

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REFERENCE NO.4 OF 2016

**JOINT CIVIL JUDGE, SENIOR DIVISION)
MALEGAON)...PETITIONER**

V/s.

SUCHETA ASHOK BACCHAV & OTHERS)...RESPONDENTS

Mrs.M.M.Deshmukh, APP for Reference Petitioner.

Mr.Pramod Joshi a/w. Ms.Vrishali Raje i/b. Mr.Vishal Tambat,
Advocate for Respondent No.1.

Mr.Amitkumar D. Sale, Advocate for Respondent Nos.2 and 3.

**CORAM : INDRAJIT MAHANTY &
A. M. BADAR, JJ.**

**DATE : RESERVED ON 23rd APRIL 2019
PRONOUNCED ON**

JUDGMENT : (PER : A .M. BADAR, J.)

1 This is a reference made under Section 15(2) of the
Contempt of Courts Act, 1971, by Shri. R.S.Karankal, Joint Civil
Judge, Senior Division (C.J.S.D.), Malegaon, on 30th April 2016,

thereby praying for taking cognizance of commission of criminal contempt of the court presided over by him by respondents Smt.Sucheta Bacchav, Shri.Bhavrao Shankar Shewale, Advocate and Shri Chandrashekhar Jibhau Shewale, Advocate. On receipt of the reference, this court vide order dated 17th March 2017 took cognizance and noticed the respondents.

2 Facts, in brief, leading to the reference are thus :

- (a) Suit filed by respondent no.1 Dr.Sucheta Bacchav which was numbered Special Civil Suit No.64 of 2012 was pending on the file of Shri. R.S.Karankal, Joint C.J.S.D., Malegaon. The said suit was for specific performance of contract and it was fixed for advancing arguments by the parties. After full-fledge arguments were advanced by the advocates appearing for both the parties, respondent no.1 Dr.Sucheta Bacchav had filed a pursis Exhibit 96 in the said suit through her relative Kishor Hiray alleging therein that the court is prejudiced against her and she will not get justice from the court. Respondent no.1 Dr.Sucheta Bacchav further

informed vide said pursis that she had preferred an application for transfer before the District Judge and therefore, proceedings of the suit be stayed till disposal of the transfer application. This pursis Exhibit 96 was presented on 5th February 2016. Respondent no.1 Dr.Sucheta Bacchav had, infact, preferred an application under Section 24 of the Code of Civil Procedure before the Principal District Judge and the said application was registered as Miscellaneous Civil Application No.18 of 2016. It was averred by respondent no.1 Dr.Sucheta Bacchav in the said application that the Presiding Officer of the court Shri. R.S.Karankal, Joint C.J.S.D., Malegaon, was earlier posted at Bhusawal and his conduct at that place was suspicious. Many complaints were filed against him at that time. A clerk named Suryawanshi working at the court at Bhusawal was acting as an agent and the Presiding Officer Shri. R.S.Karankal, Joint C.J.S.D., used to accept bribe through the said clerk. Respondent no.1 Dr.Sucheta Bacchav further averred in the said application that

departmental enquiry of the said Presiding Officer has been started. She further alleged that she came to know that the defendants in the suit had bribed the Presiding Officer through a clerk named Suryawanshi, and therefore, she will not get justice. Said application under Section 24 of the Code of Civil Procedure contains an averment that several advocates practicing in the court at Malegaon had lodged complaints against Shri. R.S.Karankal, Joint C.J.S.D., Malegaon, and as he has accepted bribe, she will not get justice. With these averments, respondent no.1 Dr.Sucheta Bacchav prayed for transfer of Special Civil Suit bearing No.64 of 2012 to the file of some other court. In support of her application under Section 24 of the Code of Civil Procedure, respondent no.1 Dr.Sucheta Bacchav had preferred an affidavit dated 29th January 2016 in the court of the learned Principal District Judge, Nashik, reiterating her averments regarding acceptance of bribe by the Presiding Officer through a clerk named Suryawanshi, in her matter, from the other side. She reiterated her contention

regarding suspicious conduct of the Presiding Officer when he was posted at Bhusawal and further stated that there were complaints against him at Bhusawal. Not satisfied with this contention in the affidavit dated 29th January 2016, the respondent no.1 had again filed another affidavit dated 17th February 2016 in the Miscellaneous Civil Application No.18 of 2016 before the learned Principal District Judge by contending that prior to filing of the application for transfer, two persons came to her house and demanded bribe of Rs.3 lakh from her by stating their names as Vijay Suryawanshi and Bacchav. She refused to oblige and then she came to know that those two persons approached the opposite party and had a meaningful discussion.

- (b) The learned Principal District Judge, Nashik, was pleased to decide the Miscellaneous Civil Application bearing No.18 of 2016 filed by the respondent no.1 under Section 24 of the Code of Civil Procedure vide order dated 8th March 2016.

Relevant observations of the learned Principal District Judge while rejecting the said application moved by the respondent no.1 need to be quoted and those read thus :

“The applicant has made serious allegation that the Ld.Judge indulged in economic dealing through Jr.Clerk Survanshi in this matter. Her first affidavit dated 29.01.2016 shows her knowledge in this regard was hearsay. She had received reliable information. It assumes that she had no personal knowledge. The applicant thereafter filed another affidavit Exh.19 dtd. 17.02.2016. In this affidavit she has stated that before filing of the application, two persons Vijay Suryavanshi and Bacchav came to her house and informed her that they had been there on behalf of the Ld. Judge. They demanded Rs.3,00,000/- from her for a favourable decision in her suit SCS No. 64/2012. She refused to comply their demand and thereafter those persons went to the other side and there was positive discussion amongst them. I think, this was very serious matter.

The date and time and the witnesses present should have been indicated and on the same day the application should have been moved before the Ld. Trial Judge for staying the proceedings and immediately the matter should have been reported to me and to the Hon'ble High Court. But the applicant remained silent regarding this serious aspects in the trial and her pleadings as well as in her affidavits. She does not say that she approached the Trial court for stay of the matter on this ground. She does not say that she made complaint to me or to the Hon'ble High Court. Her contents of second affidavit are contrary to the contents in the first affidavit. There is no corroboration whatsoever. The matter cannot be transferred on the round of such serious allegations when those allegations are not substantiated. I find that as per affidavit Exh.7 the applicant had received reliable information, she should have filed affidavit of person who has knowledge. No such affidavit is filed. I find no

substance in the allegations of the applicant. In the result, the application deserves to be dismissed. I impose exemplary costs Rs.1,000/- on the applicant. Hence, the following order :

ORDER

- 1) The application stands rejected.
- 2) The applicant shall pay exemplary costs of Rs.1,000/- (Rs. One Thousand Only) to the DLSA.”

- (c) It is worthwhile to note that, though the transfer application under Section 24 of the Code of Civil Procedure for transfer of the suit filed by respondent no.1 Dr.Sucheta Bacchav was rejected by the learned Principal District Judge on 8th March 2016, the suit filed by her was transferred on administrative ground to the file of the C.J.S.D. Malegaon presided over by Shri. Nere, on the very same day. This was done in the wake of issuance of notices of contempt against the respondents herein by Shri. R.S.Karankal, Joint C.J.S.D.,

Malegaon, upon noticing allegations made against the court in an application under Section 24 of the Code of Civil Procedure.

- (d) Shri. R.S.Karankal, Joint C.J.S.D., Malegaon, noticing the fact of allegations made against the court, issued notices dated 8th February 2016 to the respondents/contemnors and after hearing was pleased to make the subject reference.
- (e) In pursuant to notices for reference of the matter to this court, issued to the respondents/contemnors by Shri. R.S.Karankal, Joint C.J.S.D., Malegaon, the respondents/contemnors submitted their replies and after considering the matter, Shri. R.S.Karankal, Joint C.J.S.D., Malegaon, came to the prima facie conclusion that the respondents/contemnors need to be dealt with by this court under Contempt of Courts Act, 1971. Hence, this reference.

3 After noticing the respondents/contemnors on receipt of the reference, by taking cognizance of the criminal contempt committed by them, the respondents/contemnors have filed their affidavits in reply.

4 We have heard Mr.Pramod Joshi, the learned counsel appearing for contemnor/respondent no.1 Dr.Sucheta Bacchav and Mr.Amitkumar Sale, the learned counsel appearing for the contemnors/respondent nos.2 and 3. We have also heard Mrs.M.M.Deshmukh, the learned APP.

5 It is a matter of record that respondent no.1/contemnor was plaintiff before Shri. R.S.Karankal, Joint C.J.S.D., Malegaon, in Special Civil Suit No.64 of 2012. Arguments in that suit were over and it was merely pending for submissions of case laws. However, abruptly, pursis Exhibit 96 came to be moved by respondent no.1/contemnor Dr.Sucheta Bacchav alleging that as the court is prejudiced against her, she will not get justice from the court. She had also preferred an application under Section 24

of the Code of Civil Procedure which came to be registered as Miscellaneous Civil Application No.18 of 2016. We have already reproduced averments made by respondent no.1/contemnor in the said application. We have also put on record contentions raised and averments made by respondent no.1/contemnor in her two affidavits filed before the learned Principal District Judge in support of her application under Section 24 of the Code of Civil Procedure for transfer of the suit. The learned Principal District Judge gave a categorical finding that all these allegations are unsubstantiated and the application for transfer of the suit came to be dismissed with exemplary costs of Rs.1,000/-.

6 We are of the considered view that taking lesson from what happened before the learned Principal District Judge, respondent no.1/contemnor Dr.Sucheta Bacchav ought to have mend her ways while dealing with the courts of law. However, she has done audacity of explaining her conduct in her reply affidavit by making following averments :

“I say and submit that, I had no intention to make

any “Publicity” of the conduct of the Presiding Officer. I had made an Application before the concerned higher authorities i.e. the District Court as to why I had an apprehension that I am not likely to get proper justice. I say that the averments made in the Miscellaneous Application bearing No.18/2016, filed on 29.01.2016 makes a reference as to why I did not have faith and apprehended unfair decision in the suit. I say that some persons approached me and received certain information and hence I gathered a genuine apprehension about the impartiality about and / or conduct of the Learned Presiding Officer, which I have indicated in my affidavit dated 17.02.2016, therefore, I had filed a Transfer Application in the District Court at Nashik for transfer of the proceedings of the Special Civil Suit No.64/2012 to some other court. I say that, I thought that, it is not fit for the learned Presiding Officer to proceed with my Civil Suit,

which was pending before the Learned Presiding Officer. I had an apprehension that justice will not be done, impartially and hence, I had filed Application for transfer and requested the Learned Presiding Officer not to proceed with the matter. I say that this was done only because of the information collected and / or for the bonafide belief that the proceedings filed by me should not be heard by the said Learned Judge. It is very difficult for me to collect the evidence about the impartiality and /or about the demand of the monetary consideration to prove the same. Therefore, I was required to make a Application for transfer of the proceedings from one court to another court.”

It is, thus, clear that, though the learned Principal District Judge came to the conclusion that her wild allegations are unsubstantiated, still respondent no.1/contemnor Dr.Sucheta Bacchav reiterated before this court on affidavit that some persons

approached her and she received some information and therefore, she had apprehension about impartiality of the court. Thus, the respondent no.1/contemnor tried to justify her conduct in her affidavit in reply before this court. So far as respondent no.1/contemnor is concerned, we have no doubt in concluding that by making wild allegations against the court, she had prejudiced and interfered with due course of judicial proceedings in Special Civil Suit No.64 of 2012. By her conduct in making wild allegations against the court for seeking her Special Civil Suit No.64 of 2012 transferred, the respondent no.1/contemnor had interfered and obstructed the administration of justice. She has dared to substantiate her wild allegations for which she is not having any iota of evidence.

7 The learned counsel appearing for the respondent no.1/contemnor tried to justify her conduct by stating that she is not guilty of contempt in view of provisions of Section 6 of the Contempt of Courts Act, 1971. However, the said provision has no application to the facts of the present case, as the respondent

no.1/contemnor had not made any complaint against the Presiding Officer of the court but she had initiated judicial proceeding by filing an application under Section 24 of the Code of Civil Procedure making allegations that the court is bribed by other side after she has refused to pay bribe of Rs.3 lakh to two persons, who had approached her. The respondent no.1/contemnor made further allegations that even at last posting at Bhusawal, there were several complaints against the Presiding Officer and his departmental enquiry is initiated. As observed by the learned Principal District Judge, all these allegations, which are made on affidavit, were ultimately proved to be unsubstantiated. It is, thus, clear that, the respondent no.1/contemnor has committed criminal contempt of the court by interfering with due course of administration of justice when the suit filed by her was ripe for disposal. Ultimately, that suit came to be dismissed at the hands of another Presiding Officer after it was transferred by an Administrative Order.

8 So far as respondent nos.2 and 3 are concerned, they do not appear to have nor had drafted the application under Section 24 of the Code of Civil Procedure filed by the respondent no.1/contemnor before the District Court, Nashik. Pursis at Exhibit 96 was also not signed by them, when it was filed in the court of the learned Joint C.J.S.D., Malegaon. Affidavit of respondent no.3 makes it clear that it was after filing of that pursis, at the instance of the Presiding Officer, he had signed that pursis which was already on record of the court. As such, it cannot be said that respondent nos.2 and 3 have committed criminal contempt of the court.

9 Now comes the question of imposing punishment on respondent no.1/contemnor Dr.Sucheta Bacchav. We have heard the learned counsel appearing for the respondent no.1/contemnor. He submitted that accepting the apology of the contemnor, she be discharged. Affidavit filed by the respondent no.1/contemnor, in the opening paragraph, does contain pleadings regarding tendering of an unconditional apology by her

before this court and then that affidavit goes on justifying the act of the contemnor. The conduct of the respondent no.1/contemnor in justifying her action of scandalizing the court is serious and is a matter of concern. Disorderly conduct of this contemnor caused serious damage to the institution. However, we are also aware that in exercising powers in contempt jurisdiction, the court must not be hypersensitive or swung by emotions. It is expected to act judiciously. Hence, we are of the considered opinion that considering the fact that the respondent no.1/contemnor is a doctor by profession and she has tendered an unconditional apology before this court, she needs to be discharged by accepting her apology. Therefore, the order :

ORDER

- i) The contempt proceedings as against respondent nos.2 and 3 are dropped.
- ii) The respondent no.1/contemnor is discharged by accepting her apology.
- iii) Contempt petition is accordingly disposed off.

(A. M. BADAR, J.)

(INDRAJIT MAHANTY, J.)