

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI**

Writ Appeal No. 341 of 2018

Judgment: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

The order under appeal came to be passed at the stage of admission of the Writ Petition, without the appellants herein being given an opportunity of filing their counter-affidavit. While we see no reason to interfere with the order of the learned Single Judge in granting interim direction as prayed for, in as much as the said interim order can always be sought to be vacated by the appellants herein filing their counter-affidavit along with a petition to vacate the interim order, the fact remaining that the learned Single Judge has recorded a finding of *malice*, and has called upon the Tahsildar to show cause why proceedings under the Contempt of Courts Act, 1971 should not be initiated against him for willful disobedience of the order in WP No. 28589 of 2017 dated 8.9.2017.

The question whether the order in W.P. No. 28589 of 2017 dated 8.9.2017 was violated, and whether the action of the appellants in doing so was illegal, could only have been examined after the appellants were given an opportunity of being heard, and after they had filed their counter-affidavit in the Writ Petition.

Proceedings, under the Contempt of Courts Act, 1971 (hereinafter referred to as "the Act"), are not to be resorted to as a matter of course. Further, the burden of establishing malafides is very heavy on the person who alleges it. The allegations of malafides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility. **(E.P. Royappa v. State of**

Tamil Nadu¹). No finding of *malice* could, therefore, have been recorded without any such allegation being made in the Writ Petition; and even without the person, against whom malice is alleged, being arrayed as a respondent *eo nomine* (**State of Bihar vs. P.P. Sharma**²).

The order under appeal, to the limited extent the 3rd respondent was directed to show cause why *suo motu* proceedings should not be initiated against him under the Act, is set aside. The Writ Appeal is disposed of accordingly. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(**RAMESH RANGANATHAN, ACJ**)

(**KONGARA VIJAYA LAKSHMI, J**)

5th March, 2018

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¹ AIR 1974 SC 555

² AIR 1991 SC 1260

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