



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 03.09.2020

DELIVERED ON : 02.12.2020

CORAM :

THE HONOURABLE MRS. JUSTICE R. THARANI

Crl.A.(MD) No.233 of 2020

and

Crl.M.P.(MD)No.3714 of 2020

G.Samwell Rajendran

... Appellant/Petitioner

Vs.

The Principal District and Sessions Judge,
Thoothukudi.

... Respondent/Respondent

Prayer:- Criminal Appeal filed under Section 351 of Criminal Procedure Code, to call for the records and to set aside the same and acquit the appellant in M.C.No.1 of 2020 by the order dated 09.06.2020 on the file of the learned Principal District and Sessions Judge, Thoothukudi.

For Appellant : Mr.G.Prabhu Rajadurai

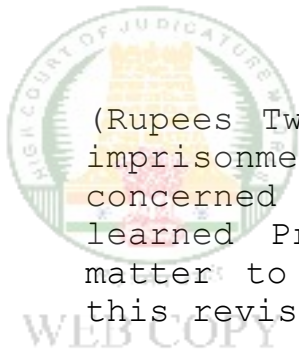
For Respondent : Mr.Mohemed Mohideen

JUDGMENT

This appeal has been filed to set aside the order passed in M.C.No.1 of 2020 dated 09.06.2020 on the file of learned Principal District and Sessions Judge, Thoothukudi.

2.The facts of the case in brief is as follows:

On 08.06.2020, while the learned Principal District and Sessions Judge was hearing bail applications through whatsapp video call at about 11.45 a.m., Advocate Mr.Samwell Rajendran appeared on behalf of Advocate Mr.Raja for representing the case in Cr.M.P.Nos.1615 of 2020 and 1616 of 2020, when he was representing the Court, all of sudden, uttered unparliamentary words and the same was witnessed by learned Public Prosecutor, Stenographer, Protocol Officer and System Analyst. The learned Principal District Judge, Thoothukudi issued a show cause notice under Section 228 of IPC r/w. Section 345 of Cr.P.C., through email and the Advocate sent a reply through email. The learned Principal District Judge, Thoothukudi being not satisfied with the explanation given by the contemnor, imposed a fine of Rs.200/-



(Rupees Two Hundred only) in default to undergo one month simple imprisonment and sent a copy of the order through email. The concerned advocate deposited the fine amount in the Court. The learned Principal District Judge, Thoothukudi has referred the matter to the Bar Council. Against which, the petitioner filed this revision case.

3.The brief substance of the petition in this revision is as follows:

The order of the learned Principal District Judge is passed without providing reasonable opportunity to the revision petitioner. An opportunity for personal hearing was not given. In the reply given by the advocate instead of "this would not happen in future", it was wrongly typed as "it would not occur in due course". The learned Judge has mistakenly taken a view that this will not happen in a regular Court. If an opportunity for personal hearing was given, the appellant might have explained the situation. The words uttered were not against the Court or against the Court proceedings. The appellant has no displeasure towards the Court. There is no intentional insult or interruption to the Court. Before determining the punishment, an opportunity for the appellant was not given. Advocates were not accustomed to argue through whatsapp and when they are adjusting themselves to the technology, this incident has happened. Though the fine amount is minimal on monetary terms the damage to the reputation of an advocate having an unblemished record of 30 years practice is incalculable.

4.The brief substance of the report filed by the learned Principal District Judge, Thoothukudi is as follows:

On 08.06.2020, when the learned Principal District Judge was hearing the bail in Cr.M.P.Nos.1615 and 1616 of 2020, the appellant appearing on behalf of another advocate by name, Raja has uttered the following words, "புண்ட மகன் எப்படி காரை ஓட்டிட்டு போறான் பாரு". The same was witnessed by the learned Public Prosecutor, Stenographer, Protocol Officer and System Analyst. The Court has taken action against the advocate under Section 228 of IPC r/w. Section 345 of Cr.P.C., for uttering unparliamentary words interrupting the Court proceedings. Since the reply submitted by the appellant was not satisfactory, a fine under Section 228 of IPC was imposed.

5.On the side of the petitioner, it is stated that the petitioner is an advocate having unblemished service for the past 30 years and he has worked as a Government pleader for five years. The appellant is not well versed with the recent technologies. Due to signal problem, the appellant was representing the Court from his car, which was parked near the Court. After the completion of



the arguments in the bail petition before disconnecting the call, suddenly some body drove his vehicle in a rash and negligent manner caused scratches on the car of the appellant and on the spark of the moment, the appellant has abused that driver.

6. There was no intention to insult or to interrupt the Court proceedings. Only the driver of the car was abused by the appellant and unfortunately the call was not disconnected at that time. The appellant received a show cause notice through mail at about 04.30 p.m. Immediately the appellant approached the Court in person but the learned Principal District Judge refused audience. Hence, the appellant sent a reply apologizing the incident. The reply of the appellant was very polite. The learned Principal District Judge failed to consider the fact that the advocates are not technically well versed and accustomed to the virtual Court proceeding. Accidental uttering of some words against a third person was mistakenly taken as an insult or interruption to the Court proceedings.

7. In the reply statement instead of "this will not happen in future", the words "this will not happen in due course" were wrongly typed. This typographically error made the learned Principal District Judge to get an impression that "this might not have happened in a open Court". Though the incident has taken place during the Court proceedings, there was no interruption to the Court proceedings.

8. There are similar incidents even before the Hon'ble Supreme Court and before other Courts throughout the World. During the pandemic period, the advocates are using their house as office, there are many incidents such as noise of children, etc., interrupting the proceedings. As per Section 345 Cr.P.C., an reasonable opportunity must be given to the appellant. The incident should be taken into cognizance before the raising of the Court that means in the presence of the contemnor. This imply the contemnor must be given an opportunity to explain the situation in person.

9. On the side of the appellant, it is stated that the appellant has no opportunity to file an appeal before paying the fine. If fine was not paid, the appellant has to undergo default sentence. The non payment of the fine will cause the incarnation of the advocate. In this circumstances, the appellant is left with no other option but to pay the fine.

10. The Court was under the impression that the appellant is challenging the power of the Court whereas the appellant has only pleaded apology with due respect to the Court. The Court must have shown sympathy towards the advocate who has apologized. Even after



imposing fine, the Court has referred the matter to the Bar Council. If at all the fine is insufficient, the learned Principal District Judge has to refer the matter to the learned Judicial Magistrate, who is having jurisdiction. Under Section 282 of IPC, the Court will be the prosecutor as well as the Judge.

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11.On the side of the respondent, it is stated that under Section 228 of IPC, the intention is not the only criteria and the Court can take action, even if the proceedings are interrupted. In the reply filed by the appellant, he has admitted that unnecessary words were forwarded by him. There is no dispute regarding the facts. The appellant admitted the facts of the case. Under Section 345 of Cr.P.C., the Court has to give opportunity for the contemnor. Since virtual Court is functioning, the show cause notice was sent through email and the reply was also received from the appellant through mail, which itself sufficient enough.

12.The learned Judge in a judicial proceedings can take cognizance under Section 345 of Cr.P.C. There is no necessity to forward the case to any other Court.

13.On the side of the appellant, it is stated that the charges was framed only as an intentional insult to the Court and interruption to the Court was not stated in the Charge.

14.On the side of the respondent, it is stated that in the show cause notice, interruption to the Court proceedings was specifically mentioned.

15.Records perused. It is seen that during the virtual Court proceedings while representing the bail petition, the appellant has uttered the following words: “புண்ட மகன் எப்படி காரை ஓட்டிட்டு போறான் பாரு”

16.The usage of unnecessary words was admitted in the reply mail sent by the appellant. There is no dispute regarding the facts or the occurrence.

17.On the side of the appellant, it is stated that those words are not addressed to the Court. There is no intentional insult to the Court. Those words are used to abuse a driver of another car, who ruptured the car of the appellant.

18.When a court proceedings is going on usage of unparliamentary words by the appellant while addressing a Court cannot be brushed aside.

19.Another statement of the appellant is that the words in the reply mail was misunderstood by the Court. It is stated that



instead of "this will not happen in future", the words "this will not happen in due course" was wrongly typed. It is stated that the appellant is not well versed with the latest technology and this mistake was wrongly interpreted by the Court below.

20. On the side of the appellant, it is stated that no personal audience or opportunity was given to the appellant. If at all the appellant needs time for filing a counter, he must have asked for the same in his mail. But the appellant failed to do so. He has sent a reply immediately. Since virtual Court was functioning, the reply by the appellant sent through mail can be taken as sufficient opportunity given to the petitioner.

21. On the side of the appellant, it is stated that if fine was not paid the petitioner might have been remanded to undergo default sentence and as there was no other go, the appellant was left with no other option but to pay the fine on that date itself.

22. The appellant was not physically present at the time of passing the order. The appellant being an advocate is well aware that he can sent a petition for suspension of sentence. But he failed to file any such petition.

23. The appellant has admitted the issuance of show cause notice. An opportunity for the appellant to file his reply was given. The appellant has not filed any petition seeking time for filing counter. The appellant has admitted the occurrence. The appellant in his reply mail has extended his apology to the Court. Without praying for suspension of sentence, the appellant has paid the fine. The petitioner cannot now question the order of the learned Principal District Judge as a matter of right. But considering the nature of the occurrence and considering the introduction of virtual Court functioning and considering the fact that the petitioner extended apology, some leniency has to be shown. Hence, accepting apology, the order is set aside. The fine amount paid is directed to be refunded to the petitioner.

24. With the above observation, this Criminal Revision Case is disposed of. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

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Sub Assistant Registrar (CS)



To **மேன்மையான நீதி**

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- 1.The Principal District and Sessions Judge,
Thoothukudi.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to

The Section Officer-2 copies
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.T.S. MOHAMED MOHIDEEN, Advocate (SR-23735[F] dated
02/12/2020)

+1 CC to Mr.G.PRABHU RAJADURAI, Advocate (SR-23852[F] dated
03/12/2020)

Crl.A.(MD) No.233 of 2020
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