

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.04.2021

PRONOUNCED ON : 04.06.2021

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH
AND
THE HONOURABLE Mr.JUSTICE R.PONGIAPPAN

Contempt Petition No.340 of 2021

P.S. Murthi, I.T.S.

Petitioner

vs.

1 P.S. Vijay
2 P.S. Suraj

Respondents/
Alleged contemnors

Contempt Petition filed under Section 10 of the Contempt of Courts Act, 1971, to punish the respondents/accused 1 and 2, viz., (1) P.S. Vijay and (2) P.S.Suraj, for their wilful breach of the undertaking dated 28.12.2019 given to the Court of the V Metropolitan Magistrate, Chennai, under the Contempt of Courts Act and punish the respondents 1 and 2.

For petitioner Mr. T. Arun Kumar
for M/s. Tamizh Law Firm

For respondents Mr. V. Krishnamoorthy

ORDER

R. PONGIAPPAN, J.

“How sharper than a serpent’s tooth it is to have a thankless child”

– William Shakespeare –
King Lear – Act 1, Scene 4

2 Old age is a curse especially for a well heeled widower with children. The life of Shakespeare’s King Lear bears testimony to this.

3 For the sake of convenience and to avoid prolixity, the principal actors in this case will be referred to by their names.

4 The facts leading to the filing of this contempt petition are as follows:

4.1 The petitioner, P.S. Murthi, is now aged 87 years. He was employed in the Department of Telecommunication as a Senior Officer. He is blessed with five children, viz., Raghu (55 years), Vijay (53 years), Suraj (50 years), Laxmi Rajah (44 years) and Gokul (40 years). However, he is not lucky like King Pandu, father of the Pancha Pandavas, in that, after the death of his wife in 2011, his life became miserable on account of his sons.

4.2 When he was in service and when his children were young, he was allotted a plot by the Tamil Nadu Housing Board on 26.05.1972, in which, he built a two-storeyed house bearing Door No.K-90 (New No.K-4), 14th Street, Anna Nagar, Chennai 600 102. He retired 27 years ago and was peacefully living in the first floor of the said house along with his wife and his fourth son, viz., Laxmi Rajah. Apart from this house, he owns some other properties in and around Chennai.

4.3 The real trouble started for him after the demise of his wife in 2011 when his children started demanding share in the properties. His son Vijay and Suraj took possession of the ground floor portion of the house and thereafter, about a year ago, they started giving him trouble. Fearing that they may dispossess him, he settled the said house by executing a deed of settlement *vide* Document No.4763 of 2018, dated 22.11.2018, in favour of his fourth son Laxmi Rajah. This infuriated his remaining four sons so much that Lavanya, wife of his second son Vijay, assaulted him (Murthi) and thereafter, his other three daughters-in-law, viz., Janaki Devi, wife of Raghu, Kumudhini, wife of Suraj and Sunitha, wife of Gokul, lodged a police complaint on 31.10.2019 against Murthi, their father-in-law, based on which, the police conducted an

enquiry in CSR No.917 of 2019 and closed the case as “civil dispute”. Notwithstanding that, the disgruntled sons also gave a complaint of cheating and fraudulent transaction against their father to the Inspector of Police, K-4 Police Station, Anna Nagar, in which, a petition enquiry was conducted in C.S.R. No.222 of 2019 and the case was closed as “family quarrel”. Again, Lavanya, wife of Vijay, lodged a complaint with the Inspector of Police, A.W.P.S., Anna Nagar, on 01.11.2019 against Murthi, her father-in-law, alleging that he is abusing her in foul language. The police did not take serious note of these complaints, perhaps, because, they knew the actual plight of Murthi.

4.4 While so, Vijay and Suraj filed a suit in O.S. No.8912 of 2019 before the VII Additional City Civil Court, Chennai, for partition, alleging that their father Murthi did not have any means to purchase the Anna Nagar house property and that it was purchased with the funds of their grandfather Veeraraghava Swamy and hence, they have a share in it.

4.5 The last straw on the camel's back was when Murthi's two sons Vijay and Suraj assaulted him physically in December 2019, which prompted him to lodge a complaint with the police and seek protection under the Tamil Nadu Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for

brevity “the Act”). Pursuant to this complaint, the police registered an FIR in Cr.No.776 of 2019 on 27.12.2019 against Vijay (A.1) and Suraj (A.2) for the offences under Sections 294(b), 352 and 506(I) IPC and Section 24 of the Act. Noteworthy it is to refer to Section 25 of the Act, which says that an offence under the Act is cognizable and bailable.

4.6 The police arrested Vijay and Suraj on 28.12.2019 and produced them before the V Metropolitan Magistrate, Egmore, Chennai (for brevity “the V MM”) for remand as the complaint disclosed the commission of other non-bailable offences under the I.P.C. At the time of remand, the advocate for the accused (Vijay and Suraj), pleaded that the dispute was essentially between father and sons and requested the V MM that if Murthi appears before the Court, the matter can be resolved easily.

4.7 On getting this information from the police, Murthi went to the V MM's house, where, his two sons pleaded with him to withdraw his complaint by saying that they will vacate the premises if time is granted. To show their *bona fides*, they filed a written memo of undertaking before the V MM in Cr.No.776 of 2019 which reads as follows:

“It is submitted that a complaint has been filed against us
by my father on 28.12.2019 for the offence punishable under

294(b), 352, 506(II) IPC r/w Section 24 of Welfare and Maintenance of Parents and Senior Citizens Act, 2007.

It is learned that my father has given the property at Anna Nagar by way of settlement in the name of our 4th brother P.S. Laxmi Rajah. Since we filed civil suit also before the Court of law, we undertake to vacate the premises at Anna Nagar, House No.K-90, Anna Nagar East, Chennai 600 102 within one month.

In the meantime, we also undertake that we will not disturb the peaceful living of my father and my brother Mr. P.S. Laxmi Rajah on any other means / account.”
(emphasis supplied)

4.8 In response to the aforesaid memo of undertaking, Murthi filed a reply memo which reads as follows:

“It is submitted that on 28.12.2019, I gave a complaint against my sons M/s. P.S. Vijay and P.S. Suraj for the offence punishable under Sections 294(b), 352, 506 (II) IPC read with Section 24 of Welfare and Maintenance of Parents and Senior Citizens Act, 2007.

It is submitted that since the accused P.S. Vijay and P.S. Suraj undertaken to vacate the house at K.90, Anna Nagar East, I pray that this High Court may be pleased to drop further proceedings of the above case Cr.No.776 of 2019, pending before the Inspector of Police, K.4 Police Station, Anna Nagar East, Chennai and thus, render justice.”

The usage of the expression “High Court” above is a misnomer.

4.9 It is reported that both these memos were prepared by an Advocate Mr.C.S.S. Pillai who appeared before the V MM, on behalf of Vijay and Suraj at the time of remand.

4.10 On receipt of these two memos, the V MM passed the following order on 28.12.2019:

“A1 & A2 produced at 9.00 p.m. Grounds of arrest explained. No complaints against police. On perusal of record, offence u/s 294(b), 352, 506(I) IPC before 7 years. Advocate for the accused appeared stated that it is civil in nature and *de facto* complainant is father of the accused and further stated that partition suit is pending, further, *de facto* complainant appeared before me and stated that if the accused 1 & 2 accept to vacate the premises, he drop the proceedings of the above complaint. Since the accused 1 & 2 accept the same and gave a statement, *de facto* complainant gave statement that no further proceeding of this case. Hence, this Court felt that there is no *prima facie* to remand the accused as prayed for by the I.O. Hence, accused 1 & 2 set at liberty and directed to get muchilika for further appearance for further investigation if necessary.”

4.11 After earning freedom, thanks to the mercy and benevolence of their father, the two sons turned turtle, reneged from their undertaking and refused to vacate the premises and therefore, Murthi is before this Court with the instant contempt petition.

5 On notice, Vijay and Suraj entered appearance through Mr.V.Krishnamoorthy, Advocate, and filed their counter affidavit dated 20.04.2021 along with the relied upon documents. In the counter affidavit, they have taken a stand that their father Murthi was earning a very meager salary and that he had purchased the house property in question with the funds provided by

their grandfather, Veeraraghava Swamy. They have denied the other allegations that were made by their father Murthi with regard to assault, *etc.* After having stated in paragraph 4 of the counter affidavit that their father did not have any means to buy the house property, they forgot about it subsequently, which is evident from the following averment in paragraph 7 of their own counter affidavit, wherein, they have stated as follows:

“We state that our father is well off and having properties/houses in Anna Nagar East, Chinmaya Nagar, Thirumullaivoyal and land in Ranipet SIPCOT Industrial Area. He is getting pension around Rs.50,000/- (fifty thousand) and he is giving all false complaints and illegal proceedings against us to evict us from our family house in which we are living since childhood.” (emphasis supplied)

At this juncture, pertinent it is to point out that one who makes a false statement has to remember the same throughout and make subsequent statements in sync with his initial false statement. Vijay and Suraj have miserably failed in this test. Truth requires no memory, one a lie requires.

6 Initially, we heard this case *via* video conferencing. But, since this is a case arising under the Contempt of Courts Act, we relaxed the COVID-19 protocol and permitted the alleged contemnors and their counsel to be physically present before us on 23.04.2021 at 2.30 p.m. to argue the case.

7 Mr. V. Krishnamoorthy, learned counsel for the alleged contemnors, reiterated the averments in the counter affidavit and contended that the undertaking memo was given while the duo was in police custody and therefore, the breach of it would not amount to a contumacious act.

8 When enquired by us, Vijay stated that he is a B.E. (E.C.E.) graduate and is employed as Placement and Skill Development Officer in Loyola College and Suraj stated that he is a B.Com. graduate and is employed in Apollo Hospitals as Manager (Credit Cell). Thus, it is limpid that both Vijay and Suraj have been provided a decent education, thanks to which, they are well placed in good jobs. Both of them are able-bodied individuals with no apparent sign of any physical or mental deformity or handicap.

9 Now, the short point that emerges for the consideration of this Court is whether the undertaking given by Vijay and Suraj before the V MM was under coercion when they were in police custody or they gave it voluntarily.

10 A reading of the order dated 28.12.2019 passed by the V MM that has been extracted above shows very clearly that Vijay and Suraj were

defended by an Advocate at the time of remand and it was the Advocate who pleaded, on their instructions, before the V MM saying that the matter can be resolved as it was purely a dispute between the father on the one hand and the sons on the other. Further, Murthi's contention that in the residence of the V MM, his sons made a fervent plea to withdraw his complaint and they further stated that they will vacate the premises and hand over possession of the house property within one month and therefore, being his children, he also yielded to their request, appears probable.

11 During the hearing, we found Vijay and Suraj to be defiant, in that, when their counsel Mr. V. Krishnamoorthy submitted before us that if some more time is granted, they would vacate the house, the duo refused to toe their counsel's line as well. On the contrary, they were mainly sticking on to the issue that their father has not given any share to them in his property. In fact, the Act casts a duty upon the children to take care of their parents and protect them.

12 Mr. Krishnamoorthy endeavoured to take us through the FIR in Cr.No.776 of 2019 and submit that the complaint therein did not disclose even a *prima facie* material to remand the duo and therefore, the V MM was not even

prepared to remand them initially. To buttress this submission, he took us through the averment in paragraph 8 of Murthi's affidavit. A reading of paragraph 8 of Murthi's affidavit shows that Murthi was in his house when his two sons were produced for remand before the V MM and therefore, what really transpired at the time of remand can be inferred only from the judicial order that has been passed by the V MM and not from the averments in paragraph 8 of Murthi's affidavit that was referred to by Mr. V. Krishnamurthy, because, those averments are not based on Murthi's direct knowledge, but, hearsay. A reading of the order passed by the V MM extracted above verbatim shows that the advocate for the accused pleaded to the V MM not to remand the accused and only thereafter, Murthi came into the picture, resulting in the duo filing a memo of undertaking to vacate the house, followed by Murthi filing a memo accepting the undertaking given by his sons. The contention of Mr.V.Krishnamoorthy that the V MM refused to remand the accused initially, despite which the duo gave an undertaking that they will vacate the house within a month, defies logic. The fact remains that the accused were represented by an advocate at the time of remand and he would not have been so guile to make his clients file a memo of undertaking had the V MM been disinclined to remand them in judicial custody. Having regard to the aforesaid aspects, it is limpid that the alleged contemnors had filed an undertaking into the Court, which they had no intention of

honouring, and had successfully extricated themselves from remand proceedings and their contention that the undertaking was given by them under coercion defies credulity.

13 We must also bear in mind that we are now called upon to exercise our contempt powers and it would not, therefore, be possible for us to meander outside the four corners of the order which is alleged to have been violated. (See **Er. K. Arumugham vs. Balakrishnan [(2019) 8 SCC 150]**. The following statement of law in Halsbury's Laws of England, Vol.VII, Pg.35, Para 51 may be apt in the present case.

“The breach of an undertaking given to the Court by a person or corporation, pending proceedings, on the faith of which the Court sanctions a particular course of action or inaction, is misconduct amounting to contempt.”

14 The power of this Court to punish for contempt of Courts subordinate to it, is recognized in Section 10 of the Contempt of Courts Act, 1971. The provision reads thus:

“10. Power of High Court to punish contempts of subordinate courts:

Every High Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempt of courts subordinate to it, as it has and exercises in respect of contempts of itself

Provided that no High Court shall take cognizance of a contempt alleged to have been committed in respect of a court subordinate to it where such contempt is an offence punishable under the Indian Penal Code (45 of 1860).”

15 It is equally well settled that a wilful breach of an undertaking given to the Court would constitute civil contempt. In **Port of Mumbai vs. Nikhil N.Gupta [(2015) 10 SCC 139]**, the Supreme Court observed as under:

“18.The principles relating to contempt of court are clear. The definition of “civil contempt” includes wilful breach of an undertaking given to a court. Public interest requires that solemn undertakings given to a court with the intention of obtaining any benefit should not be breached wilfully. The respondents cannot be absolved of the undertaking on purely ground that the undertaking was given under misconception. The breach of solemn undertaking given to a court is a serious matter and will have to be sternly dealt with.....”

16 As alluded to *supra*, the undertaking given by the alleged contemnors before the V MM in Cr.No.776 of 2009 would unambiguously reveal that they had undertaken to vacate the premises at No.K-90, Anna Nagar East, Chennai, within one month. It is also clear from the order dated 28.12.2019 of the V MM that the Court was persuaded to come to a conclusion that there was no *prima facie* case for remand solely on account of the fact that Murthi had consented to the undertaking given by his sons and had requested no further action to be taken. Thus, the subsequent act of deliberately reneging from the terms of the undertaking by the alleged contemnors constitutes a

serious interference in the administration of justice, inasmuch as, the order dated 28.12.2019 setting the alleged contemnors at liberty is directly predicated on the aforesaid undertaking.

17 Under these circumstances, it cannot be contended, with any degree of seriousness, that the breach of the undertaking given to the Court below will not constitute civil contempt within the meaning of Section 2(b) of the Contempt of Courts Act.

18 In such perspective of the matter, no leniency or mercy can be shown to the alleged contemnors, especially in view of the fact that they showed no signs of remorse or repentance for having callously and wilfully reneged from the undertaking that was given by them voluntarily to the V MM.

19 In the ultimate analysis, we are of the opinion that the respondents are guilty under Section 2(b) of the Contempt of Courts Act, 1971 and accordingly, they are sentenced to undergo simple imprisonment for a period of three months and pay a fine of Rs.2,000/- each, in default thereof, to undergo simple imprisonment for a period of one week.

20 The Deputy Commissioner of Police, High Court Security, is directed to effect arrest of Vijay and Suraj and cause their production before the

V MM, who shall remand them in judicial custody under appropriate committal warrant for serving out the sentence imposed by us.

In the result, this contempt petition is allowed.

21 After the orders were pronounced, Mr.Vijayan, Advocate, who has now been appointed by the contemnors to represent them, prayed for suspension of sentence. However, both the contemnors viz. P.S.Vijay and P.S.Suraj were not even present in video conferencing when the orders were pronounced, which only shows their scant regard they have for the system. Therefore, the request for suspension of sentence cannot be acceded. They may surrender to custody before the V Metropolitan Magistrate, Egmore and thereafter, seek suspension of sentence, if so advised.

SD/-

ASSISTANT REGISTRAR(COMM.CASES)

cad/gya

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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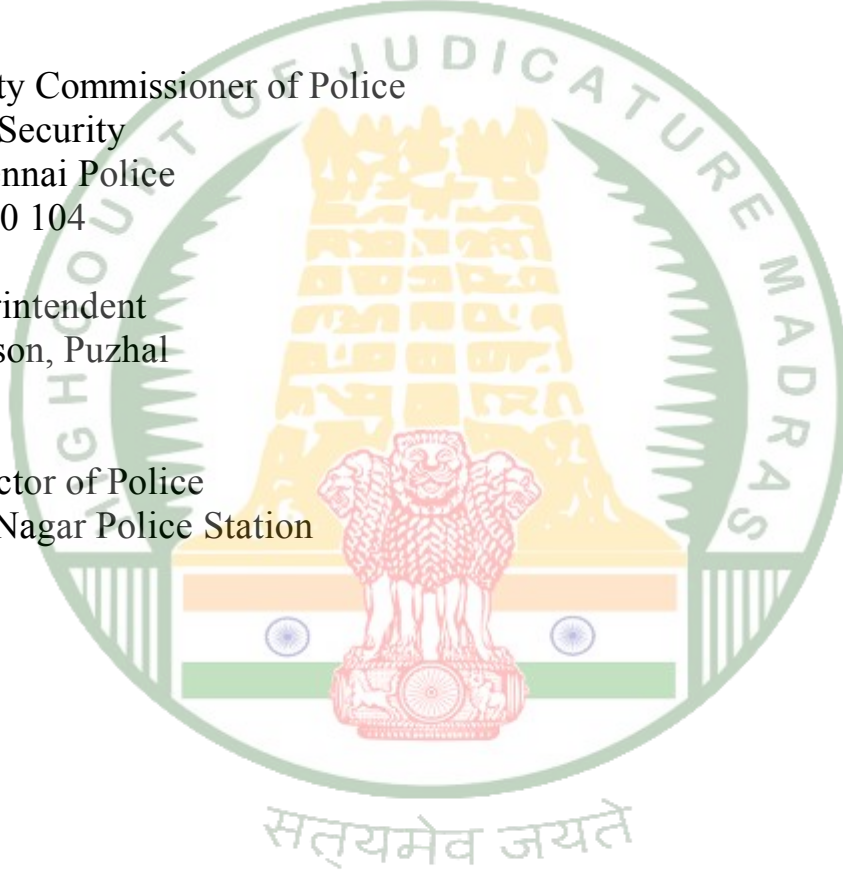
To

1 The V Metropolitan Magistrate
Egmore
Chennai

2 The Deputy Commissioner of Police
High Court Security
Greater Chennai Police
Chennai 600 104

3 The Superintendent
Central Prison, Puzhal
Chennai

4 The Inspector of Police
K-4, Anna Nagar Police Station
Chennai



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