

HON'BLE SRI JUSTICE M.S.K.JAISWAL

Criminal Revision Case No.2539 of 2013

ORDER:-

This revision is filed questioning the correctness of the order of the learned Chief Metropolitan Magistrate, Hyderabad, in S.R.No.3393 of 2013, dated 05-09-2013, dismissing the private complaint filed by the petitioner/complainant.

2. The case of the complainant briefly is that the 2nd respondent is working as Section Officer in the Posting Section of the High Court of Judicature at Hyderabad, that the complainant filed a review petition on 29-01-2013 in W.A.M.P.SR No.13316 of 2013, that the respondent has put up a note contrary to the provisions of Order XLVII Rule 5 C.P.C., and obtained an erroneous order for posting the case before Division Bench-III of Hon'ble Sri Justice Ashutosh Mohunta, but fraudulently posted the same before the Division Bench-IV of Hon'ble Sri Justice L.Narasimha Reddy and thereby lowered the authority of the then Hon'ble The Acting Chief Justice Sri N.V.Ramana in contravention of the provisions of Article 225 of the Constitution of India and the decision of the Supreme Court. It is further alleged that the respondent being the Section Officer of the Posting Section himself re-constituted the Division Bench-IV of Hon'ble Sri Justice L.Narasimha Reddy and Hon'ble Sri Justice B.N.Rao Nalla in the place of Hon'ble Sri Justice K.G.Shankar, that the said Bench passed an order to post the matter after vacation before another Bench by obtaining orders from the Hon'ble the Chief Justice. It is further alleged that a petition dated 01-04-2013 was given by him to the Government of Andhra Pradesh for posting the review petition before the Hon'ble Sri Justice Ramesh Ranganathan which was forwarded to the High Court and hence the complaint.

3. The complaint was filed on 07-06-2013 and after recording the statement of the *de facto* complainant and perusing the material on record, the learned Magistrate held that there is no material to take cognizance of the complaint and hence dismissed the petition. Hence,

the revision.

4. The contention of the petitioner/complainant is that contrary to the provisions of the Code of Civil Procedure, the Constitution of India and the procedure being followed, the respondent being the Section Officer of the Posting Section has put up a wrong note before the then Acting Chief Justice and obtained the orders for posting the review petition before a Bench of which Hon'ble Sri Justice Ramesh Ranganathan was not the member and thereby committed the offence.

5. A perusal of the record shows the following aspects:-

The petitioner/complainant filed WP (SR) No.81961 of 2010 against the Judgment and Decree in O.S.No.44 of 2002, dated 29-04-2006 on the file of the I-Additional District Judge, Kadapa, and prayed for quashing the same. The said W.P. (SR) was rejected as being not maintainable by order dated 13-07-2010. The petitioner preferred W.A.No.556 of 2010 against the said rejection. The Writ Appeal was dismissed by a Division Bench comprising of Hon'ble Sri Justice V.V.S.Rao and Hon'ble Sri Justice Ramesh Ranganathan on 19-01-2011. The petitioner/complainant intended to file a review petition and also filed Miscellaneous Petitions to dispense with the filing of the certified copy and seeking permission to the petitioner to file the review petition as a third party.

6. For the purpose of posting the Miscellaneous Petitions, a note was put up by the Registrar (Judicial) seeking orders from the Hon'ble the Acting Chief Justice for posting the same before an appropriate Bench since by then Hon'ble Sri Justice V.V.S.Rao has retired. On the note submitted by the Registrar (Judicial), the Hon'ble the Acting Chief Justice directed the Miscellaneous Petitions to be listed before Division Bench-III. As per the arrangements for sitting of the Hon'ble Judges, which was w.e.f. 11-03-2013 till 15-04-2013, Division Bench-III comprised of Hon'ble L.Narasimha Reddy and Hon'ble Sri Justice K.G.Shankar. It is also on record that Hon'ble Sri Justice Ashutosh Mohunta was on leave up to 15-04-2013. After 15-04-2013, Division Bench-III comprised of Hon'ble Sri Justice Ashutosh Mohunta and Hon'ble Sri Justice A.Rajasheker Redy

and Division Bench-IV comprised of Hon'ble Sri Justice L.Narasimha Reddy and Hon'ble Sri Justice S.V.N.Bhatti.

7. In view of the orders of the Hon'ble the Acting Chief Justice, dated 15-03-2013, the matter was listed before the then Division Bench-III presided by Hon'ble Sri Justice L.Narasimha Reddy. Accordingly, miscellaneous petitions in Writ Appeal were listed before Hon'ble Sri Justice L.Narasimha Reddy and Hon'ble Sri Justice K.G.Shankar on 19-03-2013 and the matter was posted a week thereafter. Accordingly, on 26-03-2013, the matter was listed before Hon'ble Sri Justice L.Narasimha Reddy and Hon'ble Sri Justice B.N.Rao Nalla and the matter was directed to be posted after vacation before another Bench after obtaining orders from the Hon'ble The Chief Justice. However, on 26-03-2013, the matter was listed before the Bench comprising of Hon'ble Sri Justice L.Narasimha Reddy and Hon'ble Sri Justice B.N.Rao Nalla since on 26-03-2013 Hon'ble Sri Justice K.G.Shankar was on leave and the Hon'ble the Chief Justice was pleased to constitute the Division Bench-III with Hon'ble Sri Justice L.Narasimha Reddy and Hon'ble Sri Justice B.N.Rao Nalla. On the said date, i.e., on 26-03-2013, the matter was not heard since the petitioner/party-in-person insisted that the matter should be listed before a Bench of which Hon'ble Sri Justice Ramesh Ranganathan is a member.

8. After vacation, the petitions were listed before a Division Bench comprising of Hon'ble Sri Justice Ramesh Ranganathan and Hon'ble Sri Justice Raja Elango on 26-07-2013. On that date, the matter was reserved for orders. On 13-08-2013, the Bench comprising of Hon'ble Sri Justice Ramesh Ranganathan and Hon'ble Sri Justice Raja Elango dismissed the Review Miscellaneous Petition.

9. From the facts borne out from the record, it is apparent that the allegations against the respondent being the Section Officer cannot be said to be well founded. Appropriate Office Notes were submitted by the Registrar (Judicial) before the Hon'ble the Chief Justice and as per the orders of the Hon'ble the Chief Justice, the matters were listed firstly before the Bench comprising of Hon'ble Sri Justice L.Narasimha Reddy

and thereafter, in July, 2013, the matter was listed before the Bench presided by Hon'ble Sri Justice Ramesh Ranganathan.

10. The petitioner submits that posting the matter before a Bench of which Hon'ble Sri Justice Ramesh Ranganathan was not a Member is in contravention of the provisions of Order XLVII Rule 5 C.P.C. Order XLVII Rule 5 C.P.C. reads as under:-

“Application for review in Court consisting of two or more Judges:- Where the Judge or Judges, or any one of the Judges who passed the decree or made the order, a review of which is applied for, continues or continue attached to the Court at the time when the application for a review is presented, and is not or are not precluded by absence or other cause for a period of six months next after the application from considering the decree or order to which the application refers, such Judge or Judges or any of them shall hear the application, and **no other Judge or Judges of the Court shall hear the same.**”

11. A Full Bench of this Court in a decision reported in **A.SRINATH AND ORS. V. ANDHRA PRADESH STATE ROAD TRANSPORT CORPORATION AND ANR. (1996 (3) ALD 56 (FB)** in para 8 held as under:-

“We are in complete agreement with the above view. The Bench, to which the review petition was posted under the orders of the Chief Justice, comprising of Lingaraja Rath, J., and Reddeppa Reddi, J., have thus ignored the fact that the Chief Justice exercised the power which inhere in him when the review petition was assigned to them for hearing and disposal and they have committed error of jurisdiction in pronouncing that the matter should be placed only before Reddappa Reddy, J., the earlier Judgments of this Court in *Kum.K.Pushpa Leela V. Labour Court, Guntur and another* (1991 930 ALT 22) and *G.Padma V. Dr.B.Vijaya Lakshmi* (1994 (3) ALT 318) have not taken notice of the scheme of Letters Patent of this Court and the provisions, which take care of the Letters Patent jurisdiction and the extraordinary jurisdiction under Article 226 of the Constitution of India, cannot find approval of the Court as laying down the correct law. A litigant's attempt to choose his Judge or to see that a particular Judge or Judges do not hear the case is deprecated on the sound principle that no litigant can choose his judge. No Judge who has any interest in the cause will sit to judge the

cause. He shall himself decline and say he shall not hear the matter. No one however can say that a Counsel representing a statutory authority or a State has some interest of his own in all causes of the statutory authority or the State and thus he shall have no competence to sit as a Judge in matters in which such statutory authority or State is a party. It will be stretching the principle of natural justice i.e., no one shall be a judge in his own cause, or the doctrine of bias, as the case may be, if that is allowed to be used by a litigant or a Counsel appearing for him seeking seclusion of the Judge from hearing. The matter, however, will be different if it is a case of private litigant and the acquaintance of the Judge with the litigant is more normal. Learned Counsel for the petitioner should have known that in a system where a Court is made to regulate the proceedings by self imposed controls and regulations, any outside interference is unauthorised and uncalled for. Litigant has to learn that it is his option and right in certain situations to seek justice and move the Court, but he has no choice of the Judge. He has to learn to accept the verdict of the Court if he has chosen to move the Court. A Counsel is not expected only to represent the cause of the client but to take the burden of an Officer of the Court. While he has a duty to respond to the trust that his client has put in him, he has also a duty to protect the majesty of the Court. His indulging in making vague insinuations on the role of a Judge of this Court as a member of the Bench who finally disposed of the appeal with a view to embarrass him so that he desists from hearing the review petition, is one that must receive severest of the reprimands.”

12. In view of the above authoritative pronouncement of a Full Bench of our High Court, it is clear that as per the provisions of Order XLVII Rule 5 C.P.C., the review petition in a Writ Appeal need not necessarily be heard by the same Judges who constitute the Bench or by one of them. It is also laid down that the Hon'ble the Chief Justice has inherent powers to order the matter to be placed before any Judge or Bench of Judges and that the litigant cannot have any say in the matter.

13. In view of the above decision, the contention of the petitioner that a review petition filed in Writ Appeal should invariably be heard by the same Bench or the same Judges cannot be countenanced. On the basis of the Office Note put up by the Registrar (Judicial) and in view of the

retirement of one of the Judges of a Division Bench which has originally disposed of the Writ Appeal, the Hon'ble the Chief Justice has directed the matter to be listed before a particular Bench and that cannot be said to be in violation of Order XLVII Rule 5 C.P.C. as contended by the petitioner.

14. Be that as it may, the petitioner has filed a private complaint alleging that the respondent being a Section Officer of the Posting Section has committed the offences punishable under Sections 219 and 506 IPC. At the outset, it can be stated that it is not the respondent/Section Officer who put up the Office Note but the Office Note was placed before the Hon'ble the Chief Justice under the signature of Registrar (Judicial). Even if the entire contents of the private complaint are taken to be true, the ingredients of Sections 219 and 506 IPC., are not attracted. Sections 219 and 506 IPC., read as under:-

“219. Public servant in judicial proceeding corruptly making report etc., contrary to law:-

Whoever, being a public servant, corruptly or maliciously makes or pronounces in any state of a judicial proceedings, any report, order, verdict, or decision which he knows to be contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

506. Punishment for criminal intimidation:-

Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

15. By no stretch of imagination, can the respondent being a Section Officer of the Posting Section in High Court of Judicature, be said to have made or pronounced an order, report, verdict or decision, which he knows to be contrary to law. The petitioner could not place any evidence to show that he was threatened with injury to his person, reputation or property with intend to cause alarm to that person, so as to hold that there was any criminal intimidation on the part of the respondent against the petitioner/complainant. Except for his sworn statement, the petitioner has not produced any other evidence in support of allegations for showing *prima facie* that the offences are committed by the respondent for taking

cognizance. Even though, in the private complaint, the offences alleged are Sections 219 and 506 IPC., but in his sworn statement, which is by way of affidavit filed by the petitioner/complainant on 24-07-2013, he has prayed for action against the respondent/accused only under Section 219 IPC. The learned Magistrate has considered the matter in proper perspective and has dismissed the private complaint. The said order cannot be said to be irregular or illegal warranting interference in this revision. There are no merits in the petition and the same is liable to be dismissed.

16. In the result, Criminal Revision Case is dismissed. Miscellaneous petitions, if any, pending in this revision shall stand closed.

M.S.K.Jaiswal, J

3rd September, 2015
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