jsn

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CONTEMPT PETITION NO.3 OF 2015

Dr. Jawaharlal Sitaram Agarwal … Petitioner
Versus
Advocate Mahesh D. Menghrajani & Ors. …Respondents

Ms. Mili V. Thakkar, with Mr. Vijay P. Salunkhe, for the Petitioner.
Mr. V.K. Gupte, for Respondent No.1.
Mrs. P.P. Shinde, APP for State.
Mr. Jaydeep K. Raut, i/b Samir Sarambalkar for Respondent Nos.2 to 5.
Mr. Chirag Shah i/b. Jitendra Shah for Respondent No.6.

CORAM: S.C. DHARMADHIKARI &
R. I. CHAGLA, JJ.
DATED: 5TH NOVEMBER 2019

PC:-

1. The Petition before this Court is seeking action under the Contempt of Courts Act, 1971.

2. The prayer is that the Respondent Nos.1 to 7 to this Petition be held guilty of committing criminal contempt and they be punished in accordance with law.

3. The allegations in the Petition are that there was a senior citizen (Jawaharlal Sitaram Agarwal) since deceased, through whom this Contempt Petition has been filed. The Petitioner Nos.1(a) to 1(e) are the heirs and legal representatives of the deceased Petitioner. The deceased is the original Petitioner.

4. The deceased was a Plaintiff in Suit No.2945 of 1986 filed on the original side of this Court. After the requisite amendments were made to the applicable statute, the suit is transferred to the Bombay City Civil Court and now numbered as 108409 of 1986. The Suit was filed against three Defendants. The Respondent Nos. 1 to 6 to this Petition are enrolled as Advocates by the Bar Council of Maharashtra and Goa. They appeared for the original Defendants in that Suit. The Respondent No.7 is a notary, who had assisted the party for filing Writ Petition No.9638 of 2013. Respondent No.7 is a notary public of Union of India and the allegations is that even he is guilty of criminal contempt.

5. The allegations are that there was an Advocate engaged by the Defendants in that Suit in the year 1987. The Vakalatnama of the Defendants was signed by one Jose Philips as Constituted Attorney. However he is termed in this Petition as purported Constituted Attorney. It was informed that the papers and proceedings in the Suit were misplaced. There was an order of reconstruction. Later on, there was an amendment to the Bombay City Civil Courts Act and on account of the pecuniary limits, the Suit was transferred, on 25th September, 2012, to the City Civil Court. It is stated that in the proceedings before the City Civil Court, Respondent No. 1 to this Petition sought to appear on

behalf of the Defendants. An Advocate was engaged to seek adjournment. The matter was adjourned. Later on, it is stated that another Advocate appeared. He tendered draft issues. Since there was no Vakalatnama, the Court apparently directed him to file Vakalatnama. Thereafter, that Advocate Mr. Rupesh Sohoni sought to file Vakalatnama along with a Power of Attorney dated 25th March, 2008 alleged to be executed in favour of Shri Pulinthanth Jacob and Shri Koshy Stephen Vaithara. This Vakalatnama was tendered by the Advocate Shri Sohoni on 24th June, 2013. These signatures of the Advocates on the said Power of Attorney were totally different from their admitted signatures on a document styled as an agreement dated 5th May, 1983. Therefore, the Vakalatnama was objected by the Advocate for the Petitioner on various grounds. It was not taken on record. Apparently, there was another Advocate firm engaged M/s. Siganporia & Dalvi and no objection was not taken by the Advocate replacing this firm. Therefore, the objection was taken and the matter was adjourned. Then, another Advocate appeared instructed by M/s. Siganporia & Dalvi. The Petitioner objected to his appearing on the ground that M/s. Siganporia and Dalvi had already given their no objection in favour of one Rupesh Sohoni, Advocate and hence the counsel engaged by M/s. Siganporia and

Dalvi had no right to address the Court. Once M/s. Siganporia and Dalvi have given their no objection, then, this instructing Advocate could not have been allowed to address the Court. Hence the matter was adjourned. Thereafter, M/s. Shroff and Company tendered a Vakalatnama dated 15th September, 2013. That Vakalatnama was purported to be signed by Jose Philips on behalf of the Defendant Nos. 1 and 3 in the Suit. That was also objected. There was a Power of Attorney dated 19th November, 1987 relied upon, but that was not taken on record. There was an order passed by the Trial Court which was challenged in a Writ Petition in this Court. In that Writ Petition as well, the acts attributed to the Advocates as set out in paragraph 3(a), (l), (m) and (n), have been allegedly committed.

6. On the strength of the allegations in this paragraph, it is averred that Jose Philips had already expired. He could not have, therefore, been representing the Defendants nor can file any Writ Petitions. If the Advocates were aware of his death, then that fact could not have been kept back from the Court. The Advocates have thus kept back from the Court material and relevant facts. That has resulted in serious miscarriage of justice. In paragraph 4 of this Petition, it is alleged that, all the Advocates representing these Defendants had given impression to the Trial Court that Shri

Jose Philip was alive. That he was carrying all proceedings. However, these Advocates were aware of his death and they were bound and liable to disclose this relevant and material fact. These Advocates have interfered in the administration of justice. It is these Advocates who have compelled the Petitioner in this Contempt Petition to defend unnecessary, frivolous and vexatious proceedings. It is in these circumstances that the deceased Petitioner has alleged Criminal Contempt.

7. Paragraph Nos. 6 and 7 of this Contempt Petition are relevant for our purpose and particularly to consider the preliminary objection thereto. Paragraph Nos. 6 and 7 read thus:-

> *6. "The Petitioner has thereafter vide letter dated 27th June, 2015 addressed to the Advocate General of Maharashtra sought permission / consent to prosecute the Respondents. The said consent / permission is not yet received by the Petitioner and the said Application is still pending with the learned Advocate General. Hereto annexed and marked Exhibit "S" is the copy of the Application without annexures filed by the Petitioner with the learned Advocate General's Office".*
>
> *7. "The Petitioner states that the contemptuous act started with the proceedings and vakalatnamas being filed in the Hon'ble City Civil Court and continued in the Hon'ble High Court by filing Writ Petition in the Hon'ble High Court and continued till it was withdrawn on 13th February, 2014. The Petitioner received the Death Certificate on 17th July, 2014. The Petitioner has filed this proceedings within a period of one year from the date of receipt of Death Certificate when the Petitioner learnt that the said Jose Philips had expired on 21st March, 2004. The Petitioner states that the*

cause of action to file contempt Petition arose on 17th July, 2014. The Petition is therefore filed in time. The Petitioner however, states that if there is any delay in filing the aforesaid contempt petition, this Hon'ble Court in exercise of is constitutional powers under Article 215 of the Constitution of India and considering the gravity of the contempt committed by the Respondent Nos. 1 to 7 this Hon'ble Court be pleased to issue a suo moto contempt proceedings against the Respondents who have committed this grave misconduct."

8. Our attention has been invited by Ms. Mili Thakkar to two material orders of this Court on the Contempt Petition. She would rely upon an order passed on 5th April, 2017. That reads as under:-

1. "For the time being, we issue notice to first and second respondents calling upon them to explain as to why action under Section 15 of the Contempt of Courts Act, 1971 should not be initiated against them. This notice shall not be treated as the notice under Rule 9(1) of the Contempt of Courts (Bombay High Court) Rules, 1994.
2. The Advocate on record for respondent nos.1 and 2 waive service. Notice is made returnable on 4th May, 2017. Reply, if any to be filed before the next date."

9. Thereafter, she fairly invites our attention to another order of this Court passed on 3rd January, 2019. That order reads as under:-

"The matter is placed today on admission board. Learned counsel appearing for respondent Nos.2 to 5 raised the preliminary objection. According to him after

rejection of approval by Advocate General the present matter is not tenable."
2. Learned counsel for the Petitioner submits that though the matter is on admission board, it is for final hearing. She submits that while passing the order on 5th April, 2017, preliminary objection has been looked into. On that day refusal of consent by Advocate General was very much on record. She relies upon the language employed in the order dated 5th April, 2017 of this Court.

3. We have perused that order. Order no where specifically states that it is notice before admission but then at the same time it also qualifies itself by using the words "For the time being".

4. We therefore find it appropriate that the parties seek necessary clarification so that the matter can be thereafter looked into by us accordingly.

10. After that order the matter went back to the same Bench and, which issued a clarification. The clarification dated 15th February, 2019, of the Bench presided over by (A.S. Oka,J.), reads as under:-

1. Pursuant to the order passed by the Co-ordinate Bench dated 3rd January, 2019, this Contempt Petition is placed before this Bench. According to us, paragraph 1 of the order dated 5th April, 2017 is very clear. Clause means that this Bench had not taken cognizance of the contempt and only a show cause notice was issued. No further clarification is necessary.

11. Ms. Mili Thakkar would submit that the lack or absence of consent by the learned Advocate General would not be relevant

and material for the simple reason that if the acts are of serious nature and go to the root of the issue raised before this Court, then, we should not be inhibited by any technical objection. We must entertain this Petition and decided on its merits.

12. The argument is that when serious offences concerning administration of justice and affecting the functioning of the Court are committed by none other than the Advocates, then, this Court should not uphold the technical objection.

13. Ms. Mili Thakkar invites our attention to the provisions of the Contempt of Courts Act, 1971, particularly the definition of the term “Criminal Contempt” and how the cognizance of criminal contempt is taken as set out in Section 15. She would submit that we must rely on the mandate of Article 215 of the Constitution of India. The language of Section 15 would not therefore control or much less interfered with our power which is, according to her, overriding in nature. The power to take cognizance of criminal contempt, therefore, is derived from Article 215 of the Constitution of India and that overrides the Contempt of Courts Act.

14. She relies upon a judgment of the Hon’ble Supreme Court rendered in the case of *Muthu Karuppan v. Parithi Hamvazhuthi & Anr.*[1]. That according to Ms. Mili Thakkar relies upon the judgment

---

1 AIR 2011 Supreme Court 1645.

rendered in the case of ***Pritam Pal v. High Court of Madhya Pradesh, Jabalpur[2].*** Our attention has also been invited to another judgment of the Hon'ble Supreme Court which has been referred to in the case of ***Muthu (Supra).***

15. To appreciate her contentions, we must refer to the Contempt of Courts Act, 1971. It is an act to define and limit the powers of certain Courts in punishing for Contempt of Courts and to regulate their procedure in relation thereto. Since it is conceded that this is a Petition alleging Criminal Contempt, we deem it appropriate to reproduce the definition of the term "Criminal Contempt" as appearing in Section 2(c) of the Contempt of Courts Act, 1971.

> ***2(c). "criminal contempt" means the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which---***
>
> ***(i) scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court; or***
>
> ***(ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or***
>
> ***(iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner;***

16. A perusal of this definition leaves us in no manner of doubt that criminal contempt means the publication of any matter or the

---

2 AIR 1992 Supreme Court 904.

doing of any other act whatsoever which interferes or tends to interfere with or tends to obstruct the administration of justice in any manner. This *inter alia* is the substances of the allegations in the present Contempt Petition. We are not concerned with the merits of these allegations and our present order would not be an expression of opinion on the merits at all.

17. We are concerned with the compliance of Section 15 of the Contempt of Courts Act, 1971. Section 15 reads as under:-

> *15. Cognizance of criminal contempt in other cases. – (1) In the case of a criminal contempt, other than a contempt referred to in section 14, the Supreme Court or the High Court may take action on its own motion or on a motion made by—*
>
> *(a) the Advocate-General, or*
> *(b) any other person, with the consent in writing of the Advocate-General, [or]*
> *(c) in relation to the High Court for the Union territory of Delhi, such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf, or any other person, with the consent in writing of such Law Officer.*
> *(2) In the case of any criminal contempt of a subordinate court, the High Court may take action on a reference made to it by the subordinate court or on a motion made by the Advocate-General or, in relation to a Union territory, by such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf.*
> *(3) Every motion or reference made under this section shall specify the contempt of which the person charged is alleged to be guilty.*
> *Explanation.— In this section, the expression "Advocate-General" means,—*
> *(a) in relation to the Supreme Court, the Attorney-General or the Solicitor-General;*

> *(b) in relation to the High Court, the Advocate-General of the State or any of the States for which the High Court has been established;*
> *(c) in relation to the court of a Judicial Commissioner, such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf.*

18. A perusal of this provision indicates to us that in the case of a criminal contempt, other than the contempt referred to in Section 14, the Supreme Court or the High Court may take action on its own motion or on motion made by the Advocate General or any other person with the consent in writing of the Advocate General.

19. In the case of contempt of a subordinate Court, the High Court may take action on a reference made to it by the subordinate Court or on a motion made by the Advocate General.

20. We are not concerned in this case with sub section (2) because there is no reference made to this Court by the subordinate Court. The present order will not prevent the subordinate Court from making appropriate reference to this Court.

21. We are concerned here with the Petition by a deceased who has admittedly not obtained the consent at the Advocate General.

22. We are orally informed that an attempt was made to obtain consent but during that attempt the period of limitation, prescribed

in Section 20 of this Act, came to an end. Thereupon, it was not possible to move the Court. Hence the argument is that without any consent of the Advocate General the cognizance of the criminal contempt be taken.

23. Before we deal with the submission, we must dispose of an ancillary or incidental argument canvassed that this Court on 5th April, 2017, had indeed taken cognizance of this contempt as alleged in the present Petition. Far from it, the Division Bench has clarified in the clarificatory order that it has not taken cognizance of the contempt and it has only issued a show cause notice. Once this aspect becomes clear on a perusal of the order dated 15th February, 2019, then, this ancillary contention need not detain us. It deserves to be rejected as it is contrary to the plain and clear order of this Court.

24. Now the argument is that the law has undergone a change. The Hon'ble Supreme Court in the judgment of ***Muthu (Supra)*** has enunciated a salutary principle according to Ms. Thakkar, that cognizance of criminal contempt can be taken without compliance with the provisions of Section 15 of the Contempt of Courts Act. The argument is that the Hon'ble Supreme Court has, in paragraph 14 of this judgment relied upon its earlier decision in

the case of ***Amicus Curiae v. Prashant Bhushan's[3].***

25. Now, in the case of ***Muthu (Supra)*** the Supreme Court was concerned with an Appeal filed against the final judgment and order dated 29th October, 2004 of the Division Bench of the High Court of Madras in Contempt Petition No.397 of 2001. The High Court held the Respondents guilty of the offence punishable under Section 2(c) of the Contempt of Courts Act and sentenced them to undergo simple imprisonment of seven days. The first Respondent to that criminal Appeal filed in the Supreme Court was elected as a member of the legislative assembly in the elections held on 10th May, 2001 to the Tamil Nadu State legislative assembly. Large scale violence and several attempts of booth capturing were reported on the day of election. Crime No.958 of 2001 was registered against his opposite party candidate and others for various offences. There was another crime no.960 of 2001 registered against Respondent No.1. The accused, namely, in Crime No.958 of 2001 was arrested on 10th May, 2001 and remanded to judicial custody. The first Respondent in the matter before the Supreme Court filed an application for anticipatory bail before the Sessions Court in Chennai and the same was dismissed on 16th May, 2001. On 17th May, 2001, the

---

3 2010 (7) SCC 592.

first Respondent was arrested and remanded to judicial custody. On that very day, the Appellant before the Supreme Court was appointed as the Commissioner of Police, Greater Chennai City and assumed charge. On 21st May, 2001, Respondent No.1 moved application for bail before the competent Criminal Court which was dismissed on the same day. Another application was moved before the Principal Sessions Court mainly on the ground that the elected representative had to attend the assembly and take oath as MLA resulted in conditional bail granted by the Sessions Judge. An Application was made before the High Court for cancellation of this bail. A learned Single Judge of the High Court stayed the order of grant of bail and issued notice to the Applicant in the bail application. That was issued on the ground that the victim who was assaulted is in a serious condition and the accused is in police custody. A counter Affidavit was filed by the elected candidate Respondent No.1 before the Supreme Court submitting that the statement of the Applicant in the cancellation application is false. A reply was filed admitting that it was a mistake by oversight and the same is neither willful or deliberate act.

26. The Petition for cancellation of bail was dismissed by the High Court. Thereafter, the Contempt Application was filed by the

elected candidate Respondent No.1 before the High Court alleging that the Application to cancel the bail was based on a false statement and that prevented the elected representative from attending the assembly session. It is on that contempt application that the Division Bench of High Court of Madras passed the judgment and order of conviction and sentence.

27. The Supreme Court was approached by the guilty challenging this judgment and order. The arguments are then referred and what is reproduced by the Hon'ble Supreme Court is the order of the Division Bench. In paragraph 7, the Hon'ble Supreme Court held that giving false evidence by filing false affidavit is an evil which must be effectively curbed with a strong hand. A prosecution should be ordered when it is considered expedient in the interest of justice to punish the delinquent, but there must be a prima facie case of "deliberate falsehood" on a matter of substance and the court should be satisfied that there is a reasonable foundation for the charge. Then, the nature of the contempt proceedings is pointed out in paragraphs 8 and 9 and thereafter the Court considered the argument of the senior counsel appearing for the Appellant that the Contempt application could not have been entertained by the High Court of Madras as there was no consent of the Advocate General.

28. That argument has been dealt with and in paragraph 14, the Hon'ble Supreme Court observed thus:-

> *14. It is clear from the recent decision of this Court in Prashant Bhushan's case (supra) that if the issue involved in the proceedings had greater impact on the administration of justice and on the justice delivery system, the court is competent to go into the contempt proceedings even without the consent of the Advocate General as the case may be.*

29. Ms. Mili Thakkar would rely on paragraph 14 alone. However, we cannot read on paragraph 14 in isolation. The Hon'ble Supreme Court says in clearest terms in paragraphs 15 and 16 that the High Court of Madras proceeded on the basis of the admitted facts. Thus there was a final order passed by the High Court and that did not suffer from the legal infirmity attempted to be pointed out before the Hon'ble Supreme Court. In other words want of consent of the Advocate General was not the only issue but the whole order of the Division Bench of the High Court of Madras was challenged on merits. Throughout the parties proceeded on merits.

30. We do not think that by reading in isolation, the observations of the High Court in paragraph 14, Section 15 of the Act can be brushed aside. The law laid down and exhaustively by the Hon'ble Supreme Court is that the requirement of obtaining

prior consent of the Advocate General in writing for initiating proceedings for criminal contempt is mandatory and failure to obtain prior consent would render the motion non maintainable. In case a party obtains a consent subsequent to filing of the Petition, it would not cure the initial defect and thus the Petition would not become maintainable. The judgment in the case of ***Bal Thackrey Vs. Harish Pimpalkhute & Ors.[4],*** while reiterating the above also held that in the absence of the consent of the Advocate General taking suo motu action for contempt, without a prayer, was not permissible. ***Prashant Bhushan (Supra)*** was an exception. In that judgment, the Hon'ble Supreme Court held that in a rare case, the cognizance is deemed to have been taken in terms of the Supreme Court Rules to Regulate Proceedings for Contempt of the Supreme Court, without the consent of the Attorney General or the Solicitor General, the proceedings must be held to be maintainable. That is in view of the fact that the issues involved in the proceedings are far reaching with greater ramifications and impact on the administration of justice and on the justice delivery system and the credibility of the Supreme Court in the eyes of the general public.

4AIR 2005 SCC 396.

31. We do not think that either ***Prashant Bhushan (Supra)*** or the judgment in ***Muthu (Supra)*** can assist the Petitioner before us.

32. These are judgments rendered by the Hon'ble Supreme Court bearing in mind the peculiar circumstances, and the facts of exceptional nature. There was a MLA, who was newly elected by the voters in a constituency, but because of a false statement made in an application to cancel his bail, he was prevented from attending the legislative assembly session. The seriousness of the case, therefore, merited the Supreme Court's intervention and without the consent of the Advocate General being obtained. The cognizance was already taken by the High Court of Madras without such insistence and therefore, before the Supreme Court that argument was disposed of by the observations made and referred by us in forgoing paragraph. Thus, the warning is that proceedings in contempt themselves being quasi criminal in nature, burden and standard of proof is the same as is the requirement in criminal cases. The whole process has to be gone into before a conviction and sentence can be ordered. Hence, the requirement of consent is provided in law.

33. In the facts and circumstance, peculiar to our case, we do not think that the Petitioner can move this Court and pray for cognizance being taken as the Petitioner was aware of the

mandate of the law. The Petitioner has, in paragraph 7, pleaded that the consent of the Advocate General had not been obtained. The Petitioner has therefore, requested this Court to take cognizance of the proceedings without such consent being obtained and *suo motu*. We do not think that case for taking such cognizance is made out. More so, when the Petitioner addressed a letter dated 27th June, 2015 to the Advocate General and sought permission / consent to prosecute the Respondent. Till the filing of the contempt petition the consent was not obtained. That application was pending. In these circumstances, we do not think that any assistance can be derived by Ms. Mili Thakkar from the judgment of the Supreme Court in the case of ***Prashant Bhushan (Supra)*** and ***Muthu (Supra).***

34. As a result of the above discussion, we uphold the preliminary objection to the maintainability of this Petition. We dismiss it, accordingly.

(R. I. CHAGLA, J.) **(S.C. DHARMADHIKARI, J.)**