

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.04.2018

CORAM :

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

Contempt Appeal No. 3 of 2018

R. Srinivasan .. Appellant/Petitioner

Versus

1. P. Rajan
The Superintendent of Police
Nethimedu
Salem - 636 002
2. S. Sivalingam
The Inspector of Police
Omalur, Salem ... Respondents/Respondents

Appeal filed under Section 19 of The Contempt of Courts Act against the order dated 18.01.2018 made in Contempt Petition No. 1698 of 2017 on the file of this Court.

Contempt Petition filed under Section 11 of the Contempt of the contempt of courts Act, to punish the respondents 1 & 2 for will ful disobedience of the order dated 07.10.2016 made in Crl.O.P.22915 of 2016 filed under Secion 482 Cr.P.C. To direct the 2nd respondent to execute the warrant of arrest dated 19.05.2016 pending against the 3rd respondent in C.C.No.129/2012 on the file of Judicial Magistrate VI, Salem.

For Appellant : Mr. A. Karthikeyan

JUDGMENT

(Judgment of the Court was delivered by R. Subbiah, J)

The appellant has come forward with this Contempt Appeal questioning the correctness and validity of the order dated 18.01.2018 passed by this Court in Contempt Petition No. 1698 of 2017.

2. The appellant herein has filed the aforesaid Contempt Petition No. 1698 of 2017 before this Court, complaining non-compliance of the order dated 07.10.2016 passed in Criminal Original Petition No. 22915 of 2016. By the order dated 07.10.2016, this Court directed the respondents to execute the Non-bailable Warrant which is pending as against the accused in C.C. No. 129 of 2012 on the file of Judicial Magistrate No. VI, Salem, without any further delay. However, it was complained that the said direction issued by this Court to execute the non-bailable Warrant was not complied with and therefore, the contempt petition was filed.

3. When the Contempt Petition No. 1698 of 2017 was listed for hearing before the learned single Judge on 18.01.2018, the learned single Judge has dismissed the contempt petition by observing as follows:-

"5. It is further averred that when he gave a representation to execute the NBW as per the above mentioned order, the first respondent gave a reply stating that the Inspector went to the residence of J. Selvamurugan and he was not found there and upon enquiry with the Village Administrative Officer, it appears that Selvamurugan is not residing in the said place.

6. The learned counsel appearing for the petitioner also submits that the whereabouts of the accused Selvamurugan is not known to the petitioner and it is the duty of the police to trace the accused and execute the NBW.

7. In this case, admittedly, whereabouts of the accused is not known even to the petitioner. The respondents/police are also not in a position to execute the NBW as they came to know upon enquiry with the Village Administrative Officer that J. Selvamurugan, accused in Section 138 of Negotiable Instrument Act case, is not residing in the said place. Under the said circumstance, the petitioner has to proceed further as contemplated under Criminal Procedure Code.

8. From the above facts, it cannot be discerned that the respondents 1 and 2 disobeyed the orders of this Court and therefore this Contempt Petition is liable to be dismissed.

In the result, this Contempt Petition is dismissed."

5. It is as against this order dated 18.01.2018 dismissing the Contempt Petition No. 1698 of 2017 filed by the appellant herein, the present Contempt Appeal is filed.

6. We have heard the counsel for the appellant and perused the records. At the outset, the learned single Judge, by the order dated 18.01.2018, dismissed the Contempt Petition No. 1698 of 2017 filed by the appellant herein. It is well settled that as against an order dismissing a contempt petition, a contempt appeal cannot be entertained. If the contempt petition is entertained and any direction is issued thereon, only then, a contempt appeal can be entertained by this appellate Court. Therefore, we are of the opinion that the contempt Appeal is not maintainable and it is liable only to be dismissed. Accordingly, the Contempt Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

rsh

TO

1. THE JUDICIAL MAGISTRATE VI, SALEM.

2. DO THRO THE CHIEF JUDICIAL MAGISTRATE, SALEM.

COPY TO

THE SECTION OFFICER,

CONTEMPT SECTION, HIGH COURT, MADRAS.

Cont. Appeal No. 3 of 2018

SSI(CO)

TR(23/05/2018)

WEB COPY