

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.03.2016

DATE OF DECISION : 23.03.2016

CORAM

THE HON'BLE Mr.SANJAY KISHAN KAUL, CHIEF JUSTICE
and

THE HON'BLE Mr.JUSTICE M.M.SUNDRESH

L.P.A.Nos.2 of 2015 and 2 of 2016

L.P.A.No.2 of 2015:

T.Udayakumar

... Appellant

Vs.

1. T.Elangovan,
S/o Thangavelu,
No.69/55, 4th Street,
Vyasar Nagar, Vyasarpadi,
Chennai-600 039.

2. Saundarya,
District Collector,
Chennai District,
62, Rajaji Salai,
Chennai-1.

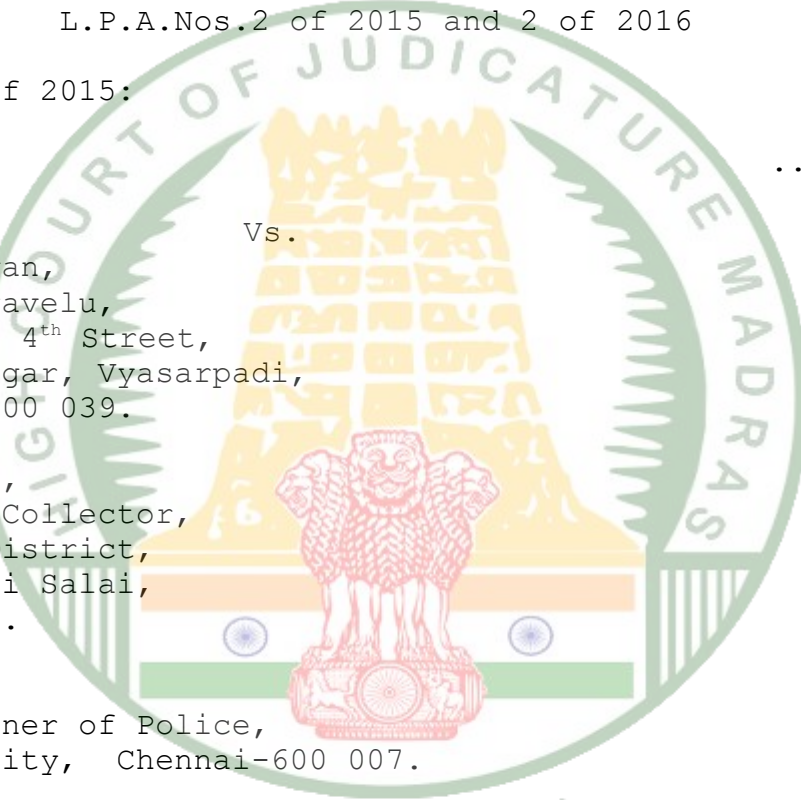
3. K.George,
Commissioner of Police,
Chennai City, Chennai-600 007.

4. Rubeen Raj,
Inspector of Police,
P-1, Pulianthope,
Chennai-600 012.

... Respondents

L.P.A. No.2 of 2016:

1. Saundarya, I.A.S.,
District Collector,
Chennai District,
62, Rajaji Salai,
Chennai-600 001.



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2. K.George, I.P.S.,
Commissioner of Police,
Chennai City,
Chennai-600 007.

... Appellants

Vs.

1. T.Elangovan,
S/o Thangavelu,
No.69/55, 4th Street,
Vyasar Nagar, Vyasarpadi,
Chennai-600 039.

2. Rubeen Raj,
Inspector of Police,
P-1, Pulianthope P.S.,
Chennai-600 012.

... Respondents

Prayer: Letter Patent Appeals are filed under Clause 15 of Letters Patent Act read with Section 19 of the Contempt of Courts Act to set aside the order dated 10.03.2015 in Contempt Petition No.2825 of 2014 in CrI.O.P.No.11771 of 2014 on the file of this Court.

For appellant in : Mr.S.Ramesh
LPA.No.2/2015

For appellants in : Mr.S.Shanmughavelayutham,
L.P.A.No.2/2016 Public Prosecutor, Asst. by
Mr.STS.Moorthy,
Government Pleader for
Mr.V.R.Kamalanathan for
Mr.V.Shanmughasundar, G.A.,

For Respondents : Mr.R.Sankarasubbu for R1
LPA.No.2/2015
Mr.S.Shanmughavelayutham,
Public Prosecutor, Asst. by
Mr.V.R.Kamalanathan for
Mr.V.Shanmughasundar, G.A.,
for R2 and R3
Mr.V.Vasanthakumar for R4

For Respondents : Mr.R.Sankarasubbu for R1
L.P.A.No.2/2016 Mr.V.Vasanthakumar for R2

COMMON JUDGMENT

M.M.Sundresh, J.

Contempt Appeal No.2 of 2015 has been preferred against the order passed by the learned single Judge in Contempt Petition No.2825 of 2014 in Crl.O.P.No.11771 of 2014 dated 10.03.2015, in which, a direction was issued to the Chief Secretary and Home Secretary to the State Government to consider shifting the appellants to some other place. As the learned counsel appearing for the appellant has filed a memo to treat the above Contempt Appeal as Letters Patent Appeal, the said memo was ordered on 15.03.2016 and numbered as L.P.A.2 of 2016.

2. L.P.A.No.2 of 2015 has been filed by the appellant being aggrieved over the findings rendered against him without even arraying him as a party respondent in the contempt petition No.2825 of 2014 as well as Crl.O.P.No.11771 of 2014. Thus both the appeals have been taken up together and disposed of by way of a common order. For the sake of brevity, the parties herein are arrayed as arrayed in L.P.A.

3. Before deciding these appeals on merit, the background facts are to be placed on record.

About 14 acres of land situated in Perambur Barracks Road was owned by M/s Binny Limited. These lands were used as residential quarters for the employees of M/s Binny Limited. In pursuant to the stoppage of the industrial operation, proceedings have been initiated and pending the same, a compromise was entered into between the employees and Management of M/s Binny Limited, by which, alternative accommodation to the employees was provided on free of cost. About 123 employees did not opt for settlement and thus, they did not vacate the quarters. A suit in C.S.No.396 of 2011 was filed before this Court inter alia contending that compromise entered would not bind them. Pending the said suit, 119 employees entered into a settlement with the Management in the month of December, 2013, by receiving terminal benefits with interest and alternative land. An agreement was entered into between the appellant in LPA.No.2 of 2015 and M/s Binny Limited for the development of the property. It is the case of the appellant that all the employees have vacated their respective quarters including the father of the first respondent, who was incidentally working with M/s Binny Limited earlier. Alleging that the first respondent and few others were dispossessed forcibly by the appellant, a complaint was given. As there was no registration of the First Information Report,

CrI.O.P.No.11771 of 2014 was filed by the 1st respondent seeking a direction to register and investigate the complaint dated 25.04.2014. On 08.05.2014, the learned single Judge has disposed of the said petition in the following manner.

"This petition is filed, praying for a direction to the respondent to register and investigate the complaint dated 25.04.2014 of the petitioner in accordance with law.

2. Heard the learned counsel appearing for the petitioner as well as the learned Additional Public Prosecutor appearing for the respondents.

3. Considering the facts and circumstances of the case, this Court directs the petitioner to submit a fresh complaint before the concerned Assistant Commissioner and the Assistant Commissioner on receipt of the said complaint, shall investigate the same and act in accordance with law.

4. With the above directions, the Criminal Original Petition is disposed of accordingly."

4. On 20.05.2014, the first respondent preferred another complaint. On receipt of the same, a case was registered in Crime No.1334 of 2014. After investigation, the complaint has been closed as "false" on 26.06.2014. A referred charge sheet notice was also served on the first respondent. The first respondent and three others have filed W.P.No.20771 of 2014 seeking a writ of mandamus directing the respondents therein to construct houses for them.

5. Despite the earlier complaint given, yet another complaint was given by the first respondent on 8.7.2014, which has been registered as Crime No.1854 of 2014, wherein it was stated that on 29.06.2014 the houses have been demolished forcibly. The writ petition filed in W.P.No. 20771 of 2014 was dismissed on 02.12.2014. The first respondent has also filed a protest application before the V Metropolitan Magistrate, Egmore, against the closure report in CrI.M.P.No.1986 of 2014.

6. Contending that the order passed in CrI.O.P.No.11771 of 2014 dated 08.05.2014 has not been complied with, contempt petition No.2825 of 2014 was filed. Though the appellant was not arrayed as a party respondent in CrI.O.P.No.11771 of 2014 as well as the Contempt Petition, findings have been rendered against him in the Contempt Petition to the effect that he has trespassed into the property and acted contrary to law. Thus, it was held that a complete trial is required. The respondents 2 and 3, who are the appellants in L.P.A. No.2 of 2016, also were found fault with for not taking appropriate action despite the absence of specific directions to them in CrI.O.P.No.11771

of 2014. The Chief Secretary and the Home Secretary of the State were directed to consider the shifting of respondents No.2 and 3 for their failure to perform their role.

7. Heard Mr.S.Ramesh, learned counsel appearing for the appellant, Mr.R.Sankarasubbu, learned counsel appearing for the first respondent, Mr.S.Shanmugha Velautham, learned Public Prosecutor appearing for respondents 2 and 3 and Mr.V.Vasanthkumar, learned counsel for the fourth respondent.

8. It is contended on behalf of the appellant and respondents 2 and 3 that the learned single Judge has exceeded his jurisdiction as there was no specific direction in the order passed in Crl.O.P.No.11771 of 2014 dated 08.05.2014. The First Information Report was duly registered. The learned single Judge has undertaken a mini trial and acted contrary to the final report. When the matter is pending before the jurisdictional Court by way of a protest petition, such an order has been passed, that too, without the appellant being arrayed as a party in Crl.O.P.No.11771 of 2014. Therefore, the appeal will have to be allowed.

9. Mr.R.Sankarasubbu, learned counsel appearing for the first respondent, submitted that it is a case of atrocity committed against the down trodden persons. The appellant and Respondents 2 and 3 cannot circumvent the direction issued by this Court. Such a direction shall be understood in the context in which it has been given. The issue has to be seen as a whole. In support of his contention, he has relied upon the following judgments.

- (1) T.R.Dhananjaya V. J.Vasudevan (1995 (5) Supreme Court Cases 619);
- (2) Samaj Parivartan Samudaya and others V. State of Karnataka and others (2012 (7) Supreme Court Cases 407);
- (3) State of Karnataka V. Appa Balu Ingale and others (1994 Supreme Court Cases (Cri) 1762; and
- (4) Kumari V. Government of Utter Pradesh and others (2008 (7) Supreme Court Cases 164).

10. A perusal of the order passed in Crl.O.P.No.11771 of 2014 dated 08.05.2014 would show that absolutely no discussion is made on merit. In fact, the earlier complaint said to have been given by the first respondent was not even considered. The first respondent was only permitted to give a fresh complaint and that too, before the concerned Assistant Commissioner, who in turn, was directed to receive and investigate as per law. Admittedly, the complaint filed by the first respondent was registered and investigated. After investigation,

the same was closed as "false". The first respondent has also filed a protest application, which is also pending consideration. Therefore, the learned single Judge has recorded findings of fact without any basis. Such an exercise is also beyond the contempt jurisdiction. The contempt petition is filed on the wilfull disobedience of the order passed in CrI.O.P.No.11771 of 2014 dated 08.05.2014. When there is no specific direction in the above said order, the learned single Judge ought not to have gone into the issues on merit. We do not find any wilful or deliberate violation of the order passed. On the contrary, the order passed has been complied with. The direction issued was to the Assistant Commissioner. Thus, merely because the second and third respondents were also respondents in CrI.O.P.No.11771 of 2014, they cannot be found fault with. Strangely, the Assistant Commissioner has not been arrayed as a party.

11. The learned single Judge has treated the contempt jurisdiction as the one under Section 482 of Cr.P.C. Thus, the order passed on the face of it cannot be sustained in the eye of law.

12. We do not understand as to why the first respondent has filed contempt petition after filing the protest petition. It has to be noted that the first respondent has also filed another CrI.O.P.No.17268 of 2014 seeking transfer of investigation to CBCID, which has also been dismissed as early as on 07.07.2014.

13. The decisions relied upon by the learned counsel appearing for the first respondent do not have any application to the case on hand. As discussed above, we are on the exercise of power under the contempt jurisdiction. The writ petition in W.P.No.20771 of 2014 filed by the first respondent and three others was also dismissed by the speaking order dated 02.12.2014. The findings rendered by the learned single Judge, followed by the directions issued are clearly outside his jurisdiction. There is no question of vicarious liability when no positive direction is issued. The order passed in CrI.O.P.No.11771 of 2014 has worked itself out. The closure of the report was done by the Officer concerned and therefore, there cannot be any connection between the second and third respondents, who are appellants in L.P.A.2 of 2016 in the said action. Unfortunately, a mini trial was conducted without even a material basis, while exercising contempt jurisdiction for the alleged violation of an order issuing a mere direction without going into the merits.

14. Thus, in the light of the above discussion, both the appeals are allowed. Consequently, the order passed in Contempt Petition No.2825 of 2014 in CrI.O.P.No.11771 of 2014 is hereby set aside. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar
raa

To

- 1.The District Collector,
Chennai District,
62, Rajaji Salai,
Chennai 01.
- 2.The Commissioner of Police,
Chennai City, Chennai 04.
- 3.The Inspector of Police,
P-1, Pulianthope,
Chennai 12.
- 4.The Chief Secretary to the Government,
Tamilnadu Secretariat,
Chennai 09.
- 5.The Home Secretary to the Government,
Tamilnadu Secretariat,
Chennai 09.

+1cc to Mr.V.Vasanthakumar, Advocate, S.R.No.18790
+2cc's to Mr.R.Sankarasubbu, Advocate, S.R.No.18508
+1cc to Mr.S.Ramesh, Advocate, S.R.No.18638
+1cc to the Public Prosecutor, S.R.No.18524

L.P.A.No.2 of 2015
&
L.P.A. No.2 of 2016

PVS (CO)
CA(05/05/2016)