

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 05.02.2020

Date of Verdict : 19.02.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Cont.P.No.1434 of 2019

S.R.Chandrasekarn

...petitioner

Vs.

S.R.Sivalingam

...Respondent

Prayer :- This Contempt Petition is filed under Section 11 of Contempt of Courts Act, 1971 to punish the respondent for contempt in misrepresenting order in Crl.O.P.No.8100 of 2019 dated 16.04.2019.

For Petitioner : Mr.V.V.Sairam

For Respondent : Mr.M.Govindaraju

सत्यमेव जयते

ORDER

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This contempt petition is filed to punish the respondent for contempt in misrepresenting the order passed in Crl.O.P.No.8100 of 2019 dated 16.04.2019 before the Judicial Magistrate-I, Tindivanam in C.C.No.1 of 2018.

2. The learned counsel for the petitioner submitted that the petitioner initiated proceedings for the offence punishable under Section 138 of Negotiable Instruments Act against the respondent in C.C.No.1 of 2018 on the file of the Judicial Magistrate-I, Tindivanam. While pending the trial, the respondent filed application in CMP.No.54 of 2009 under Section 91 of Cr.P.C. for production of income tax returns of the petitioner for the purpose of disproving the transaction. The said petition was dismissed by the trial court by an order dated 31.01.2019, against which the respondent filed petition under Section 482 of Cr.P.C. in Crl.O.P.No.8100 of 2019 before this Court. This Court also dismissed the said petition by an order dated 16.04.2019 and also directed the trial court to complete the trial proceedings as directed by this Court in earlier proceedings by four months from the date of receipt of order. Unfortunately, the respondent and also his counsel appeared before the trial court and filed memo on 23.04.2019 stating that this Court allowed the Crl.O.P.No.8100 of 2019 by an order dated 16.04.2019. Further the respondent filed affidavit before the trial court stating that this Court allowed the Crl.O.P.No.8100 of 2019 on 16.04.2019 with a direction that the petitioner / complainant has to produce income tax returns, thereby committed contempt of this Court and prayed for punishing the respondent.

3. The learned counsel for the respondent filed counter and submitted that the junior counsel Mr.Sivachandran informed him that the petition in CrI.O.P.No.8100 of 2019 was allowed by this Court. On the information, he instructed the counsel who appeared before the trial court and filed memo on 23.04.2019 as if this Court allowed the petition. On receipt of the memo, the trial court adjourned the case to 03.05.2019 for production of order copy. Unfortunately, the order copy was not made ready and as such the trial court insisted him to file an affidavit. Therefore, he filed an affidavit stating that this Court allowed the petition and directed the petitioner / complainant to produce income tax return. Therefore, no wrong committed by him and prayed for dismissal of the contempt petition.

4. Heard, Mr.V.V.Sairam, the learned counsel for the petitioner and Mr.M.Govindaraju, the learned counsel for the respondent.

5. The petitioner lodged complaint under Section 138 of Negotiable Instruments Act against the respondent in C.C.No.1 of 2018 on the file of the learned Judicial Magistrate-I, Tindivanam. The respondent filed application under Section 91 of Cr.P.C. calling upon the petitioner to produce income tax

return to disprove the case of the petitioner in CMP.No.54 of 2009 and the same was dismissed by order dated 31.01.2019. Aggrieved by the same, the respondent challenged the said order before this Court in CrI.O.P.No.8100 of 2019 and the same was also dismissed by this Court by an order dated 16.04.2019. Further, the trial court was directed to complete the trial as directed earlier by this Court within a period of four months from the receipt of order. When the trial was posted on 23.04.2019, the respondent and also his counsel filed memo before the trial court stating that the CrI.O.P.No.8100 of 2019 was allowed by this Court by an order dated 16.04.2019. Thereafter it was adjourned to 23.05.2019 for production of order copy. Again, the respondent filed affidavit before the trial court stating as follows:

“I submit before this Hon'ble Court that, I had preferred a Criminal Revision Petition before the Hon'ble High Court of Madras as against the order dated 31.01.2019 passed by this hon'ble Court in CMP.No.54 of 2019. I submit further that the same is numbered as CrI.O.P.No.8100 of 2019 and allowed by the hon'ble High Court of Madras on 16.04.2019, with direction, that the complainant has to produce the Income Tax Return. The copy of the order dated 16.04.2019 passed in CrI.O.P.No.8100 of 2019 not yet been received by me, so I unable to produce the same before this hon'ble court today.”

6. Thereafter, the petitioner produced the dismissal order of this Court before the trial court and now the trial is going on. However, the respondent filed affidavit with false information and as such the petitioner has come forward with this contempt petition. On perusal of the counter, the respondent stated that only on the instruction of the junior counsel on record, Mr.Sivachandran, the respondent instructed his counsel who appeared before the trial court and filed memo stating that this Court allowed the petition in CrI.O.P.No.8100 of 2019 by an order dated 16.04.2019. Further stated that only on the compulsion of the trial court, again the respondent, based on the instruction given by the junior counsel Mr.A.Sivachandran filed affidavit before the trial court. As such he had no intention to file a false affidavit to cheat anybody. Only to gain time, that too on the instruction of the junior counsel he filed an affidavit and memo with wrong information. It happened only by miscommunication and without any wilful intention. He also sought for unconditional apology. The filing of false affidavit with wrong particulars would not amount to contempt of court. The respondent did not disobey any order passed by this Court.

7. This Court dismissed the petition filed by the respondent and he was miscommunicated by wrong information as if the said petition was allowed. Therefore, he filed memo and affidavit before the trial court as if the petition filed by him was allowed. However, he cannot shift the wrong committed by him to junior counsel, since once he filed false affidavit he is liable to be answered. Therefore, it would amount to perjury. It is unambiguously clear that the respondent has filed a false affidavit with a view to obtain favourable order by misleading the court by giving a false affidavit and thereby committed a contempt. Though the contemner sought for unconditional apology, it is well settled principles of law that an apology is not a weapon of defence to purge the guilt of the contemner.

8. The filing of false affidavit should be effectively curbed with a strong hand. It is enough to invite adverse reaction and it would amount to contempt of court. In this regard, it is relevant to rely upon the judgment of the Hon'ble Supreme Court of India in the case of ***Dhananjai Sharma Vs. State of Haryana*** reported in (1995) 3 SCC 757, wherein the Hon'ble Apex Court in dealing with the issue that by swearing false affidavit amounts to Contempt of the Court and observed as under:

“Any conduct which has the tendency to interfere with the administration of justice or the due course of judicial proceedings

amounts to the commission of criminal contempt. The swearing of false affidavits in judicial proceedings not only has the tendency of causing obstruction in the due course of judicial proceedings but has also the tendency to impede, obstruct and interfere with the administration of justice. The filing of false affidavits in judicial proceedings in any court of law exposes the intention of the concerned party in perverting the course of justice. The due process of law cannot be permitted to be slighted nor the majesty of law be made a mockery by such acts or conduct on the part of the parties to the litigation or even while appearing as witnesses. Anyone who makes an attempt to impede or undermine or obstruct the free flow of the unsoiled stream of justice by resorting to the filing of false evidence, commits criminal contempt of the court and renders himself liable to be dealt with in accordance with the Act. Filing of false affidavits or making false statement on oath in Courts aims at striking a blow at the Rule of Law and no court can ignore such conduct which has the tendency to shake public confidence in the judicial institutions because the very structure of an ordered life is put at stake. It would be a great public disaster if the fountain of justice is allowed to be poisoned by anyone resorting to filing of false affidavits or giving of false statements and fabricating false evidence in a court of law. The stream of justice has to be kept clear and pure and anyone soiling its purity must be dealt with sternly so that the message percolates loud and clear that no one can be permitted to undermine the dignity of the court and interfere with the due course of judicial proceedings or the administration of justice.”

9. Therefore, it cannot be slightly brushed aside and the tendency to file false affidavit and placing it as part of record of the court are matters of grave and serious concern. The respondent has sworn to an affidavit, but had not even the slightest hesitation to make a somersault and deny his averments in the sworn affidavit filed before the court. These disturbing trends cause not only a deep anguish to this Court of the degeneration in the moral and official conduct but also make it difficult to place absolute reliance on affidavit evidence placed on record. The respondent did not only make deliberate attempts to impead the administration of justice, since in his attempt in delaying dispensation of justice. Therefore, this Court found the respondent guilty of contempt of court. Though the respondent had tendered unconditional apology before this Court, the apology appeared to be not genuine and bonafide, since the respondent stated in the affidavit as this Court allowed the petition and also directed the petitioner / complainant to produce income tax returns. In the earlier memo, he stated that this Court allowed the petition and for production of order copy it was adjourned. Therefore, the respondent deliberately filed false affidavit and as such he should be punished with fine not only for the wrong done by him, but also to deter others from filing such false affidavit. In the facts and circumstances afore-stated, this Court rejects the apology tendered by the respondent- contemner and hold him

guilty of contempt.

10. He is therefore sentenced to pay a fine of Rs.10,000/- (Rupees Ten Thousand only) within the period of two weeks from the date of receipt of the order, in default of payment of which, he will suffer simple imprisonment for one week. The fine, if realised, shall be paid to the petitioner as compensation.

11. Accordingly, this contempt petition is allowed.

SD/-

ASSISTANT REGISTRAR(COMM.CASES)

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//Certified to be true copy//

Dated at Madras this the day of 2020.

COURT OFFICER(O.S.)

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SMI/09.03.2020

To

1.The Public Prosecutor,
High Court of Madras, Chennai.

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