



CrI.A.(MD)No.12 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: 11.09.2023

Pronounced on: 20.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE **P.DHANABAL**

CRIMINAL APPEAL(MD)No.12 of 2016

G. Sulthan Sha ... Appellant

Vs

The IV Additional District Judge,
Madurai Respondent

Prayer:- Criminal Appeal is filed under Section 372 of Cr.P.C to set aside the judgement and order passed by the respondent dated 04.01.2016 in M.C.No.1 of 2015 on the file of the IV Additional District Court, Madurai and acquit the appellant/accused from the charge.

For Appellant : Mr.C.M.Arumugam

For Respondent : Mr.N.Tamilmani

JUDGMENT

This Criminal appeal has been preferred as against the judgment and order of conviction passed by the learned IV Additional District Judge, Madurai in M.C.No.1 of 2015, dated 04.01.2016, wherein, the trial Court



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has convicted the accused for the offence under Section 345 read with Section 228 of IPC and sentenced to pay fine amount of Rs.200/- in default to under-go simple imprisonment, for a period of one month.

2. The case before the trial Court is that, on 06.11.2015, the appellant herein, who was a counsel for the defendants 4 to 6 in O.S.No.8 of 2015 has entered into the Court hall at about 12'o clock and without seeking any permission and without observing basic mannerism and decorum, interfered with the Court proceedings in O.S.No.73 of 2010 and produced an application to receive additional documents in I.A.No.42 of 2015 to the Bench Clerk and also compelling him to place it before the presiding officer at once when the other matter was being heard. When the Bench Clerk refused to place it before the Presiding Officer, the appellant directly addressed the Court that, the Court should immediately consider and receive the application submitted by him. Getting annoyed by the interference caused by the Advocate/Appellant, the trial Court advised him that, being an Advocate he should not behave in such manner before the Court and explained that since, the case has been posted for orders, the application at that stage cannot be entertained. The counsel/Appellant became furious and



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in front of the litigant public and other members of the Bar and court staffs, he shouted at the Presiding Officer that the learned Judge is biased. The Advocate confronted with the Presiding Officer in a high pitch with malafide intention attributing indifferent meaning to all the words and act at the Presiding officer. At the time of hearing the applications, for more than half an hour, making the Court to face an awkward situation in the eye of the litigant public and lowered the authority of the Court.

3. Further, the trial Court advised the appellant that, if any urgency he should have properly filed the application in the Section and should have mentioned the same before the Court at the time of rising for the lunch. However, despite stern warning, he continued to pass disparaging remarks against the Presiding Officer that he has lost faith upon the credibility of the Presiding Officer and the Presiding Officer was biased. Further, the trial Court warned that if he felt so, he should have stated the same before arguing the case but after arguing the case at length till 6.30p.m and after reading the mind of the Court, as an afterthought he made such bald allegations with a malafide intention to threaten the Judge and to prevent the Court from passing any judicial Order on the said applications



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before the Deepavali Holidays. Only after stern warning and observations that his activities were very bad, he left the Court murmuring. The contemptuous act of the Advocate/Appellant had stalled the Court proceedings for more than half an hour causing insult to the Presiding Officer. If the appellant had no such intention of such misdeeds, he would have filed the Application in the concerned section and would have mentioned the same before the Court at the time of rising for lunch.

4. Taking cognizance of the offence immediately, the trial Court decided to issue a show cause notice to the Advocate/Appellant for interrupting and insulting the Presiding Officer of the Court with intention, to lower his authority and to prevent the Court from passing a judicial Order. Since he is an advocate, to avoid any commotion to the Court hall he was not taken into the custody. On the same day, after lunch, around 15.00 hours, the appellant presented a memo, through some other Advocate, in the name of the third defendant for whom he was not appearing, by making the same allegation made in open Court. In the memo, he has stated that in view of the mysterious circumstances on the last day on 05.11.2015, at about 5.00 p.m itself, the Court had passed orders as spelt in open Court in



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I.A.No.42 of 2015, and then only arguments were heard upto 6.30 p.m and that he lost faith in the credibility of the Presiding Officer and that he had decided to file Transfer Original Petition. Thereafter, the trial Court issued a show cause notice dated, 17.11.2015 to the appellant and the same was replied by the appellant dated 02.12.2015. Thereafter, the trial Court passed impugned Order on 04.01.2016 by imposing punishment of fine of Rs.200/- for the offence under section 228 of IPC, in default to undergo simple imprisonment for one month. Aggrieved against the aforesaid conviction and judgement, the present appeal has been preferred by the appellant on the following grounds.

(1) The impugned Judgement is against law, facts and all the probabilities of the case.

(2) The appellant is an advocate on record, and he argued the case in O.S.No.8 of 2015 for the defendants No.4 to 6. In the said case, in I.A.Nos. 41 and 42 of 2015, he was representing for the respondents and the said Interlocutory Applications were posted for enquiry of the appellant side and he appeared to argue the matter on behalf of the defendants 4 to 6.

(3) The learned Judge issued memo on 06.11.2015 for disrupted the proceedings of the Court by the appellant. The show cause notice is



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contrary to the B-diary extract.

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(4) The show cause notice issued by the respondent was replied by the appellant and the same was not considered by the learned Judge.

(5) There is no opportunity given to the appellant to put forth his defence by hearing him.

(6).The summons issued by the trial Court, for taking proceedings under Section 345 Cr.P.C., only on 17.11.2015 and the same is against the statutory mandates enumerated in chapter XXVI of Cr.P.C.

(7) The impugned judgment and Order by the respondent is highly arbitrary, erroneous and unjust to the facts and circumstances of the case and against the weight of evidence.

(8) The proceedings in O.S.No.8 of 2015 before the learned respondent and the instant proceeding in M.C.NO. 1 of 2015 against the appellant itself shows the malafide intention of the respondent against the appellant.

(9) The learned respondent has not furnished any copies to the appellant about the proceedings and assured that only the show cause notice and its reply of the materials. When the appellant filed the copy application before the trial Court, the respondent informed the appellant that the



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required papers are voluminous, including site plan and initially directed the appellant to pay Rs.250/- and the appellant paid the same. But, still no documents were served on the appellant and the present proceedings are illegal under Sections 345 and 346 of Cr.P.C.

(10)The impugned proceedings are in violation under Section 345 of Cr.P.C.

(11) Deterring the counsel by initiating the impugned proceedings merely because he is defending the rights of the defendants is violation of fundamental right of fair trial.

(12) The proceedings alleged to be interrupted itself is not at all done by the appellant which is in evident from the records of the respondent himself and all the facts were submitted to the Registrar General of this Hon'ble Court. Therefore, the order passed by the respondent is liable to be set aside.

5.1. The learned Counsel appearing for the appellant would contend that the appellant is a practising Advocate and he appeared on behalf of the defendants 4 to 6 in I.A.Nos.41 and 42 of 2015 in O.S.No.8 of 2014. The said case was posted for hearings on 28.10.2015, 02.11.2015, 05.11.2015



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and then posted on 06.11.2015. The case was argued by the learned counsel/Appellant herein on 05.11.2015 to hear the applications in I.A.Nos. 1208 of 2015 and 1209 of 2015 those applications were posted on 06.11.2015. On the date of hearing i.e. on 06.11.2015, the appellant was waiting for the hearing of I.A.Nos.41 and 42 of 2015 and after calling of all the cases, the case in O.S.No.8 of 2015 was not called. Prior to that on 05.11.2015 in the said applications, original documents were filed then, immediately the defendants in the suit also sought for adjournment. But the learned counsel/Appellant herein sought for adjournment on the ground, that the Senior Counsel was engaged in Madurai High Court, but the learned Judge has not inclined to adjourn the matter. Thereby, on the same day at about 05.15p.m, the appellant herein sought for adjournment stating that, today only the application was filed by the other side and he has to file counter in that application. At that time, the learned Judge stated that, if he did not file any counter, immediately the Application filed by other side would be allowed and further the trial Court insisted the appellant to argue the matter on the same day itself. Further, at that time the Judge also narrated some theft of his house and told that he wont believe the Police.



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5.2. On 06.11.2015, the appellant filed an application with photos and CD but the same was not considered and simply returned and further the learned Judge stated that the appellant can take steps to transfer the case to some other Court and presiding officer has no objection. Based on the above said words of the learned Judge on 06.11.2015, the appellant has filed the memo, in that memo the rank of the defendants were wrongly mentioned and he never interrupted the Court proceedings and only to defend the case on behalf of the defendants, he represented before the Court but the learned Judge has passed an order without following the procedure under section 345 of Cr.P.C.

5.3. As per the Section 345 of Cr.P.C, the Judge has to proceed the case on the same day but, in this case, the memo was issued after a long gap and further, the learned Judge has not given opportunity to defend the case and when the appellant is practising in the same Court as an Officer of a Court, the trial Court has to forward the matter to the concerned jurisdictional Magistrate to take proper action instead of passing orders by the Court itself. The Order passed by the trial Court is not in consonance with the memo issued by the Court on 17.11.2015. Further, the judgment passed by the trial Court is against law and the same is liable to be set aside.



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6. The learned counsel appearing for the respondent would contend that the appellant herein being an Advocate has not maintained the decorum in the Court and in the open Court, he declared that the Judge is on bias. Further, when the case is not posted for hearing, without following the basic courtesy of the the Court, presented an Application to the Bench Clerk and the Bench Clerk was also refused to receive the same. In spite of that, he presented the Application, when the other matter in O.S.No.73 of 2010 was in hearing and he interrupted the case proceedings and represented that, he also filed the memo by stating that, he approached the District Court to transfer the case by way of filing transfer petition and thereby he committed an offence under Section 228 of IPC and the trial Court also issued memo dated 17.11.2015 and thereafter, the appellant also filed the reply to the show cause notice and thereafter only the trial Court has passed an order. On the date of hearing i.e. on 06.11.2015 the occurrence was happened, and thereafter, due to the Deepavali Holidays the trial Court has issued a show cause notice after reopening of the Court and the trial Court has proceeded the case after giving opportunity to the appellant and thereby the trial Court has correctly convicted the appellant for the offence under Section 228 of



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7. This Court has heard both sides and perused the records.

8. Upon hearing both sides, perusing the records, grounds and the judgment of the lower Court, the point for determination in this appeal is:

(i) whether the appellant has committed the offence under section 228 of IPC and the judgment of the trial Court by convicting accused for the offence under section 228 of IPC is sustainable in law and on fact?

9. In this case, the accused is a practising Advocate and he appeared before the trial Court in O.S.No.8 of 2015 for the defendants 4 to 6. The case was posted on 05.11.2015 and thereafter the I.A.Nos.1208 and 1209 of 2015 were allowed. According to the respondent, accused/appellant interfered in the Court proceedings and made commotion and thereby taken cognizance for the offence under Section 228 of IPC, after issuing a show cause notice.

10. This appeal has been filed under Section 372 of Cr.P.C by quoting the wrong provision, the correct provision is Section 351 of Cr.P.C. It is well settled law that mere quoting of wrong provision is not a ground



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for refusing to grant relief, thereby this Court has treated this appeal under Section 351 of Cr.P.C.

11. On careful perusal of the show cause notice, it reveals that, on 06.11.2015 in the open court when the case in O.S.No.73 of 2010 was in hearing, the accused at about 12.00 p.m interfered with the hearing and filed application in O.S.No.8 of 2015 before the Bench Clerk which was posted on 05.11.2015. On 05.11.2015, the said case in O.S.No.8 of 2015 was passed over till 4.30p.m and thereafter, the arguments were commenced upto 6.30p.m. The case was also posted for arguments on 28.10.2015, 02.11.2015, 05.11.2015 and 06.11.2015 but the accused has not come forward to proceed with the case and as per the order passed by the Hon'ble High Court in W.P.No.16303 of 2015 dated 08.09.2015, the case has to be stayed for one week during the Deepavali holidays. Only after the caution, the accused has come forward to proceed with case. The appellant was instructed that finally on 05.11.2015 both side arguments were heard in the case in O.S.No.8 of 2015 and posted for orders and questioned him that how the petition could be heard now. In spite of that, the counsel for the defendants i.e the accused herein raised his voice that the application should



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be heard and the Judge is acting one side and agitated before the Court.

Further, in order to curtail the order passed by the Court in O.S.No.8 of 2015, he filed Transfer Original Petition before the District Court and filed memo at about 2.30 pm. Therefore, the accused committed offence and thereby a show cause notice was issued.

12. The accused had given reply denying the above facts by stating that, on 06.11.2015 the counsel for the defendants 4 to 6 i.e accused herein waiting in the Court hall and that, the case of I.A.Nos.41 and 42 of 2015 in O.S.No.8 of 2015 would be called in open Court but the said case was not called. Prior to that, the said case was posted on 13.10.2015 for filing counter and on the next day 14.10.2015, counter was filed thereafter the case was posted on 28.10.2015. On 28.10.2015 the case was not argued by the respondent counsel and the same was posted on 02.11.2015 for compromise. On 02.11.2015, the respondent counsel represented that no compromise was arrived and further the case was posted on 05.11.2015. On 05.11.2015, the case was posted for hearing and the counsel for the defendants 4 to 6 represented that, the property tax was not paid and the said case was passed over to post lunch session. After lunch, the defendant



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immediately paid the property tax and thereafter the case was argued by the counsel for defendants 4 to 6. At about 5.15 pm, the said application filed by the other side, the learned counsel appearing for the respondent made endorsement that prayed time for filing counter, the other side asked the Court to say no objection to the other side. Therefore, the appellant has not violated any procedures and no intention to breach the decorum of the Court and not committed any offence as alleged in the judgment.

13. On careful perusal of the above said memo and the reply submitted by the accused, it could be seen that on the date of hearing, the case was posted for orders i.e on 06.11.2015. On that date, the advocate appearing for the defendants 4 to 6 i.e. accused herein has represented before the Court to receive the additional documents and the same was denied by the trial Judge. According to the respondent, the accused during the course of hearing in O.S.No.73 of 2010 he interfered and presented the petition before the Bench Clerk. But the Bench Clerk has not been examined as witness in this case and not even the statement of Bench Clerk was recorded in this case and further the appellant is none other than, he is also officer of the Court. Further on the date of alleged occurrence there



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were some wordy altercations between the presiding officer and the advocate and thereby the presiding officer decided to proceed against the accused under Section 345 read with Section 228 of IPC. As per Section 345 of Cr.P.C.. "the Court may cause the offender to be detained in the custody and may, at any time before the rising of the Court on the same day, take cognizance of the offence and, after giving the offender the reasonable opportunity of showing cause why he should not be punished under section, sentence the offender to fine not exceeding 200 rupees, and, in default of payment of fine, to simple imprisonment which will extend to one month, unless such fine be sooner paid.

14. Further, section 345 of Cr.P.C read as follows:

“345.Procedure in certain cases of contempt.-(1) When any such offence as is described in section 175, section 178, section 179, section 180 or section 228 of the Indian Penal Code (45 of 1860) is committed in the view or presence of any Civil, Criminal or Revenue Court, the Court may cause the offender to be detained in custody and may, at any time before the rising of the Court on the same day, take cognizance of the offence and, after giving the offender a reasonable opportunity of showing cause why he should not



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be punished under this section, sentence the offender to fine not exceeding two hundred rupees, and, in default of payment of fine, to simple imprisonment for a term which may extend to one month, unless such fine be sooner paid.

(2) In every such case the Court shall record the facts constituting the offence, with the statement (if any) made by the offender, as well as the finding and sentence.

(3) If the offence is under section 228 of the Indian Penal Code (45 of 1860), the record shall show the nature and stage of the judicial proceeding in which the Court interrupted or insulted was sitting, and the nature of the interruption of insult.”

15. Therefore, from reading of the above said provision of Section 345 Cr.P.C, it is clear that the court has to cause the offender to be detained in the custody and made at any time before the rising of the court on the same day, take cognizance of the offence and further as per sub-clause(3) of Section 345 Cr.P.C., if the offence is under Section 228 of IPC, the record shall show the nature and stage of the judicial proceeding in which the court interrupted or insulted was sitting, and the nature of interruption or insult. Here, the trial court has not followed the procedure under sub-section(1) of Section 345 of Cr.P.C. On the same day, the Court has not taken



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congnizance and further there is no reference in what manner the Appellant interrupted or insulted. The allegation against the accused is that, he interrupted while hearing the case in O.S.No.73 of 2010. But in the said case notes paper there is no reference about the alleged nature of interruption and further, either in the diary proceedings or any notes paper of the case no reference with regard to the alleged interruption and insult, by the accused. Therefore, the trial Court has not followed the procedures as contemplated under Section 345 of Cr.P.C.

16. Where the trial Court has not proceeded under Section 345 of Cr.P.C it ought to have followed the procedure as contemplated under Section 346 of Cr.P.C. In this regard, it is relevant to extract provision under Section 346 of Cr.P.C, which reads as follows:

“346.Procedure where Court considers that case should not be dealt with under section 345. (1) If the Court in any case considers that a person accused of any of the offences referred to in section 345 and committed in its view or presence should be imprisoned otherwise than in default of payment of fine, or that a fine exceeding two hundred rupees should be imposed upon him, or such Court is for any other reason of opinion that the case should not be disposed of



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under section 345, such Court, after recording the facts constituting the offence and the statement of the accused as herein before same, and may require security to be given for the appearance of such person before such Magistrate, or if sufficient security is not given shall forward such person in custody to such Magistrate.

(2) The Magistrate to whom any case is forwarded under this section shall proceed to deal with, as far as may be, as if it were instituted on a police report.”

17. Therefore, from the reading of the above said provision of Section 346 of Cr.P.C it reveals that when the matter is not proceeded under Section 345 of Cr.P.C, the learned Judge ought to have proceeded the case under Section 346 of Cr.P.C.

18. On careful perusal of sub-section(3) of Section 345 of Cr.P.C., it is clear that it mandates the record shall show the nature and stage of the judicial proceeding in which the Court interrupted or insulted was sitting and the nature of the interruption or insult, the sub-section(3) of Section 345 of Cr.P.C is higher pedestal than sub-section(2) of Section 345 of Cr.P.C. As per sub-section(2) of Section 345 of Cr.P.C, in every such case the Court shall record the facts constituting the offence, with the statement (if any)



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made by the offender, as well as the finding and sentence. In the above circumstances, when the Court decides to proceed the case under Section 228 of IPC and unable to proceed the case on the same day, it shall follow the procedure under Section 346 of Cr.P.C for ensuring the fair trial. Further as per Section 346 of Cr.P.C, the Court while dealing the cases under Section 345 of Cr.P.C., if the Court considers that the accused should be imprisoned, or fine should be imposed more than for Rs.200/-, or any other reason of opinion that the case should not be disposed of under Section 345 of Cr.P.C then to proceed under Section 346 of Cr.P.C., since unable to proceed the case on the same day. The case on hand comes under the 3rd category, while so the trial Court ought to have proceeded the case under Section 346 of Cr.P.C. Further, the accused also officer of the Court and when there is proceeding as against the accused, the Court has to give sufficient opportunity to him for ensuring fair trial and for better administration of justice. The trial court ought to have transferred the case to some other jurisdiction Court as per Section 346 of Cr.P.C., instead he himself heard the case. Further, there was no sufficient opportunity given to the accused to defend the case and the show cause notice was issued on 17.11.2015 and the accused filed his reply on 2.12.2015 and then issued



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summons to accused to answer for the charge under section 228 of IPC dated 15.12.2015. Thereafter on 22.12.2015, charge was framed and explained to accused and then passed the impugned judgment on 4.1.2016.

19. Further, the memo dated 18.11.2015, issued by the respondent, has not stated the manner in which the accused interrupted the proceedings, neither in the proceedings in O.S.No.73 of 2010 nor in the proceedings of the application alleged to have been filed by the accused on 06.11.2015, the Court recorded about the alleged incidents. Further, in the show cause notice, the learned Judge stated that the case was posted for arguments on 28.10.2015, 02.11.2015, 05.11.2015, and 06.11.2015. On perusal of the notes paper of the case records, it reveals that the case in I.A.No.1208 and 1209 of 2015 alone were posted for hearing on 05.11.2015.

20. Further, on perusal of orders passed by the learned Judge, it reveals that he has not given opportunity to the accused and in the order, only stated about the manner of interference and not found in the memo i.e show cause notice. There are some allegations made against the accused and the accused also made some allegations against the Presiding Officer while so, the Presiding Officer ought to have proceeded the matter under



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Section 346 of Cr.P.C to ensure the fair trial. The trial Court passed a lengthy Judgment while following the procedures of summary trial proceedings without following proper procedures under Section 346 of Cr.P.C. Further, as per the Section 228 of IPC,

“228. Intentional insult or interruption to public servant sitting in judicial proceeding

Whoever intentionally offers any insult, or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.”

21. Therefore, from bare reading of the above said provision, it is clear that in order to constitute of offence under section 228 of IPC there should be intention, insult or interruption to public servant and the public servant insult or interrupted must be sitting in any stage of the judicial proceedings. The question whether an insult occurred to the public servant is intentional or not, has to be decided depending upon the facts of particular case and there is no hard and fast rule to prove the intentional insult and it vary case to case. Therefore, the present case ought to have



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been dealt with by way of trial by Jurisdictional Magistrate Court and not simply convict, the accused without hearing, that too, accused being an advocate, who is an officer of the court.

22. Further, the learned counsel appearing for the appellant has relied on the judgment in *S.Rajanikanth Vs Tmt.C.Thirumagal learned VII Metropolitan Magistrate, George Town, Chennai 600 001* reported in 2011-2-L.W.(CrI.) 320 wherein this Court, in the similar kind of situation held as follows and the relevant portion is extracted hereunder:

“8. However, it is contended on behalf of the respondent that accepting the said contention will make the court helpless if a person deliberately commits the offence at the eleventh hour of the working day; that a person may commit such an offence a few minutes prior to the rising of the court and immediately escape from the court and thereby may prevent the Presiding Officer of the court from proceeding against him summarily under Section 345(1) Cr.P.C and that the same is not intended by the legislature in enacting such a provision. As rightly pointed out by the learned counsel for the petitioner, the answer to the above said submission made by the learned counsel for the respondent is that, in such a situation the Presiding Officer of the court



initiating contempt proceedings under Section 345(1) Cr.P.C can prolong the sitting on the same day for the purpose of disposal of the proceeding. For better appreciation Section 345(1) Cr.P.C is reproduced here under:-

" When any such offence as is described in section 175, section 178, section 180 or section 228 of the Indian Penal Code (45 of 1860) is committed in the view or presence of any Civil, Criminal or Revenue Court, the Court may cause the offender to be detained in custody and may, at any time before the rising of the Court on the same day, take cognizance of the offence and, after giving the offender a reasonable opportunity of showing cause why he should not be punished under this section, sentence the offender to fine not exceeding two hundred rupees, and, in default of payment of fine, to simple imprisonment for a term which may extend to one month, unless such fine be sooner paid."

A reading of Section 345(1) Cr.P.C will show that the summary proceedings for the offences punishable under the provisions of the Indian Penal Code mentioned in sub section (1) of section 345 Cr.P.C. should be initiated on the same day of commission of the offence; that the offence should be taken cognizance of on the same day and that the order should be passed on the very same day after giving a



reasonable opportunity to show cause as to why he should not be punished under the said section.

9. In this case, the offence was allegedly committed on 28.01.2008. The petitioner was not caused to be detained and the proceedings under Section 345(1) was not initiated on the same day. On the other hand, it was sought to be initiated by issuing a show cause notice on the succeeding day, namely 29.01.2008. The same, as rightly pointed by the learned counsel for the petitioner, is outside the scope of Section 345(1) Cr.P.C. Therefore the initiation of the criminal proceedings under Section 345(1) Cr.P.C, not on the same day of commission of the offence but on the succeeding day, is a material irregularity which will vitiate the proceedings. Once the court omits to or is disabled from taking cognizance of the offence on the same day, then it loses jurisdiction to initiate the summary proceedings under Section 345(1) Cr.P.C. In such an event, the only alternative available is to set the criminal law in motion in the regular course of preferring a complaint under the private complaint procedure or lodging a complaint with the police. Therefore the very initiation of the criminal proceedings under Section 345(1) Cr.P.C is against the provision and the impugned order passed in the proceeding thus initiated cannot be sustained and the same is liable to be set aside”



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23. Therefore, from the above judgment, it is clear that the reading of Section 345(1) Cr.P.C would show that the summary proceedings for the offences punishable under the provisions of the Indian Penal Code mentioned in sub-section(1) of section 345 of Cr.P.C should be initiated on the same day of commission of the offence, that the offence should be taken cognizance on the same day and that the orders should be passed on the very same day after giving a reasonable opportunity to show cause as to why he should not be punished under the said provision. But in the case on hand, the learned Judge has not proceeded the case on the same day and after long gap, he issued a show cause notice that too, without recording the manner in which the accused interrupted and insulted the Court proceedings.

24. Further, in the same judgment, this Court referred the judgment of the *Hon'ble Supreme court in Chetak Constructions Limited Vs. Om Prakash and Others reported in (1998) 4 SCC 577* wherein the Hon'ble Supreme Court categorically held that,

"16. Indeed, no lawyer or litigant can be permitted to browbeat the court or malign the presiding officer with a view to get a favourable order. Judges shall not be able to



perform their duties freely and fairly if such activities were permitted and in the result administration of justice would become a casualty and rule of law would receive a setback. The judges are obliged to decide cases impartially and without any fear or favour. Layers and litigants cannot be allowed to "terrorize" or "intimidate" judges with a view to "secure" orders which they want. This is basic and fundamental and no civilised system of administration of justice can permit it. We certainly, cannot approve of any attempt on the part of any litigant to go "forum-shopping". A litigant cannot be permitted "choice" of the "forum" and every attempt at "forum-shopping" must be crushed with a heavy hand."

"17.At the same time, it is of utmost importance to remember that Judges must act as impartial referees and decide cases objectively, uninfluenced by any personal bias or prejudice. A Judge should not allow his judicial position to be compromised at any cost. This is essential for maintaining the integrity of the institution and public confidence in it. The credibility of this institution rests on the fairness and impartiality of the Judges at all levels. It is the principle of highest importance of the proper administration of justice that judicial powers must be exercised impartially and within the bounds of law. Public confidence in the judiciary rests on legitimacy of judicial process. Public confidence in



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the judiciary rests on legitimacy of judicial process. Sources of legitimacy are in the impersonal application by the Judge of recognised objective principles which owe their existence to a system as distinguished from subjective moods, predilections, emotions and prejudices. Judges must always ensure that they do not allow the credibility of the institution to be eroded. We must always remember that justice must not only be done but it must also be seen to be done.”

25. In this case, the case was posted for orders in the I.A.Nos.41 and 42 of 2015 on 06.11.2015 and the counsel for defendants 4 to 6 i.e accused filed an application before the Court, at that time, there were some wordy altercations between the Presiding Officer and the Advocate, if so, the learned Judge ought to have taken action immediately on the same day itself. But the memo was prepared on 17.11.2015 and was issued on 18.11.2015. Thereafter, the judgment was passed on 04.01.2016 that too, without giving opportunity to the accused. Therefore, in view of the above said discussions and the above said judgement, this Court is of the opinion that, the Judgment and conviction passed by the learned IV Additional District Judge, Madurai as against the accused is not in accordance with law and the same are unsustainable and liable to be set aside. Accordingly, the



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Judgment and conviction passed by the learned IV Additional District Judge, Madurai are set aside.

26. In the result, this appeal is allowed and the Judgment and conviction passed by the learned IV Additional District Judge, Madurai in M.C.No.1 of 2015, dated 04.01.2016, are set aside and the appellant/accused is acquitted from the charge under Section 228 of IPC and he be set at liberty, subject to other cases if any and the bail bond if any, executed by the accused shall stand cancelled. The fine amount if any, paid by the accused shall be refunded to him.

20.10.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No

dpa

To

28/30



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1.The IV Additional District Judge,
Madurai.

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2.The Additional Public Prosecutor,
Maduri Bench of Madras High Court,
Madurai.



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P.DHANABAL, J.

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