₹100/- and the contempt proceedings were closed.

21.Our attention was also invited to the Apex Court judgment in Dhananjay Sharma v. State of Haryana

[(1995) 3 SCC 757], where, dealing with a case of filing false affidavit, the Apex Court held thus:

"..... Thus, any conduct which has the tendency to interfere with the administration of justice or the due course of judicial proceedings amounts to the commission of criminal contempt. The swearing of false affidavits in judicial proceedings not only has the tendency of causing obstruction in the due course of judicial proceedings but administration of justice. The filing of false affidavits in judicial proceedings in any court of law exposes the intention of the party concerned in perverting the course of justice. The due process of law cannot be permitted to be slighted nor the majesty of law be made a mockery of by such acts or conduct on the part of the parties to the litigation or even while appearing as witnesses. Anyone who makes an attempt to impede or undermine or obstruct the free flow of the unsoiled stream of justice by resorting to the filing of false evidence, commits criminal contempt of the court and renders himself liable to be dealt with in accordance with the Act. Filing of false affidavits or making false statement on oath in courts aims at striking a blow at the rule of law and no court can ignore such conduct which has the tendency to shake public confidence in the judicial institutions because the very structure of an ordered life is put at stake. It would be a great public disaster if the fountain of justice is allowed

to be poisoned by anyone resorting to filing of false affidavits or giving of false statements and fabricating false evidence in a court of law. The stream of justice has to be kept clear and pure and anyone soiling its purity must be dealt with sternly so that the message percolates loud and clear that no one can be permitted to undermine the dignity of the court and interfere with the due course of judicial proceedings or the administration of justice."

22.P.V.R.S. Manikumar v. Krishna Reddy [1999 KHC 2177] relied on by the counsel was a case where the Court made comments against the counsel for the petitioner therein for filing an application under section 482 of the Cr.PC in the High Court of Madras, suppressing the fact that a criminal revision was filed before the district court. In Murray & Co. v. Ashok KR. Newatia [(2000) 2 SCC 367], the Apex Court found commission of contempt in a case where the parties made statements interfering the due course of justice by reason of which certain undue advantages were gained by them. In that context, explaining the principles and finding commission of contempt, the Apex Court held thus:

"17. As noticed above, hyper-sensitiveness on the part of the law Courts, if it does not obstruct or impede the course of justice, as such cannot be appreciated. This is a special jurisdiction conferred on to the law courts to punish an offender for his contemptuous conduct or obstruction to majesty of law. Needless to record that to violate the order of the court or to obstruct or tend to obstruct is a quasi criminal offence as such the courts, in the matter of award of punishment ought to be rather cautious in its approach even if the court is otherwise satisfied as to act or conduct of the party. The approach of the Court is thus different in the matter of imposition of punishment against a contemnor the same being totally dependent on to the facts and circumstances of each individual case. No generalised guidelines can be had nor a set of general principles in the matter of award of punishment can be formulated. The Court must otherwise come to a conclusion that on facts that the act tantamounts to obstruction of justice which, if allowed would even permeate into our society - it is only then that this power ought to be exercised. While, it is true that the statement made in the affidavit has been introduced as and by way of a denial but the fact remains such a statement has in fact been made in an affidavit before this Court. Litigant public ought to be extremely careful and cautious in the matter of making statements before Courts of Law.

Whether, however, the respondent has obtained a definite advantage or not is wholly immaterial in the matter of commission of offence under the Act, though the same would be a relevant factor in the context of punishment to be imposed against a contemnor....."

23. Reference was also made to the judgment of the Apex Court in Ram Niranjan Roy v. State of Bihar [2014 (2) KHC SN 29] where the petitioner was held guilty of contempt for tampering with the High Court's order and filing the same in the Supreme court and also for filing false affidavit. We may also make reference to the Delhi High Court's Suo Motu Contempt proceedings [2009 (1) KHC 427] where, after referring to judgments and relevant proceedings, Delhi High Court held thus:

"From the decisions cited before us, the following principles emerge as important considerations in dealing with cases of criminal contempt of Court. 1. The contempt jurisdiction of a Court is *sui generis*; it is a special jurisdiction and a summary jurisdiction. The Court is in effect the jury, the prosecutor, the Judge and the hangman and so the jurisdiction

has to be exercised with great caution and circumspection. 2. Action for contempt may be taken only if there is a substantial interference in the administration of justice. A Court should not be hypersensitive and take umbrage at every trivial misdemeanour. A Court should punish for contempt only if the act or omission complained of is deliberate and contumacious. 3. Proceedings for contempt are quasi-criminal in nature. While it may not be necessary to prove mens rea, but the standard of proof is that of proof beyond a reasonable doubt. This is because an alleged contemnor may be sent to prison for criminal contempt of Court. 4. Since proceedings for contempt of Court are quasi criminal in nature, the alleged contemnor must be duly informed, with sufficient particularity, of the allegations against him so that he may effectively defend himself. 5. The burden of proof is on the person asserting that there is a contempt of Court. 6. The Court is entitled to devise its own procedure for dealing with contempt of Court, and the generally accepted criminal law principles or the Evidence Act are not applicable to such proceedings. However, the principles of natural justice must be adhered to. Summary justice may be rough justice, but it should be fair."

24. Having considered the aforesaid principles, the correctness of which is not open to doubt, we shall

now proceed to examine whether the petitioner has made out a case for initiation of proceedings for criminal contempt against the respondents. As the Delhi High Court has rightly pointed out, action for contempt can be initiated only if there is substantial interference with the administration of justice and that too, by a wilful act of a party.

25. In so far as the facts of this case are concerned, it is true that the writ petitioners have filed a second petition which contained, at least a similar prayer as the one they had made in the interim relief sought for in the writ petition. In the reply affidavit, they did not comply with the requirement of making a statement as provided in the proviso to Rule 150 of the Kerala High Court Rules, 1971. The proviso to Rule 150, while containing a mandate that the petitioner shall make a statement, it also contains a mandate that the Registry of this Court shall not entertain a petition which does not contain a statement. Overlooking that mandate, the petitioner filed a petition and committing an administrative lapse, the Registry entertained the IA and posted it

before the Bench. When this IA was objected by the petitioner herein, the writ petitioners filed affidavit dated 25.2.2014 confessing that it was by an inadvertent omission that in the affidavit they did not make the statement as required under the proviso to Rule 150. In this affidavit, they further stated that the affidavit was filed as permitted by this Court and this assertion is not contradicted by the petitioner herein in any affidavit filed in the writ petition. This confession was made by them immediately on realising their omission and it shows that there was no deliberate attempt on the part of the writ petitioners to flout any requirement of law or to file a second petition suppressing anything in order to gain any unmerited advantage.

26. We cannot be oblivious of the reality that a litigant approaching a counsel cannot be expected to be familiar with the procedural requirements of the Kerala High Court Rules. Therefore, when a petition or an interlocutory application is filed in a pending writ petition, if there is non-compliance of the proviso to the Rule, that, by itself, cannot result

in the litigant being proceeded with under the Contempt of Courts Act, unless it is shown by positive evidence that the litigant was responsible for such omission and was guided by malafides or has deliberately omitted the requirement of the proviso to gain advantage from this Court. In so far as this case is concerned, there is no material whatsoever on this aspect. Added to that is the fact that the counsel for the writ petitioners, the respondent herein, himself has confessed before this Court that it was the lapse on his part that led to the mess in which the respondent has landed. We, therefore, do not think that in the facts of this case, absence of a declaration as provided in the proviso to Rule 150 of the Kerala High Court Rules justifies initiation of proceedings under the Contempt of Courts Act against the respondent.

27. The question that remains now is whether the filing of I.A.2167/14, being a second petition, would amount to an act of contempt of court as defined in section 2(c) of the Act. It is true that the judgments relied on by the learned counsel suggest that filing of

successive petitions with the same prayer in certain circumstances attract the offence of criminal contempt of court. However, initiation of contempt of court proceedings is possible only if there are materials to prima facie indicate that the filing of the second petition was actuated by any ill-motives. The situation may have been different if the writ petitioners had obtained an interim order in the second petition which also is not the case before us. That apart, the facts prima facie show that the petitioners believed that the prayer made by them in I.A.2167/14 was a narrow one as compared to the interlocutory prayer made in the writ petition.

28. For these reasons, we are inclined to think that in the facts of this case, the petitioner has not succeeded in establishing that the filing of I.A.2167/14 in W.P(C).31081/13 justifies initiation of proceedings under section 2(c) of the Act against the respondent herein.

29. However, we do take note of the fact that at least when the petitioner herein objected to I.A.2167/14 or

when this case was filed, the respondent herein could have responded in a more graceful manner by expressing regret and remorse in having omitted to make a statement as required under the proviso to Rule 150 of the Kerala High Court Rules in his affidavit which supported I.A.2167/14. Though his conduct in this respect leaves much to be desired, that cannot be a justification for initiating proceedings for criminal contempt against him.

30. We are not satisfied that grounds have been made out for initiating suo motu contempt, as prayed for.

This petition is dismissed.

Sd/-
ANTONY DOMINIC, Judge.

Sd/-
ALEXANDER THOMAS, Judge.

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/True copy/

PS to Judge