

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 1985 OF 2014
IN
CONTEMPT PETITION NO. 353 OF 2013
IN
WRIT PETITION NO. 2659 OF 2011**

Mahadev Shankar Wale

...Petitioner

Versus

A. Jabbar Saheblal Shaikh & Ors.

...Respondents

Mr. A. B. Tajane for the Petitioner

Mr. Surel S. Shah for the Respondent No. 1

Mr. V. B. Konde-Deshmukh, A.P.P for the Respondent No.5-State

***CORAM : R. M. SAVANT &
REVATI MOHITE DERE, JJ.
MONDAY, 6th AUGUST 2018***

P.C. :

1 The above Writ Petition has been filed taking exception to the order dated 27th March 2014 passed by the learned Advocate General of the State of Maharashtra, whereby, the Petitioner has been refused permission to initiate contempt proceedings against the Respondent No. 1 herein. The second relief sought by the Petitioner is to remand the matter to the learned Advocate General for considering afresh the application dated 25th September 2013 filed by the Petitioner in view of what has been stated in the above Writ Petition.

2 The cause for filing the said application dated 25th September 2013 before the learned Advocate General was the false statement made in Writ Petition No. 2659 of 2011 by the Respondent No. 1 herein that an Appeal has been filed by him against the order of his demotion from the post of Head Master to the post of Assistant Teacher in the Ashram School in question before the Divisional Social Welfare Officer, Pune. It is alleged against the Respondent No. 1 that in view of the said statement made by him that a direction came to be issued by a Division Bench of this Court [Coram: D. D. Sinha & A. R. Joshi, JJ. (as their Lordships then were)] to the Respondents to dispose of the Appeal filed by the Respondent No. 1. The allegation of the false statement made by the Respondent No. 1 is sought to be fortified on behalf of the Petitioner by relying upon the copy of the Appeal Memo which was annexed to the said Writ Petition No. 2659 of 2011. As indicated above, the said Writ Petition came to be disposed of by a Division Bench of this Court [Coram: D. D. Sinha & A. R. Joshi, JJ. (as their Lordships then were)] by order dated 23rd June 2011. It seems that contemporaneously, the Respondent No. 1 had made a representation to the

Divisional Social Welfare Officer, Pune, for withdrawal of the said order of demotion passed against him, in view of the fact that no opportunity of hearing was given to the Respondent No.1. It seems that the Respondent No. 1 had also challenged the order of demotion by way of a Civil Suit in which Suit, an application for stay filed by the Respondent No. 1 came to be rejected and in the Appeal filed by the Respondent No. 1, the Appellate Court had refused him stay.

3 The above Writ Petition has been founded on the information which the Petitioner has received under the Right to Information Act. The Special District Social Welfare Officer, vide his letter dated 17th January 2012, has communicated to the Petitioner that no Appeal has been filed by the Respondent No. 1. The said fact has also been communicated to the Petitioner by the Divisional Social Welfare Officer, Pune, by letter dated 27th July 2012.

4 The Petitioner filed Writ Petition No 9370 of 2012 based on the information that the Petitioner had received, under the Right to Information Act, for recalling the order dated 23rd June 2011 passed by the Division

Bench of this Court. The said Writ Petition came to be disposed of by a Division Bench of this Court [Coram : S. J. Vazifdar and R. Y. Ganoo, JJ. (as their Lordships then were)] by directing the Petitioner to adopt appropriate proceedings including one for contempt, if so advised. It is pursuant to the said order passed by the Division Bench in the Writ Petition No. 9370 of 2012, that the Petitioner had filed a Contempt Petition, which was disposed of as not maintainable in view of the fact that the permission of the learned Advocate General for initiating criminal contempt was not obtained by the Petitioner. It is, thereafter, that the Petitioner, on 25th September 2013, applied to the learned Advocate General seeking his permission, which, as indicated hereinabove, came to be rejected by the learned Advocate General by his order dated 27th March 2014.

5 Insofar as the information obtained by the Petitioner under the Right to Information Act is concerned, the said information is in the form of three letters i.e. the letters dated 27th June 2011, 12th July 2011 and 13th July 2011. By letter dated 27th June 2011, the Office of the Government Pleader, High Court, informed the Divisional Social Welfare Officer to decide the Appeal filed by the Respondent No. 1 within eight weeks. By letter dated

12th July 2011, the Divisional Social Welfare Officer informed the Petitioner that no Appeal has been filed by the Respondent No. 1 and by letter dated 13th July 2011, the Divisional Social Welfare Officer informed the Government Pleader, High Court, Mumbai that no Appeal has been filed by the Respondent No. 1. It was, therefore, the case of the Petitioner that the aforesaid documents clearly show that a false statement has been made by the Respondent No. 1 in the said Writ Petition No. 2659 of 2011. Since the information obtained by the Petitioner under the Right to Information Act transcends the order passed by the learned Advocate General, who deemed it appropriate to entertain the above Petition and to consider whether suo-moto action for criminal contempt is warranted against the Respondent No. 1.

6 In response to the above Writ Petition, an affidavit-in-reply has been filed by the Respondent No. 1. The said affidavit-in-reply starts with the apology of the Respondent No. 1. Thereafter, the Respondent No. 1 refers to the representation dated 16th June 2011 made to the Divisional Social Welfare Officer by him for withdrawing the order of demotion passed against him. The Respondent No. 1, thereafter, refers to the order

dated 23rd June 2011 passed by the Division Bench of this Court in Writ Petition No. 2659 of 2011, thereafter, the order dated 4th August 2011 passed by the Divisional Social Welfare Officer withdrawing the order of demotion subject to conditions mentioned therein. The Administrator, based on the said order dated 4th August 2011, revoked the demotion by order dated 6th August 2011. It seems that the Petitioner had thereafter sought information vide letter dated 7th March 2014, as to on what basis the order was withdrawn. The Petitioner received the information from the Assistant Commissioner that the order has been withdrawn in view of the fact that the procedure was not followed. Hence, the aforesaid facts disclose that the reinstatement of the Respondent No. 1 as Head Master was not on the basis of the order passed by this Court. The aforesaid facts also indicate that no benefit as such has been derived by the Respondent No. 1 on the basis of the said statement, which was appearing in the said Writ Petition.

7 After the affidavit-in-reply was filed by the Respondent No. 1, a show-cause notice came to be issued to the Respondent No. 1 by this Court on 21st June 2018. A further affidavit in reply has been filed by the

Respondent No. 1, wherein, the Respondent No. 1 has taken a contention that the contempt alleged is beyond limitation and therefore, cognizance could not be taken. A chronology of dates and events has been reproduced in the said affidavit to indicate as to how the Contempt Petition filed was beyond limitation.

We have gone through the said affidavit which has been filed pursuant to the show-cause notice and having regard to the contents thereof, we had questioned the learned counsel for the Respondent No. 1 whether the apology which the Respondent No. 1 had tendered was unconditional. Upon this, the learned Counsel appearing for the Respondent No. 1 submitted that the Respondent No. 1 would withdraw the said affidavit and would file an affidavit giving an unconditional apology. The said affidavit has accordingly been filed which is dated 2nd August 2018.

8 The learned counsel appearing on behalf of the Petitioner Mr. Tajane would advance submissions which are reflective of the pleadings appearing in the above Contempt Petition. The learned counsel would contend that in the light of the information obtained by the Petitioner

under the Right to Information Act and going by the admission of the Respondent No. 1, the order passed by the learned Advocate General can be said to have been passed on a wrong premise. It was, therefore, the contention of the learned counsel that this Court take cognizance of the contempt arising on account of the false statement made by the Respondent No. 1. In support of the said contention, the learned counsel sought to place reliance on the judgment of the Apex Court in the matter of ***Afzal & Anr. vs. State of Haryana & Ors.***¹. In the said judgment, the Apex Court has held that deliberately and willfully making a false or misleading or wrong statement by a party to the proceedings to obtain a favourable order would amount to 'criminal contempt'. Relying upon the said judgment and having regard to the statement made by the Respondent No. 1 in the said Writ Petition No. 2659 of 2011, it was the submission of the learned counsel for the Petitioner that the Petitioner has brought home the charge of contempt against the Respondent No. 1.

9 *Per contra*, the learned counsel Mr. Surel Shah for the Respondent No.1 would fairly accept the fact of the wrong statement made by the Respondent No. 1 as appearing in the Writ Petition that was filed by

1 1996 (7) SCC 397

him being No. 2659 of 2011. It was the submission of the learned counsel that the material on record would show that no benefit has been obtained by the Respondent No. 1 in view of the said order dated 23rd June 2011 passed by a Division Bench of this Court. The learned counsel submitted that the Respondent No. 1 is presently the Head Master of an Ashram School and therefore he may be pardoned by accepting his unconditional apology.

10 Having heard the learned counsel for the parties, we have considered the rival contentions. The question that is posed is, whether the Respondent No. 1 is required to be hauled up for criminal contempt on account of the false statement made by him in the said Writ Petition No. 2659 of 2011. Before proceeding further, it is required to be noted that the Petitioner claims to be a person having an interest in the affairs of the Trust being Shri. Shivchaitanya Parmarthik Seva Sangh, Kamthi (Khurd), Taluka Mohol, District Solapur. The undercurrent is of a simmering dispute between two rival fractions in the said Trust, insofar as the management of the Trust in question is concerned. It appears that the Trust is running educational institutions which includes the Ashram School where the Respondent No. 1 is presently working as a Head Master.

11 As indicated above, the allegation of a criminal contempt having been committed is founded on the false statement which was made in the said Writ Petition No. 2659 of 2011 filed by the Respondent No. 1. It is not necessary for us to investigate into the said aspect, as the Respondent No. 1 has fairly accepted the same. The question that arises is, whether any benefit has been derived by the Respondent No. 1 on account of the order dated 23rd June 2011 passed by a Division Bench of this Court. It is required to be noted that the Respondent No. 1 had made a representation against his said demotion, to the Divisional Social Welfare Officer. The order of demotion was set-aside and the Respondent No. 1 was reinstated as Head Master in view of the fact that no procedure was followed before demoting the Respondent No. 1 from the post of the Head Master to the post of Assistant Teacher in the Ashram School in question. The order dated 4th August 2011 of the Divisional Social Welfare Officer reinstating the Respondent No. 1 as Head Master, refers to the order passed by this Court, but it cannot be said that the demotion of the Respondent No. 1 was set-aside on account of the order passed by this Court. Hence, it

cannot be conclusively said that any benefit has been derived by the Respondent No. 1 on account of the said order dated 23rd June 2011. However, the fact remains that an incorrect statement came to be made by the Respondent No. 1 in the said Writ Petition No. 2659 of 2011.

12 It is required to be noted that the Respondent No. 1 is a Head Master. He, therefore, ought to have known the seriousness of the matter as he was prosecuting a Writ Petition in this Court against his demotion. However, having regard to the fact that the Respondent No. 1 is a Head Master, that too, of an Ashram School, where a large number of children from the lower strata of Society are taking education, we do not deem it appropriate to proceed against him in our contempt jurisdiction. This is with a hope that the Respondent No. 1 would be more careful in future in respect of Court proceedings. We, therefore, do not propose to punish the Respondent No. 1 for contempt. We are accordingly discharging the contempt notice issued to the Respondent No. 1 by issuing him a warning and with the hope that he would be more careful in future in respect of the Court proceedings.

13 The notice is accordingly discharged and the above Writ
Petition to accordingly stand disposed of.

REVATI MOHITE DERE, J.

R. M. SAVANT, J.