



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.04.2022

Coram

The Honourable Mr. Justice P.N.PRAKASH
and
The Honourable Mr. Justice A.A.NAKKIRAN

Cont.A.No.1 of 2022

1. The Director General of Police
and Head of Police Force,
Tamil Nadu, Chennai - 4.

2. M.Baggiyalakshmi,
Inspector of Police,
District Crime Branch,
Namakkal District.

.. Appellants

Vs.

S.Vasanthi,
Keerampur Village and Post,
Namakkal District.

.. Respondent

Contempt Appeal filed under Section 19(1) of the Contempt of Courts Act, 1971, to expunge the remarks made in paragraph no.8 of the order dated 31.01.2022 passed in Cont.P.No.1330 of 2021 in Crl.R.C.No.112 of 2021.

Prayer Cont.P.No.1330 of 2021

Contempt Petition filed under Section 11 of the Contempt of the Courts Act, 1971, to punish the respondent for willful disobedience of the order passed by this court in crl.r.c.no.112 of 2021 dated 16.03.2021.

PRAYER: Crl.R.C.No.112 of 2021.

Criminal Revision Petition filed under Sections 397 r/w 401 of Criminal Procedure Code, to set aside the order of the learned Judicial Magistrate, Tiruchengode in C.M.P.No.1045 of 2020 in Cr.No.32 of 2011 on the file of the learned DCB, Land Grabbing Wing, Namakkal.



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For Appellants : Mr.Hasan Mohammed Jinnah
State Public Prosecutor
assisted by
Mr.R.Muniyapparaj
Additional Public Prosecutor
and
Mr.N.S.Suganthan
Government Advocate
(Crl.Side)

JUDGMENT

[Delivered by P.N.PRAKASH, J.]

This contempt appeal has been filed to expunge the remarks made in paragraph no.8 of the order dated 31.01.2022 passed in Cont.P.No.1330 of 2021 in Crl.R.C.No.112 of 2021.

2. For the sake of convenience, the parties will be referred to by their names.

3. The minimum facts that are required for disposing of this contempt appeal are as under:

4. Vasanthi, the respondent herein, gave a complaint to the Inspector of Police, District Crime Branch (DCB), Namakkal, against two persons viz., Natesan and Rajavelu. On the basis of the said complaint, a case in DCB Crime No.32/2011 was registered for the offences under Sections 147, 148, 447, 294 (b), 120-B, 420, 467, 468, 471 and 506(II) IPC.

5. After completing the investigation, the DCB, Namakkal, filed a closure report dated 10.02.2014 before the jurisdictional Magistrate, closing the case as "mistake of fact". Since no Referred Charge Sheet (RCS) notice was served on Vasanthi, she approached this Court by filing Crl.O.P.No.13364 of 2020, wherein, by order dated 01.09.2020, a direction was issued by this Court giving her liberty to file a protest petition before the Judicial Magistrate Court, Thiruchengode, on the closure report.

6. Accordingly, Vasanthi filed Crl.M.P.No.1045 of 2020 before the said Court and after hearing the arguments of both sides, the learned Magistrate, by order dated 18.12.2020, held that there is no necessity for further investigation in the case and proceeded to take up the protest application as a private complaint under Section 200 Cr.P.C. and called upon Vasanthi to file a list of witnesses. This order was challenged by Vasanthi



in Crl.R.C.No.112 of 2021 before this Court, in which, a learned Single Judge of this Court, by order dated 16.03.2021, directed the Inspector of Police, DCB, Namakkal, to conduct fresh investigation in Crime No.32/2011 and file a charge sheet in accordance with law.

7. Alleging that Baggiyalakshmi, Inspector of Police, DCB, Namakkal, had failed to comply with the aforesaid directions, Vasanthi filed Cont.P.No.1330 of 2021 in Crl.R.C.No.112 of 2021 against Baggiyalakshmi and the contempt petition was heard by the learned Single Judge, who passed the order dated 16.03.2021 in Crl.R.C.No.112 of 2021.

8. The learned Single Judge, after issuing notice to Baggiyalakshmi, heard both sides extensively and passed final orders on 31.01.2022 in Cont.P.No.1330 of 2021 closing the same, by holding that Baggiyalakshmi was not guilty of wilful disobedience of the order dated 16.03.2021 passed in Crl.R.C.No.112 of 2021. However, in paragraph no.8 of the order dated 31.01.2022 in Cont.P.No.1330 of 2021, the learned Single Judge had made the following observations:

"8.....

Unfortunately, as on date, the police department is running with 90% of the corruptive officers as well as the officers not having adequate capacity to do the investigation and only 10% of the officers are honest and abled officers. The 10% of officials alone cannot do all the investigation. Therefore, it is right time to sensitize the officials and find out to eradicate corruptive officers and give adequate training to the officers those who are not corruptive but they are incapacity to do investigation."

9. Aggrieved by the aforesaid observations, the Director General of Police (DGP) has filed the present contempt appeal.

10. The maintainability of this contempt appeal was decided by this Court on 07.04.2022 by placing reliance on the judgment of the Supreme Court in Tamilnad Mercantile Bank Shareholders Welfare Association (2) Vs. S.C.Sekar and Others¹, wherein, in paragraph no.40, it has been held as follows:

"Although we need not go into the larger question of maintainability of the appeal in view of the fact that the matter has been referred to the Three Judge

¹ (2009) 2 SCC 784



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Bench in Dharam Singh v. Gulzari Lal and others (SLP (Civil) No. 18852 of 2005), but prima facie, in view of the decision of this Court in Purshottam Das (supra) there cannot be any doubt that in a situation where order has been passed adverse to the interest of the alleged contemnor an appeal would be maintainable particularly where a judgment has been passed by a court which is beyond its jurisdiction. This aspect of the matter has also been considered in R.N. Dey v. Bhagyabati Pramanik, [(2000) 4 SCC 400] wherein it was opined :-

"In our view the aforesaid contention for the learned counsel for the respondents requires to be rejected on the ground that after receipt of the notice, officers concerned tendered unconditional apology and after accepting the same, the High Court rejected the prayer for discharge of the rule issued for contempt action. When the court either suo motu or on a motion or a reference, decides to take action and initiate proceedings for contempt, it assumes jurisdiction to punish for contempt. The exercise of jurisdiction to punish for contempt commences with the initiation of a proceeding for contempt and if the order is passed not discharging the rule issued in contempt proceedings, it would be an order or decision in exercise of its jurisdiction to punish for contempt. Against such order, appeal would be maintainable."

But we do not find it necessary to express our opinion on the correctness thereof in one way or the other. (emphasis supplied)"

11. Now, coming to the merits of the case at hand, we are of the view that no notice needs to be sent either to Vasanthi or to Baggiyalakshmi in this contempt appeal, because, the DGP has filed the present appeal only against the aforesaid observations of the learned Single Judge and not against the final decision of the learned Single Judge closing the contempt petition. Hence, notice to Vasanthi and Baggiyalakshmi is dispensed with.

12. The learned State Public Prosecutor placed before this Court many a judgment of the Supreme Court, wherein, the Supreme Court has, time and again, cautioned the High Courts for making sweeping allegations against Government officials without any basis. Suffice to refer to the celebrated judgment of the



Supreme Court in State of Uttar Pradesh Vs. Mohammad Naim².

13. In Mohammad Naim (supra), a learned Single Judge of the Allahabad High Court had made the following remarks in a criminal matter:

"I issued the notice because I want to clean the public administration as far as possible but an individual's efforts cannot go very far. If I had felt that with my lone efforts I could have cleaned this Augean stable, which is the police force, I would not have hesitated to wage this war single-handed. I am on the verge of retirement and taking such steps for two months or three months more would not make any difference to the constitution and the character of the police force... Somehow the police force in general, barring few exceptions, seems to have come to the conclusion that crime cannot be investigated and security cannot be preserved by following the law and this can only be achieved by breaking or circumventing the law. At least the traditions of a hundred years indicate that this is what they believe. If this belief is not rooted out of their minds, there is hardly any chance of improvement... I say it with all sense of responsibility that there is not a single lawless group in the whole of the country whose record of crime comes anywhere near the record of that organised unit which is known as the Indian Police Force. If the Police Force must be manned by officers like Mohammad Naim then it is better that we tear up our Constitution, forget all about democracy and the rights of citizens and change the meaning of law and other terms not only in our penal enactments but also in our dictionaries."

14. Aggrieved by that, the State of Uttar Pradesh went on appeal to the Supreme Court and in paragraph no.12 of Mohammad Naim (supra), it was held as follows:

"We consider that the remarks made by the learned judge in respect of the entire police force of the State were not justified on the facts of the case, nor were they necessary for the disposal of the case before him. The learned judge conceded that the general remarks he made were not based on any evidence in the record; he



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said that he drew largely from his knowledge and experience at the Bar and on the Bench. Learned counsel for the appellant has very frankly stated before us that the learned judge has had very great experience in the matter of criminal cases, and was familiar with the method of investigation adopted by the local police. He has contended, however, that it was not proper for the judge to import his personal knowledge into the matter."

15. In paragraph no.11 of Mohammad Naim (supra), the Supreme Court issued certain guidelines, which are as under:

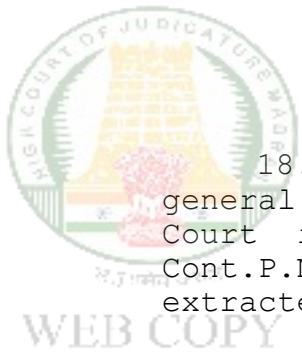
"It has been judicially recognised that in the matter of making disparaging remarks against persons or authorities whose conduct comes into consideration before courts of law in cases to be decided by them, it is relevant to consider (a) whether the party whose conduct is in question is before the court or has an opportunity of explaining or defending himself ; (b) whether there is evidence on record bearing on that conduct justifying the remarks ; and (c) whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct. It has also been recognised that judicial pronouncements must be judicial in nature, and should not normally depart from sobriety, moderation and reserve."

16. In our opinion, the sweeping remarks, which are extracted in paragraph no.8 above, made by the learned Single Judge of this Court, do not pass muster the aforesaid guidelines issued by the Supreme Court in Mohammad Naim (supra).

17. Very recently also, the Supreme Court in Union of India Vs. Bharat Fritz Werner Limited & Another³, has held as follows in paragraph no.139:

"We advise the High Courts not to make general observations which are not warranted in the case. The High Courts shall refrain from making sweeping observations which are beyond the contours of the controversy and/or issues before them."

³ decided on 17.02.2022 in Civil Appeal Nos.1332-1333 of 2022



18. In view of the aforesaid legal position, we expunge the general observations made by the learned Single Judge of this Court in paragraph no.8 of the order dated 31.01.2022 in Cont.P.No.1330 of 2021 in Crl.R.C.No.112 of 2021, which we have extracted in paragraph no.8 (supra).

This contempt appeal is ordered accordingly.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

nsd

To

1. The Inspector of Police,
District Crime Branch,
Namakkal District.
2. The Public Prosecutor,
High Court of Madras.

Cont.A.No.1 of 2022

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