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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2021

Coram

THE HONOURABLE MR. JUSTICE P.N.PRAKASH
and
THE HONOURABLE MRS. JUSTICE S.SRIMATHY

Contempt Appeal No.6 of 2019
and
C.M.P.Nos.561 of 2021 and 23760 of 2019

1. Arulnathan
The Diocesan Educational Officer & Convener
CSI Diocese of Madras,
The Diocesan Office,
Post Box No.4914
Chennai - 600 086.

2. Hepzibah Francis
The Correspondent/Headmistress,
CSI Ebba's Girls Higher Secondary School,
Mylapore, Chennai - 600 004.

.. Appellants/Respondents

Vs.

J.Daniel
S/o.James

.. Respondent/Petitioner

Contempt Appeal filed u/s.19(1) of the Contempt of Courts Act, 1971, against the order of this Court dated 25.10.2019 passed in Contempt Petition No.1310 of 2019 in W.M.P.No.17460 of 2019 in W.P.No.18070 of 2019.

For Appellants : Dr.Fr.A.Xavier Arulraj,
Senior Counsel
for Ms.A.Arul Mary

For Respondent : Mr.G.Sankaran

JUDGMENT

[Judgment of the Court was delivered by P.N.PRAKASH, J]

This Contempt Appeal has been filed against the order of this Court dated 25.10.2019 passed in Contempt Petition No.1310 of 2019.



2. The minimum facts that are required for deciding this Contempt Appeal, are as under:

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2.1. The Church of South India (for brevity 'the CSI') is a company incorporated under the Companies Act, 1913 and runs several educational institutions throughout South India. The CSI has several dioceses, of which, CSI Diocese of Madras is one.

2.2. Mr.S.Arulnathan (first appellant) was the Honorary Diocesan Educational Officer and Convener and Mrs.Hepzibah Francis (second appellant) was the Correspondent of CSI Ebba's Girls Higher Secondary School, Mylapore, Chennai (for brevity 'Ebba's school'), which is an institution run by the Diocese of Madras. One Daniel (respondent herein) was working as Office Assistant in Ebba's School in 2019.

2.3. The CSI Diocese of Madras effects annual transfer of its employees from one institution to another, which practice has been approved by a Division Bench of this Court in G.R.Prem Kumar v. The Correspondent, Corley Higher Secondary School and other¹. While that being so, the CSI Diocese of Madras transferred Daniel from Ebba's School, Chennai to CSI St.David's Higher Secondary School, Cuddalore, by an order of transfer dated 15.06.2019. In the place of Daniel, the CSI Diocese of Madras transferred one Sekar from CSI Alison Cassie Girls Higher Secondary School, Chengalpattu, to Ebba's school vide order dated 15.06.2019, who joined the said post on 18.06.2019. However, Daniel did not report to duty in the transferred post in Cuddalore, but instead submitted an application for medical leave.

2.4. Daniel filed W.P.No.18070 of 2019 on 24.06.2019 in the High Court challenging the order of transfer dated 15.06.2019 and also prayed for interim stay of the order of transfer in W.M.P.No.17460 of 2019. The main Writ Petition in W.P.No.18070 of 2019 and the application for interim stay in W.M.P.No.17460 of 2019 came up for admission on 26.06.2019 and after hearing the learned counsel for Daniel, a learned single Judge passed the following interim order in W.M.P.No.17460 of 2019 in W.P.No.18070 of 2019:

'Notice to the respondents returnable in eight weeks.
There shall be an order of interim stay.'

2.5. Thereafter, Daniel issued a pre-contempt notice dated

¹ (2011) W.L.R. 38



18.07.2019 to the CSI Diocese of Madras and followed it up by filing a Contempt Petition No.1310 of 2019 on 26.07.2019 before the learned single Judge alleging that the CSI Diocese of Madras had committed contempt of Court by violating the order of interim stay dated 26.06.2019.

2.6. The Contempt Petition was listed on various dates. In the mean while, the CSI Diocese of Madras entered appearance in the main Writ Petition No.18070 of 2019 and filed an application in W.M.P.No.30506 of 2019 in W.P.No.18070 of 2019 on 22.10.2019 for vacating the ex parte order of interim stay that was granted by this Court on 26.06.2019.

2.7. It appears that the contempt petition came up before the learned single Judge on various dates and on 25.10.2019, Arulnathan and Hepzibah Francis were physically present before the Court with their counsel. On that date, the learned single Judge heard the learned counsel for Daniel, the learned Senior Counsel for CSI Diocese of Madras and by the impugned order dated 25.10.2019 in Contempt Petition No.1310 of 2019, convicted and sentenced Arulnathan and Hepzibah Francis as under:

'18. The respondents/contemnors are punished under Section 12 of the Contempt of Courts Act, 1971. The first respondent shall undergo Civil imprisonment for a period of one month and shall pay a fine of Rs.5,000/- (Rupees Five Thousand only). The second respondent shall pay a fine of Rs.5,000/- (Rupees Five Thousand Only). The fine amount shall be paid by the respondents before the State Legal Services Authority, High Court Campus, Chennai - 600 104.'

2.8. It appears that the order dated 25.10.2019 was passed on the eve of Diwali. Since the order copy was not ready, the learned Senior Counsel for CSI Diocese of Madras approached the Hon'ble Acting Chief Justice and prayed for the constitution of a Special Bench to take up the Contempt Appeal, lest Arulnathan and Hepzibah Francis should suffer imprisonment.

2.9. Accordingly, a Special Bench comprising Hon'ble Mr.Justice M.M.Sundresh [as he then was] and Hon'ble Mr.Justice RMT.Teekaa Raman was constituted and this Contempt Appeal was taken up in SR stage viz., Cont.A.Sr.No.135477 of 2019 for hearing on 26.10.2019 and the following order was passed:

'Heard the learned Senior Counsel for the petitioners/appellants.

2. It appears from the records that the appeal



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has not been numbered as the order copy passed by the learned Single Judge is not ready.

3. The learned Senior Counsel submitted that in the meanwhile, the appellants are likely to be imprisoned apart from payment of fine as directed. On merits, it is further submitted that the respondent has been relieved and in his place somebody else has been deputed even much prior to the order passed in the writ petition. In fact, he has been relieved on 17.06.2019 whereas the writ petition was filed on 25.06.2019 and the interim stay order was passed on 26.06.2019. It is further submitted that the transfer is not punitive and only an incidental to service. The relevant Rule, namely, Rule 15(4) does not have any application to the Minority Institutions. Thus, even on merit there is no stigma attached to the order nor it can be termed as punitive in nature. It is further submitted that for the ensuing promotion, there is no bar for the respondent to proceed.

4. The learned Senior Counsel further submitted that the appellants were suffering from ailment. The learned Single Judge could have taken up the vacate stay petition and decided the matter on merits in view of the specific submission made on the facts.

5. We are not inclined to take the matter on merit for the simple reason that copy of the order passed by the learned Single Judge is not furnished and there is no typed circulation also made.

6. In such view of the matter, we are inclined to post the matter for further hearing on 04.11.2019. In the meanwhile, the Registry is directed to make the order copy ready and furnish the same to the appellants. As and when they received it, the appellants will have to file it in the Registry and number the same as per the procedure.

7. In the meanwhile, the order passed by the learned Single Judge both with respect to the payment of fine and the imprisonment shall be kept in abeyance.'

2.10. A reading of the above shows that the Contempt Appeal was entertained even without a copy of the impugned order as the situation then warranted so. Thereafter, when the impugned order passed by the learned single Judge was received, the parties



found that the learned single Judge himself had granted suspension of sentence for a period of 10 days.

3. Heard Dr.Fr.A.Xavier Arulraj, learned Senior Counsel appearing for the appellants and Mr.G.Sankaran, learned counsel appearing for the respondent.

4. The short point for determination in this Contempt Appeal is, whether the impugned order convicting and sentencing the appellants, as aforesaid, is legally maintainable.

5. To appreciate this contention, it may be apposite to extract the following paragraphs from the impugned order passed by the learned single Judge:

'8. The contempt petition was listed before this Court on 22.08.2019 and was adjourned to 05.09.2019. On 05.09.2019, it was again adjourned to 11.09.2019. When the contempt petition was listed on 12.09.2019, this Court issued statutory notice to the respondents returnable in four weeks. On 18.10.2019, the contemnors/ respondents did not appear before this Court and based on the submissions made by the learned counsel appearing for the contemnors/ respondents that due to health issue, the contemnors/ respondents were not able to appear before this Court, the contempt petition was adjourned to 25.10.2019.

9. Mr.Father Xaviour Arul Raj, learned Senior Counsel appearing for the contemnors/ respondents, on instructions, submitted that chain of transfer orders cannot be implemented and would further submit that if it is implemented, it would create chaos in the administration. The learned Senior Counsel would further submit that the respondents have filed vacate stay petition in W.P.No.18070 of 2019 and requested this Court to take up the vacate stay petition prior to contempt petition.

10. This Court perused the records. The petitioner sent legal notice to the respondents on 18.07.2019 and filed this contempt petition on 26.07.2019. The learned Senior Counsel appearing for the contemnors/ respondents fairly conceded that the vacate stay petition in W.P.No.18070 of 2019 was filed only after filing of the contempt petition.



11. The contemnors/ respondents appeared before this Court and expressed that they are not in a position to implement the order dated 26.06.2019 made in W.P.No.18070 of 2019 and W.M.P.No.17460 of 2019.'

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6. A reading of the above shows that an ex parte order of interim stay of transfer was passed by a learned single Judge on 26.06.2019, by which time, it appears that Sekar, who was transferred to the post of Daniel in Ebba's School, had joined the post on 18.06.2019. Therefore, the learned Senior Counsel for CSI Diocese of Madras submitted to the learned single Judge in the contempt proceedings on 25.10.2019 that there are administrative difficulties in the implementation of the ex parte order of interim stay and prayed for taking up the vacate stay petition and thereafter, take up the contempt appeal. This request, in our considered opinion, appears to be a genuine one and should have been considered by the learned single Judge in the light of the judgment of Supreme Court in Quantum Securities Private Limited and others v. New Delhi Television Limited², wherein it has been held as follows:

'22. We are also of the considered view that when the issue on merits is seized of by the original court in civil suit/proceedings and rights of the parties are still not decided on merits then it is not proper for this Court to probe into the facts and record any finding on any of the issues arising out of collateral proceedings such as the one here else our observation may cause prejudice to the parties while prosecuting their case before the original court on merits.

23. It is for these reasons we are of the considered opinion that it would be apposite to request the learned Single Judge to decide Notice of Motion No.1553 of 2013 renumbered as 488 of 2014 arising out of Civil Suit No.677 of 2013 renumbered as 284 of 2014 on merits in accordance with law preferably within three months from the date of receipt of copy of this judgment. Till it is decided, we are inclined to stay the contempt proceedings out of which these appeals arise. After the disposal of the notice of motion, the contempt proceedings may be decided in accordance with law including its maintainability, etc.'

7. That apart, in State of J and K v. Mohd. Yaqoob Khan and



others³, the Hon'ble Supreme Court has held as follows:

'5. We find great force in the argument of Mr. Salve that so long the stay matter in the writ petition was not finally disposed of, the further proceeding in the contempt case was itself misconceived and no orders therein should have been passed. Mr. Bhandare appearing on behalf of the writ petitioner, who is respondent before us, has strenuously contended that the orders passed in the contempt proceedings should be treated to have disposed of the stay matter in the writ petition also. He laid great emphasis on the fact that the counsel for the respondents in the writ petition had been heard before the orders were issued. He invited our attention to the merits of the claim. It is argued that the order dated March 19, 1990 must, in the circumstances, be treated to have become final and, therefore, binding on the State and the High Court was right in issuing the further direction by way of implementation of earlier order.

6. We do not agree. The scope of a contempt proceeding is very different from that of the pending main case yet to be heard and disposed of (in future). Besides, the respondents in a pending case are at a disadvantage if they are called upon to meet the merits of the claim in a contempt proceeding at the risk of being punished. It is, therefore, not right to suggest that it should be assumed that the initial order of stay got confirmed by the subsequent orders passed in the contempt matter.

7. We, therefore, hold that the High Court should have first taken up the stay matter without any threat to the respondents in the writ case of being punished for contempt. Only after disposing it of, the other case should have been taken up. It is further significant to note that the respondents before the High Court were raising a serious objection disputing the claim of the writ petitioner. Therefore, an order in the nature of mandatory direction could not have been justified unless the Court was in a position to consider the objections and record a finding, prima facie in nature, in favour of the writ petitioner. Besides challenging the claim on merits, the respondent was entitled to raise a plea of non-maintainability of a writ application filed for the purpose of executing a decree. It appears that at an earlier stage the decree in question was actually put



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in execution when the parties are said to have entered into a compromise. According to the case of the State the entire liability under the decree (read with the compromise) has already been discharged. The dispute, therefore, will be covered by Section 47 of the CPC. It will be a serious question to consider whether in these circumstances the writ petitioner was entitled to maintain his application under Article 226 of the Constitution at all. We do not want to decide any of these controversies between the parties at this stage except holding that the orders passed in the contempt proceeding were not justified, being pre-mature, and must, therefore, be entirely ignored. The High Court should first take up the stay matter in the writ case, and dispose it of by an appropriate order. Only thereafter it shall proceed to consider whether the State and its authorities could be accused of being guilty of having committed contempt of Court.'

(emphasis supplied)

8. On the contrary, the learned single Judge has questioned the appellants, who had appeared in person before him on 25.10.2019 and has, on the same day, held them guilty of contempt and sentenced them as aforesaid. It is seen that Arulnathan was 70 years old and Hepzibah Francis was 65 years old when they appeared before the learned single Judge and answered his questions.

9. In our opinion, the learned single Judge should have given the appellants an opportunity to file their counter affidavit to the allegations in the contempt petition and thereafter, should have decided on the desirability of convicting or acquitting them. The appellants should have been given an opportunity to at least tender their unconditional apology as envisaged by the proviso and explanation to Section 12 of the Contempt of Courts Act. In this case, this opportunity was not given to the appellants though their counsel was persuading the learned single Judge that it will not be feasible to implement the ex parte order of interim stay.

10. It may be relevant to state here that in paragraph No.16 of the affidavit dated 25.10.2019 that has been filed by Arulnathan along with this contempt appeal, he has tendered unconditional apology.

11. Mr.G.Sankaran, learned counsel appearing for the respondent, contended that the explanation offered by the learned Senior Counsel for CSI Diocese of Madras for not implementing the ex parte order of interim stay was a smoke screen, which did not find favour with the learned single Judge.



12. In our view, the explanation for not implementing the ex parte order of interim stay should have been considered in the vacate stay application and stay should have been made absolute. Even thereafter, if the CSI Diocese of Madras had not implemented the order, then there was scope for hauling them up under the Contempt of Courts Act, of course, subject to their right to file a writ appeal under Clause 15 of the Letters Patent. In such view of the matter, we find that the impugned order apparently looks indefensible and therefore, it is set aside.

13. Be that as it may, during the course of hearing of this contempt appeal, we passed the following order on 30.07.2021:

'During the course of hearing, Mr.Father Xavier Arul Raj, Senior Advocate appearing for learned counsel on record for the appellant stated that if the respondent joins in Cuddalore and thereafter, gives an application for promotion, the authorities will consider the same in accordance with the Rules and take a decision thereon.

Mr.Sankaran, learned counsel appearing for the respondent stated that he will revert to the respondent and get back.

Post on 13.08.2021.'

14. Pursuant to the above, on the advice of Mr.G.Sankaran, learned counsel appearing for the respondent, Daniel has joined as Office Assistant in CSI St.David's Higher Secondary School, Cuddalore, where he was transferred by the order dated 15.06.2019.

15. Dr.Fr.Xavier Arul Raj, learned Senior Counsel appearing for the appellants, fairly submitted that the CSI would not be vindictive to Daniel, inasmuch as, it would go against the ethos of Christianity - 'if someone slaps on one cheek, turn to them the other also'. Learned Senior Counsel submitted that the authorities would consider promoting Daniel either as a Lab Assistant or as a Junior Assistant in any one of the schools of the CSI Dioceses. Of course, we do not treat this as an undertaking, but, we do hope that the words of learned Senior Counsel would be honoured by the CSI Diocese.

Accordingly, this Contempt Appeal is allowed. The order of



this Court dated 25.10.2019 passed in Contempt Petition No.1310 of 2019 is set aside. Consequently, connected miscellaneous petitions are closed.

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Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

gm

To

1. Arulnathan
The Diocesan Educational Officer & Convener
CSI Diocese of Madras,
The Diocesan Office,
Post Box No.4914
Chennai - 600 086.

2. Hepzibah Francis
The Correspondent/Headmistress,
CSI Ebba's Girls Higher Secondary School,
Mylapore, Chennai - 600 004.

+1cc to M/s.Father Xavier Associates, Advocate, S.R.No.55438

+1cc to M/s.G.Sankaran, Advocate, S.R.No.55285

Contempt Appeal No.6 of 2019

RR(CO)
SU(29/11/2021)