

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2019

Coram

The Hon'ble Mr. Justice **M.M.SUNDRESH**
and
The Hon'ble Mr. Justice **M. NIRMAL KUMAR**

Contempt Petition No.2341 of 2018
and Sub Application (OS)No.120 of 2019

V. Vidya

.....Petitioner

-vs-

Mr.S.R. Jangid,
Director General of Police
Chennai Metro Transport Corporation,
Pallavan Salai,
Chennai - 600 020

..... Respondent

Contempt Petition filed under Section 2 c read with
Section 15 of Contempt of Courts Act, 1972 to initiate
criminal contempt action against the respondent.

For petitioner : Ms.V. Vidya
For Respondent : Mr.N.R. Elango
Senior Counsel for
Mr.K. Sampath Kumar

ORDER

[Order of the Court was made by M.M.SUNDRESH, J.]

The petitioner has filed this Contempt Petition inter-alia alleging that the respondent has committed a criminal contempt by fabricating the order, said to have been passed, by the learned Single Judge of this Court on 16.08.2017 and based on the same, further orders have been obtained from the Division Bench in Writ Appeal No.1007 of 2017 dated 28.08.2017.

2. The petitioner filed a Writ Petition in W.P.No.21268 of 2017, seeking Writ of Quo Warranto against the respondent. When the matter came up for hearing before the learned Single Judge on 10.08.2017, after perusing the records, the matter was directed to be listed on 28.08.2017.

3. The petitioner is stated to have made a representation on 16.08.2017 for early disposal of W.P.No.21268 of 2017, but according to the petitioner, it was filed for some other Writ Petition.

4. The learned counsel for the respondent was of the view that on the date of mentioning i.e., 16.08.2017, the petitioner wanted to take up the writ petition in WP

No.21268 of 2017, filed for Writ of Quo Warranto and on such mentioning, the learned Single Judge passed an Order appointing an Amicus Curiae. According to the learned counsel, he was informed the same by other counsels, who were present before the Court on that date.

5. Aggrieved by the same, Writ Appeal was filed in W.A.No.1007 of 2017. and the Division Bench of this Court on 21.08.2017, after hearing both sides, passed the following order:

" 9. In view of the above decision, we are of the considered view that all the writ petitions and writ appeal may be clubbed together and heard, in order to reach a finality in the matter. Accordingly, we direct the Registry to list the matter on 28.08.2017, along with W.P.Nos.10524 of 2017, 13252 of 2017, 19586 of 2017 and 21268 of 2017 and W.A.N.921 of 2017.

10. We make it clear that there shall not be any impediment for considering the name of the appellant for promotion, in accordance with the law and the same shall be subject to the result of the writ Appeal No.912 of

2017."

6. The petitioner filed a Copy Application, seeking for a copy of the Order passed in W.P.No.21268 of 2017 dated 16.08.2017 and the same was returned by the Registry on 13.10.2017 stating that "there is no order on 16.08.2017".

7. In the meanwhile, the respondent's counsel sent a communication dated 04.09.2017 to the Hon'ble The Chief Justice, seeking to preserve the CCTV Footage recorded in Court Hall No.11 on 16.08.2017 with respect to the mentioning made by the petitioner. In the said communication, it is stated as follows:

" While the facts were so, the 4th Writ Petition No.21268/2017 for issuance of Quo Warranto against my client, was listed for admission before the Honourable Single Judge on 10.08.2017. When the matter was taken up for admission, Senior Counsel, who was leading me in that case, argued that the above Writ Petition may not be admitted. The Honourable Single Judge adjourned the matter to 28.08.2017 with a specific direction to the Government to produce reports of all enquiries conducted after

2010 on the basis of the complaints preferred by Tmt.V. Vidya and also for our counter.

As instructed by my client I was preparing the counter to be filed by my client and was waiting for the writ petitions to be listed on 28.08.2017. On 16.08.2017, I came to know from my friend advocates that the Honourable Single Judge had appointed one Naveen Moorthy, Advocate as Amicus Curiae in the above Writ Petitions to assist the Court to decide "Whether Quo Warranto is maintainable against a Public Servant by an individual and what relief is a citizen entitled in case of an offence committed by Government Servant against a citizen". The Advocates present in the 11th Court Hall on 16.08.2017 also informed me that His Lordship, lastly also ordered pointing towards Naveen Murthy, "Since I am appointing you as Amicus Curie, you take all the bundles from her (the petitioner) assist her and prepare reports and put up on 28.08.2017" this further and clearly prove that His Lordship had issued the order regarding appointment of Amicus Curie on that day i.e., 16.08.2017. I was also given to understand that the Writ Petitioner Tmt.V. Vidya and

Mr.Naveen Murthy, Advocate were present in court when the above order was passed. I was shocked as none of the Writ Petitions referred above was listed before the Hon'ble Single Judge on 16.08.2017 and because the order was passed in our absence and without notice to us."

8. Further, the respondent's counsel filed an Application under Right to Information Act, 2005 on 06.09.2017 requesting to furnish the copy of the CCTV Footage of Court Hall No.11 dated 16.08.2017 from 10.30 a.m to 4.45 p.m.

9. Thereafter, aggrieved over the judgment of the Division Bench of this Court in W.A.No.1007 of 2017 dated 21.08.2017, the petitioner filed a Special Leave Petition in Dairy No.665 of 2018. In the above Special Leave Petition, at page No,19, the following statement has been made:

" 13.10.2017 - the petitioner applied to the High Court Registry for the supply of the copy of the order purportedly passed on 16.08.2017 in W.P.No.21268/2017.

The High Court Registry has issued

an endorsement that there is no order passed on 16.08.2017. A copy of the endorsement dated 13.10.2017 issued by the Registry of the High Court of Judicature at Madras is marked herewith and filed as ANNEXURE P-6 (Pg.Nos.65 to 66)".

10. The petitioner has further stated in the grounds raised by her in the Special Leave Petition, which we deem it appropriate to reproduce hereunder for better appreciation:-

" C. It is submitted that, in the Writ Appeal the first Respondent has averred that he came to know that an order was passed on 16.08.2017 by which an amicus curiae was appointed. The allegation made by the first Respondent against the Ld.Single Judge which is named in the Writ Appeal is that the hearing of the Writ Petition was adjourned on 10.08.2017 to 28.08.2017 and on 16.08.2017 the order was passed behind his back. When no such order was passed, the Writ Appeal is not maintainable at all and

Writ Appeal requires to be set aside.

D. It is submitted that there was no urgency in the matter to be taken up without the production of the impugned order purportedly passed on 16.08.2017 and that too upon oral mentioning of the matter.

E. The petitioner had applied for issuance of a copy of the order alleged to have been passed on 16.08.2017 and the registry of the High Court has given an endorsement that no such order exists. Hence, the Writ Appeal filed by the first Respondent was based on a misleading statement and the Division Bench also without ascertaining the truth has passed an order past haste."

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11. The substantial grievance of the petitioner appears to be a non existent order based on which the Division Bench had passed orders.

12. The Apex Court disposed of the unnumbered Special

is extracted hereunder:

" 1. Heard.

2. Delay condoned.

3. No ground for interference is made out in exercise of our jurisdiction under Article 136 of the Constitution of India. The special leave petition is accordingly dismissed. Pending application, if any, stands disposed of.

4. However, other grievance of the petitioner is that the writ appeals filed before the High Court, are required to be heard by the Single Judge. There is no objection with regard to clubbing of the writ petitions which have been filed by the parties and to be heard by Single Judge.

5. It would be appropriate in the fitness of the case that all the writ petitions are clubbed together and heard by the Single Judge.

6. It is stated by learned counsel that the petitioner/respondent has already been promoted. His statement is placed on record. The promotion of the petitioner is not to be disturbed. Accordingly, nothing survives in the writ appeals pending before the High Court and the same stand disposed of.

Accordingly, this petition is disposed of with aforesaid directions."

13. Now, the petitioner has filed the present Contempt Petition, *inter alia* alleging that the order has been fabricated by the respondent and therefore the same would amount to criminal contempt.

14. It is the further case of the petitioner that the fabrication of the order has been suppressed by the respondent before the Division Bench as well as before the Apex Court. The petitioner has relied on the order of the Division Bench of this Court in ***Dr.N. Manikandan vs franciscan Sisters of St. Joseph reported in (2018) 5 MLJ 641.***

15. The learned Senior Counsel appearing for the respondent submitted that the cause of action for filing the Writ Appeal was the observation made by the learned Single Judge. The counsel was not present but he was accordingly informed. This could be seen from the petition, sent by the counsel to the Office of the Hon'ble Chief Justice and also in the affidavit filed before this Court. The relevant paragraph is extracted hereunder:

" (v) I submit that while so, the Writ Appeal No.1007/2017 was filed against the order dated 16.08.2017 passed by the Honourable Single Judge and our petition to dispense with the production of copy of the order dated 16.08.2017 was also allowed. On 21.08.2017, The Honourable Division Bench was pleased to grant stay of the order dated 16.08.2017 and also order clubbing of all the Writ Petitions along with the above Writ Appeals. I state that the petitioner herein was also present in the court, when the Writ Appeal was heard and interim order was granted. At this stage the matter was relisted on 28.08.2017 before this Honourable Division Bench and in the course of the proceedings to our shock and surprise we were informed that the order of appointing Mr.Naveen Moorthy as Amicus Curiae was not there in the court records and therefore this Honourable Division Bench had ordered enquiry into the matter. "As a matter of fact, the petitioner herein, who appeared before the Hon'ble Division Bench, represented that the matter was taken by the Hon'ble Single Judge when she

mentioned it and that the Hon'ble Single Judge passed oral order appointing

Amicus Curiae".

16. The learned Senior Counsel submits that there is no wilful obstruction to interfere with the process of Justice by the respondent. The petitioner was heard by the Division Bench. Even before the Apex Court, she raised the non-availability of the order. The actual order was an oral order.

17. Admittedly, the petitioner was present on that day, whereas, neither the respondent nor his counsel was available. Therefore, the petition will have to be dismissed especially when the very same issue, though while challenging the order of the Division Bench was raised by the petitioner before the Apex Court.

18. We were informed on the earlier occasion that the Registrar (Judicial) was directed to look into the complaint made. Though it was recorded by us that it was to be done by the Registrar (Administration), it was actually the Registrar (Judicial) who was assigned the work. However, no such report is available in the file. Therefore, we are not inclined to pursue further.

19. We have perused the records of W.P.No.21268 of 2017. The records would suggest that the matter was posted for hearing on 10.08.2017 and thereafter adjourned to 28.08.2017. To be noted, the petitioner, in her reply to the counter affidavit filed by the respondent before us, has stated as follows:

" 3.5) It is to highlight that though the respondent and his counsel knew that the petitioner had appeared before the Hon'ble Single Judge on 16.08.17 only to mention, have admitted presently in the counter affidavit on the Criminal Contempt Petition No.2341/2018, that the petitioner had appeared before the Hon'ble Single Judge for mentioning. It is also necessary to highlight that the respondent has repeatedly been submitting that his counsel had been informing him on the developments and the progress and attempting to substantiate that it is only on the information given by his counsel, the Writ Appeal had been preferred in CMP No.14198/17 in W.A.No.1007/17 cannot be justified as the respondent is a state level officer of IPS Cadre and a custodian of law, has finally admitted that

the petitioner was present in this Hon'ble Court on 16.08.2017, only for mentioning which is a known to the respondent and his counsel even before the Writ Appeal in CMP Mno.14198/17 in W.A.No.1007/17 was filed, further confirms that the affidavit filed by the respondent is falsified in its entirety."

20. Thus, even according to the petitioner, a mention was made on 16.08.2017. Though it was a different case, we do not wish to go much into this. The fact remains that the petitioner was present before the learned Single Judge on 16.08.2017 and made a mention with respect to a case filed by her against the respondent.

21. We do not have any material to haul the respondent for contempt. Admittedly, the petitioner made a mention before the learned Single Judge on 16.08.2017 in the absence of the counsel for the respondent. It is the specific case of the respondent's counsel, he was accordingly informed about the order passed.

22. As recorded above, the records would suggest that the Writ Petition was not posted before the learned Single Judge on 16.08.2017. Therefore, there would not have been any written order on that date. In any case, the petitioner did not raise this plea before the Apex Court.

involved in this matter. Admittedly, there is no written order. Now, the learned Senior Counsel appearing for the respondent submits that the appeal was filed only on the basis of the information alone. Even assuming that it was the view of the respondent that it was a written order, it can only be a misconception, as, neither the respondent nor the counsel was present.

24. Thus, for the reasons aforesaid, we do not find any reason to initiate criminal contempt against the respondent. We may note, the judgment relied on by the petitioner in the case of **Dr.R.N. Manikandan vs Franciscan Sisters of St. Joseph reported in (2018) 5 MLJ Madras 641** has no application to the case on hand.

25. Accordingly, the Contempt Petition stands closed. Consequently, connected Sub Application is also closed.

SD/-
ASSISTANT REGISTRAR (COMM.CASES)

sr

//Certified to be true copy//

Dated at Madras this the day of 2019.

COURT OFFICER(O.S.)

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