

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.07.2015

DELIVERED ON : 04.08.2015

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CrI. O.P. No. 30502 of 2014

Lakshmi

.... Petitioner

Vs.

- 1.State of Tamilnadu
rep.by its DGP, Beach Road,
Mylapore, Chennai.
- 2.Public Prosecutor,
Sessions Court,
Villupuram District.
- 3.District Judge,
Villupuram District.
- 4.P.Selva Kumar.

..... Respondents

Prayer :- Criminal Original Petition filed under Section 482 Cr.P.C for (a) action against the District Judge, Public Prosecutor and the Police; (b) action against the Land - Grabbers and (c) For protecting the right to life and property of the petitioner.

For Petitioner : Mr.Manikandan Vathan Chettiar
For Mr.Mathankumar

For R1 to R3 : Mr.S.Shanmugavelayudham
Public Prosecutor
Asst. by Mr.C.Emalias,
Addl. Public Prosecutor

For R4 : Mr.R.Muthamizh

O R D E R

This Court after summoning and hearing the petitioner in person, after perusal of the records and after calling for responses from persons concerned and also after hearing the counsels appearing for the petitioner has decided to initiate criminal contempt against the two counsels who are :

- 1.Mr.Manikandan Vathan Chettiar
- 2.Mr.Mathankumar

2. The factual matrix leading to taking cognizance of the contempt committed by the two counsels are as follows:-

On 31.07.2014, there was a quarrel between two families in connection with the usage of a pathway running between their houses in Talavalapattu Village in which there was a free-for-all situation, resulting in persons from both sides suffering injuries and getting admitted to the local Government Hospital. After receiving information from the hospital, the Sub Inspector of Police, Periyathachur went to the hospital and recorded the statement of one A.Senthamizhselvan belonging to one party and also the statement of Lakshmi belonging to the other party and came back to the Station and registered two FIRs i.e:

[a] On the complaint of A.Senthamizhselvan, Cr.No. 126 of 2014 under Sections 147, 148, 294(b), 324 and 506(ii) IPC against Balaraman and six others, including Lakshmi [A6] (Petitioner herein)

[b] On the complaint of Lakshmi, Crime No.127 of 2014 under Sections 147, 148, 294(b), 323, 324 and 506(ii) IPC against seven persons including A.Senthamizhselvan [A3].

3. All the seven accused, including Lakshmi, in Cr.No.126 of 2014 filed an application in CrI.M.P.No. 5721 of 2014 for anticipatory bail before the learned Principal District and Sessions Judge, Villupuram (shown as 3rd respondent in this O.P). The 4th respondent herein was the counsel who had appeared in the bail application filed by the petitioner. After notice to the State, the learned Judge granted anticipatory bail to all the petitioners/accused in Cr.No. 126 of 2014 by order dated 05.08.2014 on condition that, they execute a bond for Rs.5,000/- each with two sureties and report before the respondent police daily at 10.00 a.m. and 5.00 p.m. until further orders. Challenging this order, Lakshmi is before this Court in this petition with the following prayer:

- (a) For action against the District Judge, Public Prosecutor and the Police;
- (b) For action against the Land-Grabber; and
- (c) For protecting the right to life and property of the petitioner

4. In the petition filed by Lakshmi she had alleged that, the police, the Public Prosecutor and her counsel had connived in order to help the complainant's party [who were the accused in the other case] to gain a foothold into her land. It may be relevant to extract the very words in the petition rather than give any interpretation to them:

"Finally the police got the accused also to be discharged on the same day that the petitioner got discharged, and the accused are gradually gaining a foothold into the petitioner's patta-land, due to treachery on the part of the Police, PP & DJ"

5. This Court was indeed shocked at such allegations being made about the District Judge who had granted the relief of anticipatory bail to the petitioner. This petition was getting adjourned from 19.11.2014 and ultimately on 07.04.2015, this Court heard Mr.Manikandan Vathan Chettiar and reserved orders.

6. When this Court perused the case papers for the purpose of dictating orders, it was observed that in the Vakalatnama filed by Lakshmi, neither the signature of Manikandan Vathan Chettiar nor his junior Mathankumar was found. Therefore, on 10.04.2015, this Court issued a memo to the Assistant Registrar [Criminal Section] calling for an explanation from the Officer for passing the petition without even checking whether the counsels have signed the Vakalatnama. The matter was directed to be listed on 16.04.2015 for hearing in the open Court.

7. On 16.04.2015, this Court ordered the Petitioner Lakshmi be directed to be summoned to this Court and also directed that P.Selvakumar, Advocate who appeared for Lakshmi in CrI.M.P.No.5721 of 2014 before the Principal District and Sessions Judge, Villupuram be made as a party, since serious allegations have been made by Lakshmi herself against him. Therefore, this Court felt that an opportunity has to be given to the added 4th respondent to enable him to respond to the charges levelled against him, by his own client Lakshmi, the Petitioner.

8. On 22.04.2015, Mr.Manikandan Vathan Chettiar filed a fresh memo in this petition containing the signature of Lakshmi. On 23.04.2015, Mr.P.Selvakumar, Advocate appeared before this Court and sought time to file his response. Though notice was served on Lakshmi by affixture on the door of her house, she had refused to receive the notice, and was not present in the Court. Mr.Manikandan Vathan Chettiar submitted that she was hospitalized. Therefore, this Court adjourned to a date after summer vacation.

9. In response to the memo dated 10.04.2015 issued by this Court, Mr.N.S.Mahadevan, Appeal Examiner, Criminal Section, High Court, Madras, who had passed the papers gave the following explanation dated 16.04.2015:

"In this connection I humbly submit that the case papers was presented on 14.11.2014 with S.R.No. 53843/2014 and it was distributed to me on the same day for scrutiny. After filing the case papers Thiru.Mathan Kumar,

Advocate who is the Junior of Thiru.Manikandan Vathan Chettiar rushed to me and pressurised me to pass the same immediately, at the instance of his above senior. Due to his pressure eventhough I tried to concentrate to scrutinize the papers thoroughly I failed to see the missing signature of the Counsel. It is purely unintentional error on my part. I further submit that whenever I attend the petitions filed by Thiru.Manikandan Vathan Chettiar, Advocate and his associates, which are allotted to me for passing, they pressurize me to pass the petitions without making any returns even in the cases where returns have to be made for valid reasons. They intimidate me that if I do not pass the petitions forthwith then I will have to face dire consequences. I am very much scared of them; I am the sole breadwinner of my family and my family is heavily dependent upon me. In view of the above circumstances I am working under a constant fear of the above Advocates. I understand that they are intimidating the other Appeal Examiners of our Section also to get their petitions passed without any return being made on them. We are working with a sense of helplessness and without any protection against above such intimidation."

10. On 03.06.2015, Mr.Manikandan Vathan Chettiar gave a representation to the Registrar (Judicial), wherein he has stated as follows:

"Due to serious personal and ideological differences, I request you NOT to post any of my case (cases where my junior Mathan Kumar is cited as counsel-on-record) before Judge Mr.P.N.Prakash."

On the same day, when the file was placed before me, I made the following endorsement:

"Place the matter before My Lord, the Hon'ble Chief Justice for appropriate orders"

11. Further, in the open Court also Mr.Manikandan Vathan Chettiar represented to me that, I should recuse from his cases, but I explained to him that I have taken an oath under the Constitution to deliver justice without fear or favour and therefore, I will never recuse myself from any case, unless I have personal interest in it. In the instant case, the litigants are neither related to me nor known to me from Adam and therefore, there was no reason for me to recuse myself from the case.

12. The request of Mr.Manikandan Vathan Chettiar was placed before the Hon'ble Chief Justice, who passed the following order:

"It is not permissible for a counsel to change a bench. Matters will be listed as per the roster."

13. On 10.06.2015 when the case was called, Mr.P.Selvakumar, learned counsel who appeared for Lakshmi in the trial Court entered appearance through Mr.R.Muthamizh, Advocate and filed his counter affidavit. A copy of the explanation dated 16.04.2015 given by Mr.N.S.Mahadevan, Appeal Examiner was furnished to Mr.Manikandan Vathan Chettiar in the open Court and his response was sought by this Court. It may be apposite to extract the docket order of 10.06.2015:

"Today, Mr.Manikandan Vathan Chettiar, Mr.Mathan Kumar, Mr.Muthamizh and Mr.S.Shanmugavelayudham, learned Public Prosecutor are present.

A copy of the affidavit filed by Mr.P.Selvakumar, counter filed by Mr.S.Shanmugavelayudham, learned Public Prosecutor and the explanation offered by the Court staff have been furnished to Mr.Manikandan Vathan Chettiar in the open Court.

Mr.Manikandan Vathan Chettiar appearing for Mr.Mathan Kumar submitted that this Court has no jurisdiction to call for explanation from him. When an allegation is made against a person, it is the duty of this Court to give sufficient opportunity for the opposite party to meet the same. Therefore, the aforesaid materials were furnished to Mr.Manikandan Vathan Chettiar and Mr.Mathan Kumar for them to file their responses.

Post the matter on 26.06.2015 under the same caption."

14. On 23.06.2015 when the case was called, Mr.Manikandan Vathan Chettiar was not present, but his junior Mr.Mathan Kumar sought adjournment on the ground that, he has made some copy application. Since Lakshmi was not present in the Court, this Court issued a bailable warrant for her production before this Court on 30.06.2015. On 30.06.2015, this Court passed the following order:

"Lakshmi was questioned in the open Court in Tamil about her grievance. She said that she has grievance with the police, her own counsel in the Sessions Court, learned Public Prosecutor, Sessions Court and the Sessions Judge and she wanted action to be taken against all of them. In effect, she reiterated the contention in her petition before this Court. This Court also explained to her that it may entail even cancellation of her bail.

2. When Mr.Manikandan Vathan Chettiar and Mr.Madhan Kumar, the learned counsel on record were asked whether they are submitting their response to the explanation offered by the Official in the Registry, Mr.Manikandan Vathan Chettiar submitted that, he would not submit his response, as that would amount to submitting to the jurisdiction of this Court. He further submitted that he has applied for a certified copy of the Vakalatnama which was filed by him on 23.06.2015 in this case and also the memo issued by this Court to the Registry calling for explanation from the concerned Official. This Court felt that procedure is merely a handmaid of justice and therefore, supplied photocopies of the Registry immediately to Mr.Manikandan Vathan Chettiar and Mr.Madhan Kumar in the Open Court.

3. Adjourned to 14.07.2015"

15. On 14.07.2015, since no response was filed by Mr.Manikandan Vathan Chettiar, orders were reserved. Mr.P.Selvakumar, learned counsel who appeared for Lakshmi in the anticipatory bail application before the District Sessions Court, Villupuram has stated in his counter as follows:

"6. The 4th respondent further submits that while in the arguments before the District Sessions Court, Villupuram the 4th argued that the victims, i.e. Swaminathan, Senthamil Selvan and Elumalai, in Crime No.126 of 2014 on the file of the Periya Thatchur Police Station, discharged from the hospital on 01.08.2014 itself, in the accident register, the discharge has been clearly depicted.

7. The 4th respondent denies the allegation that he was very close to the Public Prosecutor and the 4th respondent specifically denies the allegation that the 4th respondent being the counsel for the petitioner herein submitted two lies before the District Sessions Judge, Villupuram that the Petitioner was a minor and the complainant in Crime No.126 of 2014 has been discharged and the allegation is utterly false and baseless and vexatious one. The 4th respondent submits that he was never submitted that the petitioner is a minor and the petitioner is addressed as Wife of Raji and the order copy also depicts the same and the sentence regarding the minor in order copy is a typo error because many order copies nearly 4 order

copies (in Crl.M.P.No. 5713/2014, Crl.M.P.No.5711/2014, Crl.M.P.No.5783/2014, Crl.M.P.No.5782/2014) are having the same sentence regarding minor and the allegation of the petitioner is only trivial and without any basis. The 4th respondent submits that the 4th respondent has neither stated in the anticipatory bail application nor orally submitted before the court about a minor.

8. The 4th respondent submits that the 4th respondent after receiving reliable information regarding the discharge of the complainant in Crime No.126 of 2014, has submitted that the victims were discharged from the Government Villupuram Medical College Hospital, Mundiyaibakkam, and it is evidently supported by Hospital documents and the allegation of the petitioner is totally false and frivolous. The 4th respondent submits that he has not submitted any lies before the Hon'ble District Sessions Judge, Villupuram.

9. The 4th respondent submits that he is a practicing advocate with good etiquettes in the profession and he is having lot of respect to the Courts and the allegation is totally false and frivolous."

16. The summum bonum of Mr.P.Selvakumar's assertion is that, he took the brief of Lakshmi and prayed for the relief of anticipatory bail on the ground that, the victims have been discharged from the hospital on 01.08.2014 itself. Of course, in the anticipatory bail order the petitioner is referred to as a juvenile offender, which is factually incorrect. It is common knowledge that, today Sessions Judges all over are seething under work pressure, on account of which such errors inadvertently creep into their orders. We are not dispensing justice in countries like U.K. or USA where it is said that a Judge disposes only three to four cases a day. Our Judges are required to function like ashtavadanis of indic mythology.

17. In villages, when two groups quarrel and fight like the case in hand, the police normally register cases against both parties and proceed with their investigation. Police will not normally arrest the accused and put them to shame. Instead, they would wait for the injured to get discharged from the hospital, so that they are assured that there is no fatality in the occurrence. In Tamil Nadu, Courts also liberally grant anticipatory bail in such minor offences on the discharge of the injured from the hospital. Therefore, there is nothing sinister or insidious in the order of the Principal Sessions Judge granting anticipatory bail to Lakshmi and her group. The defenceless District Judge has been made as a third respondent without any justification.

18. On enquiry from the Registry, this Court learnt that Mr.R.Krishnamoorthy, the Sessions Judge who granted anticipatory bail was on the verge of retirement when the order was passed and now he has also retired from service. This Court is bound to suspect the bonafides of this petition, may be to keep the 'damocles sword' hanging over his head in the hope that he may not get his terminal benefits.

19. Though aware of the provisions of the Judicial Officers' Protection Act, 1850 and The Judges (Protection) Act, 1985, yet the two counsels Mr.Manikandan Vathan Chettiar and his junior Mr.Mathan Kumar have filed this petition arraying the District Judge as a respondent and the Registry had also numbered this original petition. On the other hand, in all fairness, Mr.Manikandan Vathan Chettiar and his junior Mr.Mathan Kumar should have impleaded Mr.P.Selvakumar, Advocate as a respondent. However though they have hurled serious allegations against him they did not do so. When the District Judge who passed the order has been made as a third respondent for reasons best known to Mr.Manikandan Vathan Chettiar and Mr.Mathan Kumar, Mr.P.Selva Kumar, Advocate who appeared for Lakshmi before the District and Sessions Judge was not made as a respondent and it was only this Court which suo motu impleaded Selvakumar as fourth respondent and issued notice to him.

20. By making unsubstantiated allegations against P.Selvakumar, colleague Advocate and against the District Judge for having granted anticipatory bail, Mr.Manikandan Vathan Chettiar and Mr.Mathan Kumar have violated the rules framed by the Bar Council of India (BCI) in terms of the power vested under section 49(1)(c) of the Advocates Act, 1961. Under those rules, the BCI has prescribed standards of Professional Conduct and Etiquette for the advocates. The preamble to the rule itself reads as follows:

"An advocate shall, at all times, comfort himself in a manner befitting his status as an officer of the court, a privileged member of the community; and a gentleman, bearing in mind that may be lawful and a moral for a person who is not a member of the Bar, or for a member of the Bar in his non-professional capacity may still be improper for an advocate. Without prejudice to the generality of the foregoing obligation, an advocate shall fearlessly uphold the interests of his client, and in his conduct conform to the rules hereinafter mentioned both in letter and in spirit. The rules hereinafter mentioned contain canons of conduct and etiquette adopted as general guides; yet the specific mention thereof shall not be construed as a denial of the existence of other equally imperative though not specifically mentioned."

21. Apart from this Preamble, the rules also oblige the advocates with various duties. The first part provides for an advocate's duty to the court. The sub-rule (4) reads as follows:

"An advocate shall use his best efforts to restrain and prevent his client from resorting to sharp or unfair practices or from doing anything in relation to the court, opposing counsel of parties which the Advocate himself ought not to do. An advocate shall refuse to represent the client who persists in such improper conduct. He shall not consider himself a mere mouth-piece of the client, and shall exercise his own judgment in the use of restrained language in correspondence, avoiding scurrilous attacks in pleadings, and using intemperate language during arguments in court."

22. The Supreme Court had occasions to consider the scope of the rules framed by the BCI and also the nature of actions to be initiated against advocates. The Supreme Court vide its judgment in P.D.Gupta Vs Ram Murti reported in 1997 (7) SCC 147 has held as follows:-

"A lawyer owes a duty to be fair not only to his client but also to the court as well as to the opposite party in the conduct of the case. Administration of justice is a stream which has to be kept pure and clean. It has to be kept unpolluted. Administration of justice is not something which concerns the Bench only. It concerns the Bar as well. The Bar is the principal ground for recruiting the Judges. No one should be able to raise a finger about the conduct of a lawyer. While conducting the case he functions as an officer of the court."

सत्यमेव जयते (emphasis added)

23. The Supreme Court vide its judgment in P.D. Khandekar Vs. Bar Council of Maharashtra reported in 1984 (2) SCC 556 has held as to how a professional misconduct against an advocate has to be construed in the following lines:

"The test to determine professional misconduct within the meaning of S. 35(1) is whether the proved misconduct of the advocates is such that he must be regarded as unworthy to remain a member of the honourable profession to which he has been admitted, and unfit to be entrusted with the responsible duties that an advocate is called upon to perform "

24. In this case, apart from proceeding to take contempt action against the two counsels (M/s. Manikandan Vathan Chettiar and Mathan Kumar), I also feel that action should be initiated against the two advocates by the Bar Council. In this context, it is necessary to refer to the decision of the Supreme Court wherein the Supreme Court has held that apart from the contempt action, the court can also send the matter to the Bar Council for taking appropriate action for professional misconduct in the judgment in Supreme Court Bar Association Vs Union Of India & Anr reported in AIR 1998 SC 1875. It will be useful to refer the following passage from the judgment in this regard:-

"An Advocate who is found guilty of contempt of court may also, as already noticed, be guilty of professional misconduct in a given case but it is for the Bar Council of the State or Bar Council of India to punish that Advocate by either debarring him from practice or suspending his licence, as may be warranted, in the facts and circumstances of each case."

25. Initially the Supreme Court held that appropriate punishment could be inflicted on an advocate on holding him guilty of contempt of court, but subsequently in the Supreme Court Bar Association case (cited supra) the Court has held that the power to take disciplinary action against an advocate for professional misconduct solely vest with the appropriate Bar Council and even if the Bar Council on reference failed to do so, only the Supreme Court can take action against an erring advocate as it alone has the appellate power and not the high court. It will be useful to refer to the following passage from the said judgment which is as follows:-

"It is possible for the High Courts also to draw the attention of the Bar Council of the State to a case of professional misconduct of a contemner advocate to enable the State Bar Council to proceed in the manner prescribed by the Act and the rules framed thereunder. There is no justification to assume that the Bar Councils would not rise to the occasion, as they are equally responsible to uphold the dignity of the courts and the majesty of the and prevent any interference in the administration of justice. Learned counsel for the parties present before us do not dispute and rightly so that whenever a court of record, records its findings about the conduct of an Advocate while finding him guilty of committing contempt of court and desires or refers the matter to be considered by the concern Bar Council, appropriate action should be initiated by the concerned Bar

Council in accordance with law with a view to maintain the dignity of the courts and to uphold the majesty of law and professional standards and etiquette. Nothing is more destructive of public confidence in the administration of justice than incivility, rudeness or disrespectful conduct on the part of a counsel towards the court or disregard by the court of the privileges of the bar. In case the Bar Council, even after receiving 'reference' from the court, fails to take action against the concerned advocate, this court might consider invoking its powers under Section 38 of the Act by sending for the record of the proceedings from the Bar Council and passing appropriate orders. Of Course the appellate powers under Section 38 would be available to this Court only and not to the High Courts."

26. Hence it is also a fit case for being referred to the Bar Council of Tamil Nadu for initiating action against the two counsels (M/s. Manikandan Vathan Chettiar and Mathan Kumar) for the professional misconducts committed by them. While doing so, this court expresses the very same hope as was done by the Supreme Court in the above referred case and expects that the State Bar Council will discharge its duties as expected of them. The Supreme Court observed as follows:

"We do not entertain any doubt that the Bar Council of the State or Bar Council of India, as the case may be, when apprised of the established contumacious conduct of an advocate by the High Court or by this Court, would rise to the occasion, and take appropriate action against such an advocate"

27. Coming to the case of the original Petitioner (Lakshmi), she appeared before this Court on 30.06.2015 and further reiterated the allegations made in the petition. Even though this Court explained to her that setting aside of the order will result in the anticipatory bail being cancelled, she was least remorseful about it and was only defiant. Under such circumstances, the order in Crl.M.P.No.5721 of 2015 dated 05.08.2014 granting anticipatory bail vis-à-vis Lakshmi deserves to be set aside and it will be open to the police to arrest her.

28. Coming to the explanation offered by Mr.N.S.Mahadevan, Appeal Examiner, there is prima facie material to infer that Mr.Manikandan Vathan Chettiar and Mr.Mathan Kumar have intimidated Mr.N.S.Mahadevan, Appeal Examiner resulting in a petition with so much of inherent defects which can never be numbered has been numbered. There appears

to be force in his explanation that he was harassed by the counsel. Though this Court gave several opportunities to Mr.Manikandan Vathan Chettiar and Mr.Mathan Kumar to give their response to the explanation given by Mr.N.S.Mahadevan, Mr.Manikandan Vathan Chettiar contended that they would not give their response,, for that would amount to submitting to the jurisdiction of this Court.

29. The question will be whether an attack of this nature of Court staff, amount to criminal contempt within the meaning of Section 2 (c) of the Contempt of Courts Act? Every quarrel between an Advocate and Appeal Examiner while numbering a case cannot result in contempt action. After all, an Advocate is also working under stress and many a time the Appeal Examiner also give pinpricks, which will annoy even a calm counsel. The case of Mr.Manikandan Vathan Chettiar and Mr.Mathan Kumar is an exception. It is their habit to file such petitions and ask for omnibus prayers. In S.Padma and another Vs.Chief Justice, High Court of Madras, [2012(3) MLJ 687], the Chief Justice of Madras was made as a party and the prayer to take action against the District Judge was sought. In the said case, a Division Bench of this Court has lamented thus:

"8. Insofar as the maintainability of these writ petitions, viz., impleading the Hon'ble The Chief Justice as a party respondent and praying for constituting a SIT to investigate the allegations of bribery of trial Judge, his wife, witnesses, etc., the said prayer itself is not maintainable. The entire allegation, being made against the trial Judge, who is one of the senior District Judges, without material available as on date solely on the basis of suspicion is not only unwarranted but also scandalous. Article 235 of the Constitution of India clearly empowers the High Court, supervisory control over the subordinate Judiciary. Therefore, constituting a SIT amounts to giving such power of superintendence to an outside agency."

30. Similarly in another case filed by Mr.Manikandan Vathan Chettiar and Mr.Mathan Kumar, the First bench of this Court in WP SR.93661 of 2014 has passed the following order on 02.09.2014:

"9. The learned counsel appearing for the petitioner, without complying with the defects, has represented the papers and therefore, the Registry was constrained to place the papers before the First Bench of this Court for maintainability, as it has no powers to reject the papers for want of compliance and accordingly, it was listed before this Court on 02.09.2014 so as to enable the learned counsel appearing for the petitioner to make submissions and convince the Court as to the maintainability of the

writ petition, in spite of the defects pointed out by the Registry. However, the learned counsel appearing for the petitioner, namely Mr.Manikandan Vathan Chettiar did not chose to appear and deputed Mr.R.Mathan Kumar, Advocate (Enrolment No. 2613/2013), who made a representation to call upon the Court to pass orders on merits and when he was specifically questioned as to the merits of the matter, he represented that he is unaware of the facts of the case.

10. In the considered opinion of the Court, Advocates belong to noble profession and they are expected to espouse the cause of the litigant, who had entrusted their case to them, in a fair and proper manner to the best of their ability, but unfortunately in this case, the learned counsel on record did not appear and avail the chance to convince this Court as to the maintainability of the writ petition. The very same learned counsel appearing for the petitioner is the counsel on record in W.A.(SR).Nos.100792 and 101554 of 2011 and connected M.Ps. [S.Padma and Another Vs.Chief Justice, High Court of Madras, Chennai - 104] reported in [2012(3) MLJ 687], wherein writ petitions were filed seeking issuance of a Writ of continuing Mandamus issuing direction to constitute a SIT (Specail Investigation Team) to investigate into the allegations of bribery of trial judge, his wife, witnesses etc., and manipulation of trial proceedings in the murder case in S.C.No.94 of 2005. The Registry of this Court has raised the question of maintainability stating among other things as to how the relief sought for against the Chief Justice of the High Court. The learned counsel has resubmitted the papers with the following endorsement:

" Please read the affidavit and the note appended to the petition before making such flimsy returns"

The above said writ petitions were listed before a Division bench of this Court "For Maintainability" and orders came to be passed on 27.02.2012 upholding the objections raised by the Registry and the W.P.SRs were rejected and it is relevant to extract the following paras of the said judgment:

"16. An Advocate, who is an Officer of the Court, is bound to respect the Court and maintain its dignity, decorum and majesty. Scandalizing the Court to implead the Hon'ble The Chief Justice as the respondent and making unwarranted remarks in the

solemn affidavits of the petitioners as the advice of the learned counsel, would certainly amount to criminal contempt.

.....

F. The principles laid down by the Hon'ble Apex Court in the decisions cited supra make it crystal clear that scandalising the Court and the hostile criticism of Judges is termed as diverting the due course of justice and signing the petition filed based on such affidavits in support of the petition amounts to an act of criminal contempt."

11. It is rather painful to note that the learned counsel appearing for the petitioner, who is also an officer of this Court, without realizing the solemn position and duty he owes of his client, chose to make endorsement in the form of re-presentation dated 27.08.2014, which has been extracted in para 4 above. This Court on a careful scrutiny of the entire materials placed before it, is of the considered view that the objections raised by the Registry as to the maintainability of the writ petition have to be upheld.

12. In the result, W.P.SR. 93661 / 2014 is rejected as not maintainable. No costs."

31. It may not be out of place to note that on the same day (27.2.2012) when the Division Bench passed the order upholding the office note on the non-maintainability of the several writ petitions, also passed a similar order in respect of a return made by the Registry in respect of another unnumbered writ petition in W.P.SR.No. 106151 of 2011 filed by the same counsel describing himself as V.Manikandan. In that case, the prayer found in the W.P. was as follows:

"This writ petition has been filed by the petitioner, who is an Advocate appearing before us, against one of the Hon'ble Judges, viz., Hon'ble Ms.Justice K.Suguna and the Registrar General. The same petitioner Advocate filed another writ petition against the Chief Justice of this Court.

When this case was called out, the petitioner Advocate submits that this Court should not hear the matter. Without making any observation, we think it proper to place the matter before another Division Bench. Let this case be listed before the Division Bench hearing another similar writ petition viz., W.P.No. 19894 of 2011."

32. The Division Bench while passing orders rejecting the maintainability of the said writ petition upheld the office objections and held as follows:-

"18. The plea of alternate remedy raised by the Registry is found fault with by the petitioner. The same is stated in the Rules framed under Article 225 read with Article 226 as stated supra. Even assuming that there is any practical difficulty in getting any case numbered or even after numbering if there is any delay in posting the case for admission, it is for the petitioner to address a letter to the Registry and the Registry will take appropriate steps. In this case, petitioner has not approached the Registry with a written representation. Instead of redressing his grievance, if any, on the administrative side, the petitioner has chosen to file this petition and challenge the so called instructions. The said procedure adopted by the petitioner is only for the purpose of finding fault with the Registry, instead of redressing his grievance, if any, at the Registry level.

19. On perusal of the affidavit filed in support of the writ petition, the affidavit filed by the petitioner is also not according to the rules, as the rule contemplates the affidavit must contain the name of the deponent, father's name, age, religion and residential address. In this case even though the petitioner has mentioned his name, father's name, age and religion, the place of residence is not mentioned. Petitioner has also not mentioned his correct name in the affidavit. In the affidavit and petition, petitioner has mentioned his name as "V.Manikandan". In the writ petition, wherein the petitioner is appearing as counsel for the petitioner in the connected matter disposed of today, his name is mentioned as "Manikandan Vathan Chettiar". Thus, there is discrepancy with regard to his name itself.

20. All these facts can be questioned by the Registry before numbering a writ petition and Rule 3 clearly says, soon after the writ is numbered the same be posted for the orders of the Court. Hence the WPSR filed by the petitioner, which is posted for maintainability by the Registry, cannot be found fault with. If the averments made by the petitioner in the affidavit are accepted, any petition, whether it is maintainable before the Court or before the Tribunal,

even if it is defectively filed, are to be automatically numbered. If the said procedure is followed, the regulatory power conferred to the High Court under [Article 225](#) and [226](#) of the Constitution of India, will be of no meaning, which the petitioner should have ascertained before filing this kind of petition, finding fault with the Registry and the learned Judge.

21. For the above said reasons, we are of the view that the maintainability issue raised by the Registry is sustainable and the WPSR is rejected. It is further ordered that the Registry should scrupulously follow the Rules framed under Articles 225 read with 226 of the Constitution of India and the circulars issued by the Honourable Chief Justice, before numbering any writ petition and only if the papers are in order, the same be numbered and posted for admission before the appropriate Court."

33. It must be noted that Mr. Manikandan Vathan Chettiar had filed several cases in the name of one Vijayalakshmi Shanmugam who describes herself as a practicing advocate. One such case was Vijayalakshmi Shanmugam Vs. Chief Justice, Madras High Court, Chennai and Ors reported in 2012 (7) MLJ 16 (W.P.No. 23570 of 2012 dated 7th September 2012). In that case the Division Bench while dismissing the writ petition gave stern warning to advocates who make unwarranted averments. It was observed as follows:

"Para 21 : Before parting with this case, we are constrained to observe that it is very unfortunate that the petitioner, who claims to be an Advocate, practising in this Chartered High Court, and who has been considered as an Officer of the Court, has come forward with certain unwarranted and contemptuous comments and remarks in the supplementary affidavit dated 30.7.2012, not only against the third respondent, but also against the first respondent. We make it clear that if such unwarranted averments are made in future, we would be forced to take appropriate action in the manner known to law"

(emphasis added)

34. The conduct of the two counsels in filing frivolous cases in courts and when the registry which is obliged to scrutinize the papers and post it before courts only when it is in order is ignored and impleading of judges by names not only of the sub-ordinate courts but also of the names of the Hon'ble Judges of this court without any

justification and legal requirements is seen clear in the above orders passed by the Division Bench.

35. It has to be examined as to whether the two counsels have committed criminal contempt by their actions noted above. The term Criminal Contempt is defined under section 2(c) of the Contempt of Courts Act, 1971:

"Section 2 (c) "criminal contempt" means the publication (whether by words, spoken or written, or by signs, or by visible representation, 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 proceeding; or
(iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner; "

36. As to whether cognizance can be taken note of an action of an advocate who had misbehaved with the staff of the registry and whether the term 'criminal contempt' will encompass such actions has to be considered first by this court. In *Dobson and another Vs. Hastings and others*, the Chancery Division Bench of the High Court of Justice in England [1992] Ch.394 has stated thus:

"Interference with the administration of justice

It is against this background that I turn to the important question which is raised by this application: does a person commit a contempt of court or, as I prefer to say, interfere with the administration of justice, if he inspects a court file without having obtained the leave which he knows is needed? The researches of counsel have found no authority bearing directly on the point. It is necessary, therefore, to go back to first principles. The underlying concept is that a person may not thwart or frustrate the processes or procedures, necessarily elaborate, which the law provides for the proper resolution of disputes and claims. The conduct which is thus proscribed takes diverse forms. Non-compliance with an order of the court is one form. But there are many ways in which justice can be interfered with even though there has not been a breach of a court order. Interfering with witnesses or court officers in the performance of their duties,

and physically interrupting the conduct of a trial are obvious examples. Another instance, and somewhat nearer to the present case is the type of situation exemplified in the recent Spycatcher litigation.

[emphasis supplied]

37. The Supreme Court has upheld the initiation of contempt against persons who have either misbehaved or obstructed the work of court appointed receiver in its judgment in Everest Coal Company (P) Ltd Vs. State Of Bihar & Ors. reported in AIR 1977 SC 2304. It was held as follows:-

"When a court puts a Receiver in possession of property, the property comes under court custody, the Receiver being merely an officer or agent of the court. Any obstruction or interference with the court's possession sounds in contempt of that court. Any legal action in respect of that property is in a sense such as interference and invites the contempt penalty of likely invalidation of the suit or other proceedings"

38. Again in Tarun Bharat Sangh, Alwar Vs Union Of India And Others reported in AIR 1993 SC 293, the Supreme Court observed as follows:-

"They are not unduly concerned with the basic decency of civilised living. Contemner is a mine owner and has a vested interest in perpetuating the alleged illegal mining. The atmosphere of show of force said to have been displayed by the mine-owners at the spot at the time of the visit of the committee, if true, is really disturbing. We should make this case one which will unmistakably tell those like minded with the contemner that this kind of crime against the course of justice and processes of law does not pay and interference with the justice is playing with fire and that those who play with fire cannot complain of burnt fingers."

(emphasis added)

Thus prima facie the misbehaviour of the two counsels with the staff of the Registry will amount to contempt.

39. Further the warnings given by the Division Bench in its decision referred to above does not confine only to persons / advocates who file frivolous petitions but even to counsels who

draft / approve such petitions and file it before court. In this context, it is necessary to refer to certain decisions of the Supreme Court. In M.Y.Shareef and another V. The Hon'ble Judges of the High Court of Nagpur and Others reported in AIR 1955 SC 19 it was held as follows:-

"It cannot be denied that a section of the Bar is under an erroneous impression that when a counsel is acting in the interests of his client, or in accordance with his instructions he is discharging his legitimate duty to his client even when he signs an application or a pleading which contains matter scandalizing the Court. They think that when there is conflict between their obligations to the court and their duty to the client, the latter prevails. This misconception has to be rooted out by a clear and emphatic pronouncement, and we think it should be widely made known that counsel who sign applications or pleadings containing matter scandalizing the court without reasonably satisfying themselves about the prima facie existence of adequate grounds there for, with a view to prevent or delay the course of justice, are themselves guilty of contempt of court, and that it is no duty of a counsel to his client to take any interest-in such applications; on the other hand, his duty is to advise his client for refraining from making allegations of this nature in such applications"

(emphasis added)

40. Again the Supreme Court in In Re: Roshan Lal Ahuja vs Unknown reported in 1993 Supp 4 SCC 446 held as follows:-

"Liberty of free expression is not to be confused with a licence to make unfounded, unwarranted and irresponsible aspersions against the Judges or the courts in relation to judicial matters. No system of justice can tolerate such an unbridled licence. Of course "Justice is not a cloistered virtue; she must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men", but the members of the public have to abstain from imputing improper motives to those taking part in the administration of justice and exercise their right of free criticism without malice or in any way attempting to impair the administration of justice and refrain from making any comment which tends to scandalise the court in relation to judicial matters."

41. Once again the Supreme Court in Chetak Construction Ltd. V. Om Prakash reported in (1998) 4 SCC 577, held as under :

"16. Indeed, no lawyer or litigant can be permitted to browbeat the court or malign the presiding officer with a view to get a favourable order. Judges shall not be able to perform their duties freely and fairly if such activities were permitted and in the result administration of justice would become a casualty and the rule of law would receive a setback. The Judges are obliged to decide cases impartially and without any fear or favour. Lawyers and litigants cannot be allowed to terrorize or intimidate Judges with a view to secure orders which they want. This is basic and fundamental and no civilised system of administration of justice can permit it."

42. Further, in Vishram Singh Taghubanshi V. State of U.P. reported in AIR 2011 SC 2275, the Supreme Court in paragraph 16 held as follows :

"A Lawyer cannot be a mere mouthpiece of his client and cannot associate himself with his client maligning the reputation of judicial officers merely because his client failed to secure the desired order from the said officer. A deliberate attempt to scandalise the court which would shake the confidence of the litigating public in the system, would cause a very serious damage to the institution of judiciary. An advocate in a profession should be diligent and his conduct should also be diligent and conform to the requirements of the law by which an Advocate plays a vital role in the preservation of society and justice system. Any violation of the principles of professional ethics by an Advocate is unfortunate and unacceptable"

(emphasis added)

43. In yet another decision O.P.Sharma V. High Court of Punjab & Haryana reported in 2011 (6) SCC 86, the Supreme Court held as follows :

"In a profession with such a vivid history it is regretful, to say the least, to witness instances of the nature of the present kind. Lawyers are the officers of the court in the administration of justice. The Bench as well as the bar has to avoid unwarranted situations or trivial issues that hamper the cause of justice and are in no one's interest. A lawyer cannot be a mere mouthpiece of his client and cannot associate himself with his client in maligning the reputation of a judicial officer merely because

his client failed to secure the desired order from the said officer. A deliberate attempt to scandalise the court which would shake the confidence of the litigating public in the system and would cause a very serious damage to the name of the judiciary."

(emphasis added)

44. As noted, the Supreme Court has emphasised the need to take strong actions including initiation of contempt against those who are guilty of attacking courts and judges. In the case relating to C. Ravichandran Iyer vs Justice A.M. Bhattacharjee & Ors reported in 1995 (5) SCC 457, it was observed as follows:-

"If freedom of expression subverses public interest in reasonable measure, public justice cannot gag it or manacle it; but if the court considered the attack on the Judge or Judges scurrilous, offensive, intimidatory or malicious, beyond condonable limits, the strong arm of the law must strike a blow on him who challenges the supremacy of the rule of the law by fouling its source and stream. The power to punish the contemner is, therefore, granted to the court not because Judges need the protection but because the citizens need an impartial and strong judiciary."

45. Once again the same principles were reiterated by the Supreme Court by its decision in U.P. Sales Tax Service Association Vs Taxation Bar Association, Agra & Anr. reported in 1995 (5) SCC 716 and it is necessary to extract the following passage found in the said judgment:-

"making wild allegations of corruption against the presiding officer amounts to scandalising the court/statutory authority. Imputation of motives of corruption to the judicial officer/authority by any person or group of persons is a serious inroad into the efficacy of judicial process and threat to judicial independence and needs to be dealt with strong arm of law."

Therefore, in the considered opinion of this Court, there is prima facie material against Mr.Manikandan Vathan Chettiar and Mr.Mathan Kumar for initiating criminal contempt action against them for interference with the course of justice is available before this court and hence this court takes suo moto cognizance of the contempt committed by the two advocates.

46. In view of the above, this court is constrained to pass the following orders:

- (i) Crl.O.P. 30502 of 2014 will stand dismissed.
- (ii) The order in Crl.M.P.No.5721 of 2014 dated 05.08.2014 on the file of the District Judge, Villupuram will stand set aside as regards only Lakshmi and it is open to the Police to arrest the Petitioner (Lakshmi)
- (iii) The Bar Council of Tamil Nadu is directed to initiate disciplinary action against M/s. Manikandan Vathan Chettiar and Mathan Kumar for their professional misconducts referred to in this order and if proved, to inflict appropriate punishment in accordance with law.
- (iv) This Court takes suo motu cognizance under Section 15 of the Contempt of Courts Act, 1971 of the contempt committed by M/s. Manikandan Vathan Chettiar and Mathan Kumar in their having made the District Judge, Villupuram as a party to this O.P. and having made reckless and unsubstantiated allegations against him and also for intimidating the officers of the Registry of this High Court and preventing them from discharging their duties thereby obstructing the course of justice.
- (v) The Registry is directed to place the matter before the Hon'ble Chief Justice so as to enable him to post the criminal contempt before an appropriate Division Bench in terms of Section 18 of the Contempt of Courts Act, 1971.
- (vi) The Court refrains from making any order as to costs in view of the position of the Petitioner.

gms

s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

To

1.The Director General of Police,
Kamaraj Salai,
Mylapore,
Chennai 600 004.

2.The District Public Prosecutor,
Sessions Court,
Villupuram District.

3.District Judge,
Villupuram District,
Villupuram.

4. The Secretary,
Bar Council of Tamil Nadu,
N S C Bose Road,
Chennai - 600 001.

5. The Public Prosecutor,
High Court of Madras,
High Court Campus,
Chennai - 600 104.

6. The Registrar General,
High Court, Madras 104.

7. The Registrar(Judicial)
High Court, Madras 104.

8. The Assistant Registrar,
Criminal Section,
High Court, Madras 104.
(for further action)

9. The Section Officer,
Contempt Section,
High Court, Madras.

+ 1 cc to Mr.R.Muthamizh, Advocate, SR 40067

+ 1 cc to Public Prosecutor, High Court, Madras SR 40067

kgk(co)
prk17/8



Cr1. O.P. No. 30502 of 2014

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