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A.No.1045 of 2023

in C.S.No.172 of 2022

<i>Reserved on</i>	<i>20.03.2023</i>
<i>Delivered on</i>	<i>16.06.2023</i>

K.KUMARESH BABU, J.

The application had been filed seeking to initiate action against the respondent under the provisions of Order 39 Rule 2A CPC as he had violated the order of interim injunction passed by this Court in its order dated 23.08.2022.

2.The applicant had moved this court seeking for interim reliefs against the respondent herein. The reliefs sought for in the said applications are as follows:

(i)O.A.No.509 of 2022 has been filed to grant an order of ad interim injunction restraining the respondent from in any way marking, printing, publishing, broadcasting, disseminating or circulating the statements, articles, pictures, cartoons, caricatures, sketches, tweets and videos



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mentioned in the schedule herein or its contents or any other defamatory statements, articles, pictures, cartoons, caricatures, sketches, tweets or videos which causes damage or tends to lower the reputation of the applicant on YouTube, Twitter, Facebook or in any other media or in any other manner pending disposal of the above suit.

(ii) A.No.3494 of 2022 has been filed to pass an order of ad interim direction directing the respondent to remove all the defamatory videos and tweets mentioned in the schedule herein, which are published online from YouTube, Twitter, Facebook and all other media pending disposal of the above suit.

3. This court by Order dated 23-08-2022 has passed the following order

“9. Having heard the learned counsel for the Applicant / Plaintiff and on perusal of the entire materials placed before this Court, this Court finds considerable force in the submissions made by the learned counsel. In a democratic set up, no one has right to disparage the reputation of another. In this case, the Respondent/ Defendant, prima facie, appears to have indulged in slander having posted various videos and tweets in social media intermediaries, viz., you tube, twitter, etc



with false, scandalous imputations against the Applicant/ Plaintiff who is a political executive, which in the opinion of this Court, would prima facie tarnish the personal and professional reputation of the Applicant/ Plaintiff in the society. In such view of the matter, it would be appropriate to restrain the Respondent / Defendant from making further such derogatory videos and statements, by way of interim injunction.

10. In view of the above and since the Applicant / Plaintiff has made out prima facie and balance of convenience is in favour of the Applicant and if an interim injunction is not granted the Applicant/Plaintiff would be put to irreparable hardship. Hence, there shall be interim injunction as sought for above".

4.The case of applicant is that the respondent in spite of being put on notice of the aforesaid order had continued to make statements in the social media further defaming the applicant. He had also produced various materials to substantiate the violation of the order passed by this court. Hence the learned senior counsel would request this court to punish the respondent.



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5.The respondent had filed counter, a perusal of which shows that the respondent would defend his action by contending that even if the suit is decreed the court would not pass an order of pre-censorship of the future comments to be made by him. He would further claim that the applicant is interpreting the order as though it is a gag order. He would term the contempt as a SLAPP strategy to silence the respondent by the litigation strategy. He further claimed that the statements made by him are true and a fair comment. From the averments made in the counter affidavit, it could be seen that the respondent have not denied the fact that he had not made any statements damaging or which tends to lower the reputation of the applicant. For a better appreciation the relevant paragraphs of the counter are extracted hereunder:

“8.It is humbly submitted that the order is not a blanket gag order and does not direct me to stay silent about the Plaintiff or make no reference to the Plaintiff whatsoever. By interpreting the Order as though it is a gag order, the Plaintiff seeks to do violence to the order and read it in a manner as though it is against the constitution or established judicial precedents. The Plaintiff's conduct in filing this contempt application is a SLAPP strategy to browbeat any criticism into silence by using litigation strategy. The aim is to completely silence critics without there ever being a



chance to test their thoughts or opinions or statements against the touchstone of defamation. Even if the suit is decreed, the Court would not pass an Order of pre- censorship of all future comments by the Defendant. However the Plaintiff wants such an order even at the interim stage of the suit.

9.The materials I have produced along with my Written Statement will show that there is no case, even prima facie for the Plaintiff. I have taken the defence of justification by truth and fair comment. I have produced material to substantiate what I have said. Even a prima facie examination of the material will show the basis on which my comments have been made, and these are either a) borne out by case records on the cash-for-job scam, or b) statements in the public domain and made by responsible. long-standing politicians, including the present Chief Minister, who is the leader of the party to which the Plaintiff now belongs, or are c) fair political commentary based on analysis of facts, logical deductions and reasoning from obvious facts which are available in the public domain.”

6.A further reading of the counter affidavit failed me in finding an averment of any remorse expressed by the respondent to the complaint made against him. On the contrary he has pleaded that he would render his apology if the court finds he has committed any contempt. His reasoning



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that it was his analysis that court would not have granted a gag order as assumed by the respondent, in my considered view is wholly misplaced. The respondent claims himself to be a journalist and political analyst but not a jurist. When that be so he ought to have taken an opinion from an expert in law and further if he has any doubt about the order passed by this court, he should have approached this court either seeking clarification or modification of the order. The respondent has not attempted to do so but has admitted to continue making statements claiming that they are not defamatory.

7. In the present application this court can only see if there is an infraction of the order passed by the court. Some of the uploads in the social media after the order of injunction, were the repost of the earlier uploads which the court found prima facie to affect the reputation of the applicant while granting the interim order.

8. The learned counsel for the respondent relying upon the Apex Court judgement in *Food Corporation of India vs Sukh Deo Prasad, reported in (2009) 5 SCC 665* would submit that in the present case the applicant has



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not proved that there was an order injuncting the respondent from making any statement which may not be defamatory and that statements made after the order are not defamatory, for the applicant to make a complaint of violation of the order. Even though the argument of the learned counsel is attractive, I do not wish to subscribe to the said argument for the reason that I have arrived at a finding of fact that this court while granting the interim order has prima facie found that the uploads complained by the applicant is causing disrepute to the applicant were again uploaded by the respondent after the order.

9.In that context I would wish to place reliance on two Apex Court Judgements wherein the Apex Court has held that even if an order is found to be made without jurisdiction, till the order is modified or varied or rescinded the said order has to be obeyed & even if ultimately the Court rescinds the order during the subsistence of the order there is any violation the violator could be punished:

(a) Tayabbhai M.Bagasarwalla and another vs Hind Rubber Industries Pvt.Ltd, reported in (1997) 3 SCC 443



“28. The correct principle, therefore, is the one recognised and reiterated in Section 9-A — to wit, where an objection to jurisdiction of a civil court is raised to entertain a suit and to pass any interim orders therein, the Court should decide the question of jurisdiction in the first instance but that does not mean that pending the decision on the question of jurisdiction, the Court has no jurisdiction to pass interim orders as may be called for in the facts and circumstances of the case. A mere objection to jurisdiction does not instantly disable the court from passing any interim orders. It can yet pass appropriate orders. At the same time, it should also decide the question of jurisdiction at the earliest possible time. The interim orders so passed are orders within jurisdiction when passed and effective till the court decides that it has no jurisdiction to entertain the suit. These interim orders undoubtedly come to an end with the decision that this Court had no jurisdiction. It is open to the court to modify these orders while holding that it has no jurisdiction to try the suit. Indeed, in certain situations, it would be its duty to modify such orders or make appropriate directions. For example, take a case, where a party has been dispossessed from the suit property by appointing a receiver or otherwise; in such a case, the Court should, while holding that it has no jurisdiction to entertain the suit, put back the party in the position he was



on the date of suit. But this power or obligation has nothing to do with the proposition that while in force, these orders have to be obeyed and their violation can be punished even after the question of jurisdiction is decided against the plaintiff provided the violation is committed before the decision of the Court on the question of jurisdiction.”

***(b) Prithawi Nath Ram vs State of Jharkhand and others,
reported in (2004) 7 SCC 261***

“8. If any party concerned is aggrieved by the order which in its opinion is wrong or against rules or its implementation is neither practicable nor feasible, it should always either approach the court that passed the order or invoke jurisdiction of the appellate court. Rightness or wrongness of the order cannot be urged in contempt proceedings. Right or wrong, the order has to be obeyed. Flouting an order of the court would render the party liable for contempt. While dealing with an application for contempt the court cannot traverse beyond the order, non-compliance with which is alleged. In other words, it cannot say what should not have been done or what should have been done. It cannot traverse beyond the order. It cannot test correctness or otherwise of the order or give additional direction or delete any direction. That would be exercising review jurisdiction while dealing with



an application for initiation of contempt proceedings. The same would be impermissible and indefensible. In that view of the matter, the order of the High Court is set aside and the matter is remitted for fresh consideration. It shall deal with the application in its proper perspective in accordance with law afresh. We make it clear that we have not expressed any opinion regarding acceptability or otherwise of the application for initiation of contempt proceedings.

9. In a given case, even if ultimately the interim order is vacated or relief in the main proceeding is not granted to a party, the other side cannot take that as a ground for disobedience of any interim order passed by the court.”

10. In view of the law laid down by the Apex Court as extracted supra, and in view that the statements made by the respondent after the order dated 23.08.2022, that to particularly the re-uploading of the statements upon which the court has prima facie found disrepute to the applicant, and also for the other reasonings stated supra, I am of the view that the respondent has committed an act of wilful disobedience of the order and is liable to be punished.



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11.Considering the previous conduct of the respondent, also the manner in which the averments have been made in the counter affidavit, in which I have already given a finding that the averments were remorseless, I am of the view that the respondent should mend his ways in the proceedings before a Court. Since the conduct of the respondent was very much without any remorse impinging upon the majesty of the Court, I direct the respondent to pay a sum of Rs.1,00,000/- [Rupees One Lakh Only/-] to the Tamil Nadu State Legal Services Authority, within a period of four weeks from today. He shall also file an affidavit of undertaking that in future he shall guard himself against violating any orders passed by any Court, or even make any comments which may impinge the majesty of the Courts. Such affidavit shall be filed within a period of four weeks from today.

12.In fine, the application is disposed of.

16.06.2023

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Pre-delivery order in

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