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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL CONTEMPT PETITION NO. 2 OF 2016

Yasmin M.Y. Valibhoy

...Petitioner

v/s.

Sheetal Atulya Mafatlal & Others.

...Respondents

.....

Mr. Bhavesh Parmar along with Mr. Vijayprakash Yadav i/by Mr. Devmani J. Shukla, Advocate for the petitioner.

Mr. J.P. Yagnik, APP for the respondents/State.

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**CORAM : B. R. GAVAI AND
M.S.KARNIK, JJ.**

DATE : 12th September, 2017.

ORDER (PER M.S. KARNIK, J.) :-

The present criminal contempt petition is filed by the petitioner for an order of this Court to take suo moto action of criminal contempt against respondent No.3-Advocate General, State of Maharashtra, Mumbai. The petitioner has also prayed for a direction to decide the petitioner's application dated 2/12/2015 preferred by her to the respondent No.3 under Section 15 (1)(b) of the Contempt of Court Act (hereinafter referred to as "the said Act").

The directions have also been sought for prosecuting and punishing respondent No.1/contemnor with maximum possible imprisonment and fine as provided in said Act.

2. Insofar as prayer clause (c) of the contempt petition is concerned, the said prayer is completely misconceived and no such directions can be issued by this Court under the said Act. The prayer clause (c) reads thus :-

“(c) For an order of this Hon'ble Court directing the Respondent No.3 to decide the Petitioner's application dated 2.12.2005 preferred under section 15(1)(b) of the Contempt of Court Act, immediately and forthwith to avoid application of limitation period of one year as provided under section 20 of the Contempt of Court Act.”

In any case the application dated 2/12/2015 made by the petitioner to the respondent No.3 – Advocate General has already been decided on 7th December, 2015. Nothing survives as regards prayer clause (c).

3. Insofar as the prayer clause (b) for initiating action under the said Act against the respondent No.3, we fail to understand why such a prayer is made. We do not find any provision in the said Act to proceed against the Advocate General if an application made to him under Section 15 (1) of the said Act is not decided. The prayer

clause (b), in our opinion, is completely misconceived.

4. In this light of the matter we proceed to examine the petition as regards prayer clause (d) and (e) are concerned.

5. The brief facts leading to the filing of the contempt petition are thus :-

It is the petitioner's case that the respondent No.1 lodged the complaint on 22/11/2012 despite being fully aware about the fact that the contents of the said complaint are completely incorrect and false. On the basis of this complaint of respondent No.1, FIR /Crime No.277 of 2012 was registered by the Gamdevi police station and the criminal law was set in motion against the petitioner. On 3/10/2013, V.P. Road police station filed B-Summary report before the learned Magistrate which was subsequently transferred to them for investigation. On 22/8/2014, the Crime Branch, Mumbai, also filed the B-Summary with prosecution report before the learned Magistrate. On 8/5/2015, the learned Magistrate accepted B-Summary with prosecution report dated 22/8/2014 filed by the Crime Branch, Mumbai Police, rejecting the protest petition filed by the respondent No.1. The learned Sessions court upheld the B-

Summary report filed in favour of the petitioner by an order dated 4/9/2015 passed in Criminal Revision Application No.802 of 2015 filed by respondent No.1 challenging the order dated 8/5/2015 passed by the learned Magistrate. The Criminal Writ Petition No.952/2016 preferred by the police, the Criminal Writ Petition No.3423/2015 and Criminal Writ Petition No. 3726/2015 preferred by the petitioner, challenging the order dated 4/9/2015 of the Sessions Court are pending before this Court.

6. The petitioner filed an application on 2/12/2015 under Section 15(1)(b) of the said Act to the respondent No.3 for his consent to initiate proceedings for prosecuting and punishing the respondent No.1 for having committed criminal contempt under Section 2 (c) of the said Act. The petitioner's application dated 2/12/2015 was not decided by respondent No.3 and the petitioner came to know from the media that the office of the respondent No.3 has remained vacant for substantial period of time. The petitioner being apprehensive that the period of limitation for filing the contempt petition is running against her as her application is not decided, has approached this Court.

7. In the submission of the petitioner the averments made on oath by the respondent No.1 in Criminal Revision Application No.802/2015 before the learned Sessions Court, Mumbai and the averments made by the respondent No.1 during the course of liquidation proceedings on 5th May, 2015 and 26th November, 2015 before this Court are contrary to each other and made with malafide intention to harass the petitioner. The present contempt proceedings are initiated to deter the litigants from filing false affidavits on oath.

8. Learned Counsel for the petitioner submits that making a false statement on oath and taking contradictory stand in the various proceedings filed by the respondent No.1 would squarely fall within the meaning of criminal contempt of Court.

9. It is pertinent to note that pursuant to the filing of this petition the Advocate General has specifically declined to give his consent for filing contempt petition by his communication dated 4th May, 2017. It would be pertinent to reproduce paragraphs 4 and 5 of the communication of the Advocate General :-

“4. It is your case that the alleged contemnor has committed criminal contempt of court in the following manner :-

a. The alleged contemnor made certain averments/statements on oath in Criminal Revision Application No.802 of 2015 which are contrary to averments made by the alleged contemnor herself and her Advocates before the Hon'ble Magistrates Court and/or the police.

b. Certain averments/statements on oath made by the alleged contemnor, more particularly statements made on 5th May 2015 and 26th November 2015 before the Hon'ble Bombay High Court in the liquidation proceedings of M/s. Mafatlal Dyes and Chemicals Ltd., are absolutely contrary to orders made by certain courts and are absolutely contrary to the averments/statements made by the police authorities on oath before the Hon'ble Bombay High Court and are also absolutely contrary to the averments/statements made by independent persons / witnesses before the police authorities and are also absolutely contrary to the documentary evidence available with the police produced before certain courts.

5. I decline to give you my consent because your application raises highly and seriously disputed questions of fact which would involve examination of witnesses in a wide compass, for which contempt proceedings, which are summary in nature, would be inappropriate.

10. In our opinion assuming that the statements made by the respondent No.1 in the Criminal Revision Application before the Sessions Court and the statement made on oath by the respondent No.1 in the liquidation proceedings before this court are factually incorrect, we are of the considered view that it would not fall within the definition of the "Criminal Contempt" as defined under clause (c) of Section 2 of the said Act. At the most it may amount to perjury for which an action is provided somewhere else.

11. In that view of the matter, we do not find that the case is made out for invoking contempt jurisdiction. The contempt petition is rejected.

(M.S. KARNIK, J.)

(B.R.GAVAI, J.)