

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Civil Appellate Jurisdiction

Wednesday, the First day of March Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

SUB A(MD) . No.160 of 2022
in
Cont.P(MD) No.741 of 2015
in
W.P.(MD)No.17647 of 2014
and
Crl.R.C.(MD) No.602 of 2022

P. Sabapathi,
The Inspector of Police Palayamkottai Taluk
Police Station Tirunelveli.
At Present Working As The Inspector of Police
Manur Police Station ... Petitioner

Vs

1 Adaikalam,
S/o Thangapandi Thevar No.1/106
Muthuramalingam Street
Thirumalaikolunthupuram
Tirunelveli District. ... Respondent

Prayer in Sub Appln.No.160 of 2022

Sub Application filed Under Section 151 of CPC, pleaded to accept the petitioner`s unconditional apology and recall the punishment to pay a fine of sum of Rs.2000/- imposed by this Honourable Court in Cont P(MD) No. 741 of 2015 dated 15.11.2022 and thus render justice.

Prayer in Con P(MD) No.741 of 2015;

Contempt Petition has been filed under Section 11 of the Contempt of Courts Act, to punish the respondent for his willful disobedience of the order passed by the Hon!ble court in W.P(MD) No.17647 of 2014, dted 30.01.2015.

Prayer in WP(MD).17647/2014:

Writ petition is filed under Article 226 of the Constitution of India, praying this court to issue a writ of Mandamus ,direct the 2nd respondent to release the seized TIPPER LORRY bearing Registration No.TN 34 E 5308 seized by the 3rd Respondent on 11.10.2014.

Prayer in CrI RC(MD)602/2022;

Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for the record and set aside the order dated 14.08.2015 made in CrI.M.P.No.3571 of 2015 on the file of the Judicial Magistrate No.III Tirunelveli, in Crime No.272 of 2014 on the file of the Inspector of Police, Taluk Police Station, Tirunelveli.

ORDER:- This Sub Application coming on Friday the Sixteenth day of December 2022, and upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.S.C.Herold Singh, Advocate for the Petitioner and of Mr.J.C.Rathinavel Pandian, Advocate for the respondent, and having stood over for consideration till this day, this Court made the following order:

The above petition has been filed under Section 151 of C.P.C., seeking orders to recall the punishment to pay a fine of Rs.2,000/-, imposed by this Court in Cont.P.(MD)No.741 of 2015, dated 15.11.2022, by accepting the petitioner's unconditional apology.

2. This Court in Cont.P.(MD)No.741 of 2015, by holding that the petitioner is guilty of civil contempt, imposed a punishment, directing the petitioner to pay a fine of Rs.2,000/- and in default to undergo simple imprisonment for a period of one month and further directed to pay a sum of Rs.25,000/- towards exemplary cost to the respondent/petitioner on or before 24.11.2022 and directed the matter to be posted on 24.11.2022 'for reporting compliance'.

3. When the matter was taken up for hearing on 24.11.2022, the petitioner/contemnor and his counsel were present before this Court and in pursuance of the directions of this Court, the contemnor has handed over the demand draft for Rs.25,000/- drawn in favour of the respondent/petitioner to the learned counsel for the respondent/petitioner. The learned counsel for the contemnor has submitted that the contemnor is ready to offer his unconditional apology and taking note of his long service in the Police Department, the impugned order punishing the contemnor for civil contempt and directing to him to pay a fine of Rs.2,000/- to the Hon'ble Chief Justice Relief Fund may be recalled and sought time for filing an application in that regard. In pursuance of the same, the above application came to be filed.

4. The petitioner/contemnor has filed an affidavit separately reiterating his stand taken in the above petition and tendered his unconditional apology. In the affidavit filed in support of the above petition, the petitioner/contemnor has specifically stated that he has got highest regard and respect to the orders of this Court; that he is aware that the orders of this Court has to be obeyed in its letter and spirit; that he has no intention at all to violate the orders of this Court; that he tendered unconditional

apology before this Court and beg to purge him out of contempt; that if the apology tendered by him was not accepted, he would be put to irreparable loss and immense hardship; that it would be a black mark in his service and the same would have a great bearing in his career and life and that therefore, prayed to accept his unconditional apology and purge him out of contempt.

5. It is pertinent to note that the contemnor in the counter affidavit filed to the contempt petition has stated that if the Court feels that he has committed any contempt, he is tendering his unconditional apology. Considering the above and also the subsequent conduct of the contemnor that though he was very much available in the Court at the time of final arguments in the contempt petition, he was not inclined to tender his apology, this Court has specifically observed that the apology tendered by the contemnor at that time is only a paper apology and that this Court relying on the judgment of the Hon'ble Supreme Court in **C.Elumalai vs A.G.L.Irudhayaraj** reported in (2009) 4 SCC 213, and taking note of the conduct of the petitioner in not tendering any apology nor expressed his intention to tender an apology, concludes that petitioner is found guilty of offence under Section 12 of the Contempt of Courts Act.

6. As rightly pointed out by the learned counsel for the respondent/petitioner, even now the petitioner by saying that he is tendering his unconditional apology, has also reiterated the points/aspects that were canvassed earlier in response to the contempt petition, which were already considered and rejected by this Court.

7. According to the petitioner, he joined duty at Tirunelveli Taluk Police Station on 03.01.2015, subsequent to the registration of the case and seizure of the vehicle in question and that he came to know about the order of this Court after the copy of the order was received in their Police Station on 04.03.2015 by one Pugalendhi, Police Constable. As rightly pointed out by the respondent, admittedly, this Court has passed the order in W.P.(MD)No.17647 of 2014, on 30.01.2015 and on that day, the petitioner was the Inspector of Police of the concerned Police Station. Admittedly, the petitioner has nowhere whispered in the enquiry in the contempt petition and at present, as to who was deputed to give instructions to the Government Advocate (Criminal Side) in W.P.(MD)No.17647 of 2014, what were the steps taken by the petitioner to look after the said writ petition so as to ascertain the details of the order passed by this Court and that without furnishing the any of the above details, the petitioner has simply stated that the order copy was received in their Police Station only on 04.03.2015, i.e., after the expiry of more than two months, since the date of order 30.01.2015.

8. As rightly contended by the learned counsel for the respondent, even in the present proceedings, the petitioner has attempted to show that the respondent is a habitual offender by alleging that he was having three previous cases.

9. The learned counsel for the respondent would submit that the case in Crime No.174 of 2010 was already ended in acquittal on 21.09.2012 before the Chief Judicial Magistrate Court, Tirunelveli and that the case in Crime No.210 of 2014 though ended in conviction by the learned Chief Judicial Magistrate, Tirunelveli, the Appellate Court has acquitted the petitioner and that though both the cases were ended in acquittal, the petitioner deliberately wanted to mislead the Court by way of projecting the respondent as a habitual offender.

10. The learned counsel for the petitioner has not specifically disputed the above factum. More importantly, this Court has specifically observed in the earlier order that the petitioner despite having several opportunities to comply with the order of this Court, the contemnor has not chosen to do. Moreover, this Court has specifically observed that when the respondent has moved an application under Section 451 Cr.P.C before the jurisdictional Court for return of vehicle, that the contemnor, having full knowledge about the order of this Court, dated 30.01.2015 passed in the Writ Petition and the consequent order passed by the Revenue Divisional Officer, has filed his objections before the jurisdictional Court in response to the petition filed under Section 451 of Cr.P.C raising serious objections and opposing for the release of the vehicle in question on interim custody by alleging that the contempt petition, which was actually pending against him and the review petition, which was not at all taken on file, were pending.

11. As rightly contended by the learned counsel for the respondent, even after coming to know about the orders of this Court passed in the writ petition and the consequent directions of the Revenue Divisional Officer, the contemnor has not offered any reason or explanation for raising such serious objections for releasing the vehicle on interim custody and that the nature of the objections raised by the petitioner would prove his intention.

12. As already pointed out, the petitioner in the above petition has sought to recall the order passed by this Court in Cont.P.(MD)No.741 of 2015 and it can only be considered as a prayer for review.

13. It is pertinent to note that recalling of the earlier order must be done only in exceptional circumstances as contemplated under Order 47 of the Code of the Civil Procedure. There must be an error apparent on the face of the record or some evidence which though could not be produced after due diligence, if produced, would result in a different decision or for any other sufficient reason, provided the person seeking review must prove that the existence of the document was not within his knowledge earlier.

14. It is settled law that the jurisdiction and scope of review is not that of an appeal and it can be entertained only if there is an error apparent on the face of the record. A mere repetition of old and overruled arguments is not sufficient enough to reopen the concluded decision.

15. In the case on hand, the petitioner has not shown any other grounds contemplated under Order 47 of C.P.C., to review or recall the earlier order. Even assuming for arguments sake that the petitioner has tendered his unconditional apology, that by itself cannot be a ground to recall the earlier order. But, in the case on hand, as already pointed out, the petitioner's alleged apology is not voluntarily and willingly made.

16. As rightly contended by the learned counsel for the respondent, so called apology is only to escape from the punishment imposed. Considering the above, the petitioner has not shown any reason or ground to recall or review the order passed earlier and consequently this Court concludes that the above petition is devoid of merits and the same is liable to be dismissed.

17. In the result, Sub Application is dismissed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/03/2023

Sub Assistant Registrar(CS)

TO

- 1)The Inspector of Police,
Palayamkottai Taluk Police Station.
Tirunelveli.
At present working as
The Inspector of Police, Manur
- 2)The Additional Public Prosecutor,
Madurai bench of Madras High court,
Madurai

Copy to:

- 1) The Section Officer,
writ Section
Madurai Bench of Madras High Court, Madurai

2) The Section Officer,
Criminal Section
Madurai Bench of Madras High Court, Madurai

ORDER DATED : 01/03/2023

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ORDER

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Giving direction and etc.
as stated within.

SS/16/03/2023/6P/5C