

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CONTEMPT PETITION NO. 127 OF 2019

Yogesh Waman Athavale
Age 45 yrs. Occup. Advocate
R/at 102, Sahil Village Apartment
Radhakrishna Nagar, Raotale,
At/P/Tal Chiplun, Dist. Ratnagiri

...Petitioner

Versus

1. Vikram Abasaheb Jadhav,
Civil Judge Junior Division &
Judicial Magistrate First Class,
Chiplun, District Ratnagiri

2. High Court of Judicature at Bombay,
Through the Registrar General,
High Court, Mumbai

3. The State of Maharashtra.
Through Govt. Pleader,
High Court, A.S. Bombay

...Respondents
(No.1 Original Contemnor)

.....
Mr.Murlidhar L. Patil for the Petitioner.
Mr.S.R.Nargolkar for Respondent No.2.
Ms.Tanaya Goswami, AGP, for Respondent No.3-State.

**CORAM : S.S. SHINDE &
V.G.BISHT, JJ.**

RESERVED ON : 11TH FEBRUARY, 2020

PRONOUNCED ON: 3RD DECEMBER, 2020
.....

JUDGMENT (PER: V.G.BISHT, J.)

1. The petitioner, by way of filing the present petition prays for initiating contempt proceedings against respondent No.1, who is Civil

Judge, Junior Division and Judicial Magistrate First Class, Chiplun, District Ratnagiri, for allegedly disregarding the binding precedents of the Superior Courts.

2. The petitioner, who is an advocate and practicing in the Courts at Judicial Magistrate First Class and Civil Judge Junior Division, Chiplun and District and Sessions Court at Ratnagiri and Khed, for the last more than 11 years alleges that the act of respondent No.1 in willfully and consistently ignoring and not following the binding precedents of the Superior Courts cited by the petitioner during the course of hearing before respondent No.1 is nothing but contumacious act. The petitioner has given following four alleged instances in which respondent No.1 did not follow the binding precedents:

1. In R.C.S. No. 209 of 2012 (Shri Suresh Sakharam Bhosale & Anr. Versus Shri Anant Dhondu Bhosale & Anr.), the petitioner has caused appearance for defendants. On an application by the plaintiffs therein an issue was framed namely "4A- Do the plaintiff proves that the sale deed executed by defendant Nos.1 to 8 is barred by the provisions of Consolidation and Fragmentation Act? (for short, "the said Act"). On behalf of defendant Nos.1 and 2, the petitioner made an application praying that the said issue be referred to the competent authority under the said Act and in support thereof submitted copy of the judgment and order passed

by High Court of Bombay in the case of ***Tukaram Motiram Shinde V/s. Vishwanath Khandele***¹ Respondent No.1 while rejecting the application did not even refer to the said judgment and passed a cryptic order. (Exh. A)

2. In DV Application No. 28 of 2017 (Smt. Seemeen Mohseen Alli Sayyed Versus Shri Mohseen Mohamad Alli Sayyed & Ors.) under D.V. Act, the petitioner has caused appearance for respondent- husband. The wife again filed a private complaint No. 105 of 2017 against his client and family members under Section 498A of the Indian Penal Code (for short, "IPC"). It is the contention of the petitioner that, in ***Rajesh Sharma Vs. State of U.P.***², the Hon'ble Supreme Court has issued directions that every complaint/ FIR registered under Section 498A of the IPC received by the Magistrate be referred to the Family Welfare Committee and after the report of such committee is received, the same shall be considered by the Magistrate. Moreover, since the accused therein are resident of Pune and Yavatmal i.e., beyond territorial jurisdiction, respondent No.1 should have postponed the issue of process and either himself enquired or directed an investigation by the police. However, respondent No.1 did not follow the ratio laid down in judgment in the case of ***Rajesh Sharma*** (*supra*) and the

1 2003 (3) Mh LJ 182

2 2017 Law Suit (SC) 734

mandate of provisions of the Code of Criminal Procedure, 1973 (for short, “the Cr.PC”).

3. In D.V. Application No. 39 of 2015, the petitioner appears for petitioner-wife. The evidence was completed on 20.02.2018 and at Exh. 72 the pursis for closing the evidence was also submitted. Thereafter, the opponent-husband therein filed an application (**Exh. 79 and 80**) praying to issue witness summons. His application was opposed on the ground that there was no pleading in that regard. The petitioner also placed reliance in ***National Textile Corporation Ltd. v/s. Naresh Kumar Badrikumar Jagad***³ to contend that no evidence shall be permitted beyond the pleadings. It is alleged that the ratio laid down in the aforesaid exposition has not been followed by respondent No.1 while hearing and allowing both the above said applications.

4. Yet in another case, in S.C.C. No. 2134 of 2003 (Shri. Sunil Hirachand Jain Versus Shri. Nishikant Bhojane) under Section 138 of the Negotiable Instruments Act, 1881 (for short, “the N.I.Act”), the petitioner appears for the accused. It is alleged that, in the cross-examination, the complainant clearly and unequivocally admitted the receipt of payments in lieu of the blank signed cheques given to him. However, disregarding the said admission

3 (2011) 12 SCC 695

given by the complainant and judgment cited by the petitioner in the case of **John Versus Returning Officer⁴**, respondent No.1 convicted the accused.

3. Lastly, the petitioner contended that the above instances clearly demonstrate that respondent No.1 willfully disregarded the binding precedents on irrelevant and flimsy grounds. The said act of respondent No.1 not only amounts to misconduct in discharge of duties but also contumacious act. Therefore, the petitioner prays for invoking Article 215 of the Constitution of India read with provisions of Contempt of Courts Act, 1971.

4. Mr.Patil, learned Counsel for the petitioner, vehemently submitted before us that respondent No.1 is in habit of overlooking and disregarding the binding precedents of the Superior Courts on flimsy grounds without properly going through the text of those binding precedents. The learned Counsel then invited our attention to the instances which are elaborately quoted herein above and also took us through the orders annexed with the Petition to substantiate his contentions.

5. Mr.Nargolkar, representing respondent No. 2, submitted that respondent No.1 was summoned by the learned Guardian Judge of the concerned District, on administrative side for counseling and he has been

4. 1997 Law Suit SC 181

accordingly and suitably counseled and in such circumstances, there remains nothing in the Petition and same is liable to be disposed of.

6. We have considered the submissions of the petitioner, Mr.Nargolkar appearing for respondent No.2 and learned AGP for respondent No.3. Since the petitioner has quoted the instances in the present Petition, we would like to advert quickly to those instances to find out substance therein.

7. The first instance pertains to R.C.S. No. 209 of 2012 wherein an issue was framed as “4A- Do the plaintiff proves that the sale deed executed by defendant Nos.1 to 8 is barred by the provisions of Consolidation and Fragmentation Act? It is pertinent to note that pursuant to the framing of the said issue, an application came to be moved, copy of which is annexed, by the petitioner requesting therein that the said issue be referred to the competent authority under the provisions of the said Act, and in support thereof so also placed reliance in ***Tukaram Motiram Shinde (supra)*** and ***Jagmittar Sain Bhagat & Others Versus Director Health Services, Haryana and Others***.⁵ which is apparent from the record.

8. Respondent No.1, on his part, passed order below Exh. 120 after hearing both the parties and rejected the application of petitioner.

⁵ (2013) 10 SCC 136

9. We have carefully gone through the order so passed below Exh. 120 in R.C.S. No. 209 of 2012.

10. It is true that the entire order is tellingly silent on the above noted authorities. There is absolutely no whisper as to whether those authorities relied on by the petitioner were taken into consideration or not before passing the order below Exh. 120. However, learned Counsel appearing for respondent No.2 has informed the Court that already respondent No.1 was informed and he was called by the learned Guardian Judge of the concerned District, on administrative side for counseling and he has been accordingly and suitably counseled and in such circumstances, there remains nothing in the Petition and same is liable to be disposed of.

11. The next instance is about filing of private complaint No. 105 of 2017 under Section 498 A of the IPC wherein the present petitioner represented husband-accused. Copy of the said complaint (**Exh.B colly**) is filed on record. Cause title would show the residence of all the accused beyond the territorial jurisdiction of respondent No.1.

12. Further, it appears that after recording the verification statement of the complainant, respondent No.1 directly passed the order of issuance of process against all the accused. The grievance of petitioner is that since the accused are resident of Pune and Yavatmal i.e., beyond

territorial jurisdiction of respondent No.1, respondent No.1 should have postponed the issue of process against them and either should have enquired into the case himself or should have directed an investigation to be made by a police officer. This grievance essentially emanates from the requirement of Section 202 of the Cr.P.C. We are again unable to locate from the order of issuance of process as to why there was no mention of requirement of Section 202 of the Cr.P.C or its non-applicability having regard to the fact that accused are admittedly the resident of place which was beyond territorial jurisdiction of respondent No.1. Such approach of respondent No.1 was not proper.

13. This takes us to the third instance wherein the petitioner had closed his evidence in D.V. Application No. 39 of 2015. The grievance of the petitioner is that despite there being no pleadings, respondent therein filed an application (**Exh. 79 and 80**) soliciting the issuance of witness summons which came to be eventually allowed by respondent No.1 without adhering to the ratio laid down in **National Textile Corporation Ltd.(supra)**. We have gone through the order passed below Exh. 79 and 80 in D.V. Application No.39 of 2015, copy of which is filed on record. Though the judgments relied on by the present petitioner are referred in the said order but there is no clarity as to how those judgments were distinguishable and not applicable to the case in question. This is not the way of differentiating the authorities vis-a-vis the facts and circumstances of the case in hand.

14. The last instance is in respect of criminal proceeding in S.C.C. No. 2134 of 2013 filed under Section 138 of the N.I.Act. According to petitioner although the complainant in his cross examination had clearly and unequivocally admitted the receipt of payments in lieu of blank signed cheques given to him yet accused came to be convicted by overlooking the ratio laid down in the case of **John Versus Returning Officer** (*supra*). The copy of judgment is made available on record.

15. Paragraph 16 of the judgment though shows the reliance placed by accused in **John Versus Returning Officer** (*supra*), surprisingly, there is no comment / opinion/ observation of respondent No.1 about the utility or otherwise of ratio laid down therein. The judicial mind does not reflect it as to how ratio laid down in the said judgment was not applicable to the case in hand. We *prima facie* intuitively feel that learned Counsel for the petitioner is right when he laments approach of respondent No.1 vis-a-vis the above noted authorities/ pronouncements. A common sense would prompt the conclusion that respondent No.1 ought to have carefully gone through the decisions and the ratio laid down therein and then would have formed opinion about applicability or otherwise of the same. Unfortunately, it is clear that exercise was not properly undertaken and orders came to be passed in oblivion of the pronouncements/ provisions.

16. The learned Counsel for the petitioner, firstly, placed reliance in **Shri Baradkanta Mishra, Ex Commissioner of Endowments Versus**

Shri Bhimsen Dixit⁶ wherein the remarks of the petitioner were found objectionable by the High Court of Orissa and therefore, the appellant was found guilty of contempt. This was challenged by the appellant before the Hon'ble Apex Court, however, the Hon'ble Apex Court upheld the findings of the High Court. The case in our hand is not a case of unwarranted remarks at the hands of respondent No.1.

17. The learned Counsel, secondly, placed reliance in **Balkrishna Mahadev Lad vs. State of Maharashtra**⁷. It has been held by this Court that whether it is a civil contempt or criminal contempt, the quintessence, is, that the breach must be a willful breach or willful disobedience or replete with mens rea. If the Judge of the subordinate Court were to commit some error in discharge of his/her official or judicial duty or functions, that per se cannot be the basis to proceed against the judicial officer.

In the case in hand though there is negligence but the same cannot be termed as “willful breach” or “willful disobedience” at the hands of respondent No.1.

18. Here we deem it proper to take into account the submission of Mr.Nargolkar. According to him respondent No.1 has already been summoned by this Court on the administrative side and has been

⁶ 1 SCC 446

⁷ 2012 (6) Mh. L.J.

properly counseled pursuant to the similar complaint of the petitioner. It appears that respondent No.1 has been properly and suitably counseled on the administrative side of the High Court.

19. We hope and trust that in future respondent No.1 will exercise his judicious mind while dealing with judicial work with greater care, caution and circumspection. We issue direction to learned Principal District and Sessions Judge with a request to monitor the performance of respondent No.1 for one year henceforth by randomly checking the judgments and orders and keep the High Court informed, if required, for necessary action.

20. With the above directions, Contempt Petition stands disposed of.

(V.G.BISHT, J.)

(S.S. SHINDE, J.)