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Cont.P.No.3212 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.10.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

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1.A.Shankar

2.G.Karthi

...Petitioners

Vs.

R.S.Bharathi

...Respondent

Prayer: Contempt Petition has been filed under Section 11 of the Contempt of Courts Act, 1971, pleaded to initiate proceedings for criminal contempt under Section 15 of the Contempt of Courts Act, 1971, for scandalizing the office of a Judge of this Court in particular and the High Court as an institution in general and for interfering with the administration of justice by attributing bias and impure motives to the orders of this this Court.

For Petitioner : Mr.V.Raghavachari
Senior Counsel
for Mr.P.Vijendran,

For Respondent : Mr.Richard Wilson
for M/s.Wilson Associates



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ORDER

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(Order of the Court was made by *S.M.SUBRAMANIAM, J.*)

As a prelude, we remind, on May 18, 1951, when the provisional Parliament of India (the body that succeeded and had mostly the same composition as been constituent assembly) was debating the first constitutional (Amendment Bill). Dr.B.R.Ambedkar discussed the judgments of the Hon'ble Supreme Court of India in the case of *State of Madras vs. Chapakam Dorairajan*¹ and *Venkataramana vs. the State of Madras*² and called them “utterly unsatisfactory”. The house chided him for disparaging the Apex Court and Dr.B.R.Ambedkar responded:

“I have often in the course of my practice told the presiding judge in very emphatic terms that I am bound to obey his judgment but I am not bound to respect it. That is the liberty that every lawyer enjoys in telling the judge that his judgment is wrong and I am not prepared to give up that liberty”.

2. The Contempt Petition on hand has been instituted under Section 15 of Contempts of Courts Act, 1971, to initiate proceedings for criminal

1 1951 AIR 226

2 1966 AIR 1089



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contempt against the respondent for scandalising the office of a Judge of the Hon'ble High Court of Madras for interfering with the administration of justice by attributing bias and impure motives to the orders of this Court.

3. Question arises, whether the relief as such sought for in the contempt petition is maintainable under Section 15 of the Contempts of Courts Act (hereafter referred as Act) or not.

4. Section 15 specifies how criminal contempt is to be taken cognizance of. It will be useful to set out here the relevant portions of this Section.

15.Cognizance of criminal contempt in other cases:

i)In the case of a criminal contempt, other than a contempt referred to in Section 14, the Supreme Court or the High Court may take action on its own motion or on a motion made by:

a)the Advocate-General, or

b)any other person, with the consent in writing to the Advocate-General,



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c)in relation to the High Court for the Union

territory of Delhi, such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf, or any other person, with the consent in writing of such Law Officer.

5. In the present case, the petitioner approached the Advocate General seeking his consent for initiation of criminal contempt under Section 15 of the Act. The Advocate General rejected the consent petition No.15 of 2023 dated 22.09.2023, which resulted in institution of the present contempt petition at the instance of the petitioners.

6. The initial point to be considered by this Court is, whether rejection order of the Advocate General would provide cause and right to a third person to file a petition under Section 15 of the Contempt of Courts Act.

7. In the context of right to file contempt petition under Section 15 of the Contempt of Courts Act, it was elaborately considered by the Hon'ble Supreme Court in the case of ***P.N.Duda vs. V.P.Shiv Shankar and others***³.

³ 1988 (3) SCC 167



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V.P.Shiv Shankar was the former Union Minister against whom the criminal contempt proceeding was initiated. The Hon'ble Supreme Court while considering the scope of Section 15 of Contempt of Courts Act made an observation that ***“if the consent is withheld without reasons or without consideration of that right granted to any other person under Section 15 of the Act that could be investigated in an application made to the Court. if such right is not considered on relevant materials that action is justifiable in an appropriate proceedings for contempt”***.

8. In the absence of consent from the Advocate General as contemplated under Section 15 of the Act, a petition moved by a third person before the Court for initiation of criminal contempt must be treated only as “information” on which the High Court might or might not take Suo motu action and there is no need to initiate proceeding against the respondent for contempt of Court.

9. Thus, the answer for the maintainability of the petition would be that in the absence of consent from the Advocate General, Contempt Petition under Section 15 of the Act, for initiation of criminal contempt is not



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maintainable. However, such petitions can be construed as an “information” to the Court and Court on such information might or might not initiate suo motu action as contemplated under Section 15 of the Contempt of Courts Act.

10. In the present case, the petitioner approached the Advocate General and the petition was elaborately considered and the Advocate General declined to grant consent by order dated 22.09.2023 in Consent Petition No.15 of 2023. One of the observation of the Advocate General is that the learned Judge Mr.Justice N.Anand Venkatesh himself had refused to initiate any Contempt of Court action by stating that the Court was not inclined to take any action against anyone, who criticised his orders of suo moto revisions.

11. When the learned Judge himself has refused to initiate contempt, the Advocate General formed an opinion that there is no other reason to grant consent to initiate criminal contempt proceedings against the respondent. Thus, we are of the considered opinion that against the rejection of a consent petition by the Advocate General, power of judicial review can be exercised



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and while exercising the powers of judicial review, the High Court has to treat such petition only as an “information” provided to the Court on which Court might or might not initiate action for initiation of criminal contempt of Court. Therefore, such petitions need not be thrown out on the threshold in the interest of dispensation of justice. The power of judicial review is conferred to ensure that the administration of justice is preserved. Therefore, the present petition filed by the petitioner is to be treated only as an information to the Court, on which this Court has to find out whether any contemptuous statement has been made by the respondent warranting initiation of action for criminal contempt.

12. Let us now consider the broader perspectives on law of contempt to be adopted by the Courts while initiation of contempt proceedings.

13. It is worthy to remember the words of Lord Atkin, **“Wise Judges never forget that the best way to sustain the dignity and status of their office is to deserve respect from the public at large by the quality of their judgment, the fearlessness and fairness of their approach, and by the restraint, dignity and decorum, which they observe in their judicial**



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conduct”.

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14. The very foundation of justice delivery system is transparency. Criticisms helps in building the Institution. Not only judgments, but judicial actions are also subject to criticism. The process of judicial decision making is also subject to review by the people. The idea of justice is openness and transparency in judicial process. In this world where all the public institutions are under public scrutiny, judges cannot shy away from criticism. Judiciary is also subject to public scrutiny. **The cure for misinformation and criticism is more transparency and accountability.**

15. Nobody needs to be a witness for our actions. Witnesses for our actions is always our conscience and the Constitution of India.

16. Judiciary alone cannot be an opaque institution. Institution involved in the delivery of justice must be the most transparent institution.

17. Lord Denning in the case of ***Regina vs. Commissioner of Police of the Metropolis***⁴, Ex parte Blackburn, observed as follows:-

⁴ [1968] 2 W.L.R. 1204



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“Let me say at once that we will never use this jurisdiction as a means to uphold our own dignity. That must rest on surer foundations. Nor will we use it to suppress those who speak against us. We do not fear criticism, nor do we resent it. For there is something far more important at stake. It is no less that freedom of speech itself.

It is the right of every man, in Parliament or out of it, in the Press or over the broadcast, to make fair comment, even outspoken comment on matters of public interest. Those who comment can deal faithfully with all that is done in a court of justice. They can say that we are mistaken, and our decisions erroneous, whether they are subject to appeal or not. All we would ask is that those who criticise us will remember that, from the nature of our office, we cannot reply to their criticisms. We cannot enter into public controversy. Still less into political controversy. We must rely on our conduct itself to be its own vindication.

Exposed as we are to the winds of criticism, nothing which is said by this person or that, nothing which is written by this pen or that, will deter us from doing that we believe is right; not, I would add, from saying what the occasion requires, provided that it is pertinent to the matter in hand. Silence is not an option when things are ill done”.

Gajendragadkar, C.J. In Special Reference No.1 of



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1964⁵, [1965] 1 SCR 413 observed as follows:

“We ought never to forget that the power to punish for contempt, large as it is, must always be exercised cautiously, wisely and with circumspection. Frequent or indiscriminate use of this power in anger or irritation would not help to sustain the dignity or status of the court, but may sometimes affect it adversely. Wise Judges never forget that the best way to sustain the dignity and status of their office is to deserve respect from the public at large by the quality of their judgments, the fearlessness, fairness and objectivity of their approach, and by the restraint, dignity and decorum which they observe in their judicial conduct.

18. The concept of public accountability of the judicial system is, indeed a matter of vital public concern for debate and evaluation. All social and political institutions face massive challenges and are under the pressure of re-assessment of their relevance and utility. Judicial institutions are no exception. In a democracy, no institution of the State, the judiciary included can or should be above public scrutiny and criticism.

19. For maintaining the concept of rule of law and for firmly instilling

5 [1965] 1 SCR 413



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the faith and trust of the public in the judicial system, people have the right to voice their opinions and concerns. Creative legal journalism and activist statesmanship for judicial reform cannot be jeopardised by an undefined apprehension of contempt action.

20. In the present case, the respondent is a lawyer by profession and a seasoned politician. He holds higher responsibility than that of an ordinary citizen. His words are measured in the public domain. Therefore, his responsibility and accountability stands on the higher footing than that of the responsibility of an ordinary citizen. While making statements against the public institutions, the persons like that of the respondent are expected to be more cautious, responsible and accountable so as to ensure that the public institutions and its values are protected and preserved.

21. We have carefully gone through the statement made by the respondent, while criticising the order passed by Learned Single Judge of this Court. He made certain remarks which could have been avoided. However, we do not find any strong intention behind such statements to interfere with the administration of justice.



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22. It is interested to note that in 1987, after the Spycatcher judgment, when the Daily Mirror called British Judges “You Old Fools”, no contempt was initiated because the Judges in the United Kingdom did not take notice of personal insults. In fact, Lord Templeton commented “I can't deny that I'm old; it's true. Whether I am a fool or not is a matter of personal opinion..... I do not need to invoke the power of contempt”.

23. The expression “respect for law” is a “complex one”. It is based on the belief that the law is democratic and fair and that it contributes to social progress or that it protects individual rights. Judges have vast powers and people will not remain silent if the exercise of such powers is not done properly.

24. As we are progressing towards a vibrant democracy and the press freedom and freedom of expression constitute the foundation. Courts are expected to exercise restraint, while initiating criminal contempt proceedings on each and every criticism made in the public domain by any person.



25. Certain personal remarks against Judges cannot constitute contempt of court, unless it interferes / obstructs administration of justice.

The personal remarks against judges must be pursued with his/her own personal rights and the contempt of Court jurisdiction cannot be exercised in a routine manner.

26. Judges play a vital role in the functions of judicial institution, but they are not the institution. Judges may come and go, but institution survives and the contempt jurisdiction is designed to protect the institution and not the judges in their personal capacity.

27. Conventionally it has been told that the pillar of judiciary ought to be kept away from public scrutinies to protect the dignity and integrity of the institution. But this notion no longer holds good. More transparency and openness is the base for a robust and healthy institution and this will only elevate the dignity of the institution in the eyes of the common man.

28. The members of the institution must work towards transparency to earn respect and trust of the common man. Instead prevailing his/her right to



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criticise will not strengthen the walls of judiciary. Live streaming of Court proceedings and legal awareness is the solution to combat misinformation and unfair criticisms. Our conduct and judgments is the answer to the criticisms and it should be left to the people to judge the judges. Thus, we do not find any reason to initiate criminal contempt proceedings against the respondent.

29. Accordingly, this Contempt Petition stands dismissed.

[S.M.S., J.]

[V.S.G., J.]

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Index: Yes/No

Speaking/Non-speaking order
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