

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 158 OF 2012
(Arising out of S.L.P. (Crl.) No. 72 of 2009)

C. Shakunthala & Ors.

.... Appellant(s)

Versus

H.P. Udayakumar & Anr.

.... Respondent(s)

J U D G M E N T

P.Sathasivam,J.

- 1) Leave granted.
- 2) This appeal is directed against the final judgment and order dated 18.06.2008 passed by the Division Bench of the High Court of Karnataka at Bangalore in Criminal CCC No. 32 of 2005 whereby the High Court dismissed the petition of the appellants herein.

3) **Brief facts:**

(a) The appellants herein are the children and legal representatives of late M. Channappa, who was the original complainant/landlord before the High Court. Late M. Channappa was the owner of the property bearing Old Survey No. 39/2A, Yediur Village, Bangalore South Taluk. He let out the eastern half portion of the said property to one Kachu Krishna Achari and western portion to one P.V. Lingaiah on rent. In view of the extension of the City, the property fell into the Bangalore City limits and is presently situated on the K.R. Road and bears No. 2038/A.

b) Late M. Channappa initiated eviction proceedings against both the said tenants and Kachu Krishna Achari came to be evicted pursuant to the decree granted by the competent court. The order of eviction was challenged by P.V. Lingaiah in HRRP No. 559 of 1996 before the High Court of Karnataka which came to be dismissed on 29.02.2000 granting two years time to vacate the tenanted premises subject to filing an undertaking by him.

c) Pursuant to the said order, Lingaiah filed an undertaking to vacate the tenanted premises and deliver vacant possession to late M. Channappa. In the meantime, Lingaiah approached this Court by way of a special leave petition which also came to be dismissed.

d) Mr. Lingaiah failed to adhere to the undertaking given by him to vacate the premises within two years, instead in collusion with his son L. Suresh and H.P. Udayakumar, respondent No.1 herein, he created a sale deed dated 22.02.2001 whereby respondent No.1 is purported to have acquired a portion of the tenanted premises. Significantly, respondent No.1 is the business partner of L. Suresh, son of Lingaiah.

e) Thereafter, late M. Channappa initiated contempt proceedings against Lingaiah, his son Suresh and H.P. Udayakumar, respondent No.1 herein. Since respondent No.1 and Suresh were not parties to the earlier petition, contempt proceedings were dropped against them and the High Court by its order dated 06.02.2004 convicted and sentenced Mr. Lingaiah to undergo simple imprisonment for three days.

Being aggrieved with the order of the High Court, late Channappa filed an appeal before this Court for enhancement of the sentence awarded to Mr. Lingaiah which is still pending.

f) As Mr. Lingaiah failed to vacate the tenanted premises, late Channappa also filed execution proceedings before the Court of Small Causes, Bangalore under Order 21 of CPC. The Court of Small Causes issued delivery warrant for delivery of possession of the tenanted premises.

g) While the matter was pending, on 18.12.2004, the respondent No.1 herein filed an application under Order 21 Rule 97 to 101 read with Section 151 CPC in Execution Petition No. 2658 of 2004 seeking adjudication of his right, title and interest in respect of the property in question contending that he was the absolute owner of the said property in terms of the sale deed dated 22.02.2001 and that late M. Channappa had no interest in the said property. He also contended that as late M. Channappa attempted to interfere with the property, he filed O.S.No. 15265 of 2002 before the Civil Court for permanent injunction wherein the court had granted an ad interim order of status quo.

h) It is evident that respondent No.1 is the business partner of the son of Lingaiah and he has been set up to file application to protract the proceedings.

i) In the light of the stand taken by respondent No.1, Channappa filed O.S. No. 3814 of 2005 against respondent No.1 for delivery of the vacant possession of the property.

j) The Executing Court vide judgment dated 08.06.2005 dismissed the application filed by respondent No.1 after adverting to the material on record. Respondent No.1 questioned the said order before the High Court by filing HRRP No. 285 of 2005.

k) The High Court by judgment dated 30.06.2005 dismissed the said petition on the ground that eviction order having passed in the year 1996, respondent No.1 who was obstructing the execution of the decree having purchased the property subsequently in the year 2001 interfered with the order of the Executing Court which is not warranted.

l) On 26.09.2005, respondent No.1 and his brother H.P. Ashok Kumar, respondent No.2 filed another application in the said Execution Petition opposing the same.

m) In the circumstances, late M. Channappa filed a petition under Section 11(2) of the Contempt of Courts Act, 1971 before the High Court. After hearing both the parties, the High Court by its order dated 09.06.2006 held that there was a prima facie case against the respondents to proceed further and frame charge and try them for criminal contempt for abuse of the process of the law. On 17.01.2008 M. Channappa passed away and the High Court permitted the petitioners therein to come on record.

n) The High Court, by final impugned judgment dated 18.06.2008 dismissed CrI. CCC No. 32 of 2005 and acquitted the respondents by holding that the grounds made out in the second application is under different circumstances, the identity of the property is disputed and that the respondents cannot be attributed with unlawful intention for abuse of the process of the court.

o) Being aggrieved, the appellants herein preferred this appeal by way of special leave.

4) Heard Mr. Basava Prabhu S. Patil, learned senior counsel for the petitioners and none appeared for the respondents.

5) The point for consideration is whether the impugned judgment of the High Court dismissing CrI. CCC No. 32 of 2005 after recording that *prima facie* case was made against the respondents, thereafter framing charges and recording evidence of the parties, without adverting to the plea of the parties and evidence on record, by concluding that the second application was under different circumstance being contrary to Rule 13 of the High Court of Karnataka (Contempt of Court Proceedings) Rules 1981 (in short 'the Rules') read with Section 264 occurring in Chapter XXI of the Code of Criminal Procedure, 1973 (in short 'the Code') is legally sustainable.

6) Since we have already narrated the facts of the case, there is no need to refer the same once again. Mr. Basava Prabhu S. Patil, learned senior counsel for the appellants submitted that even as early as on 09.06.2006, the Division Bench of the High Court based on the materials placed concluded that a *prima facie* case against the respondents/accused have been made out for proceeding

further and directed framing of charge to try them for criminal contempt for abuse of process of law, another coordinate Bench while passing the impugned order dated 18.06.2008, without reference to any of the materials, simply dismissed the petition filed by the petitioners therein-appellants herein. Perusal of the initial order dated 09.06.2006 shows that the Division Bench considered the contempt petition filed against the accused after obtaining the consent of the learned Advocate General in writing under Section 15-1(a) of Contempt of Courts Act, 1971. Pursuant to service of notice on the respondents, they submitted their objections along with certain documents in support of their defence. It was contended that the action complained of do not constitute abuse of process of the Court for taking cognizance in the matter and to proceed further for framing the charge.

7) As rightly pointed out by the Division Bench in the order dated 09.06.2006 in terms of Rule 8(ii)(a) of Contempt of Courts Rules, 1981, the matter was heard initially to find out whether there is a *prima facie* case to frame the charge against the accused persons. The complainant placed strong reliance

on the allegations made in the complaint and also the order passed by the trial Court in the earlier application filed by the first accused-Udaya Kumar in respect of property against which a decree is sought to be executed by the complainant in the execution proceedings. In the preliminary order, the Court had also referred to the observation of the Executing Court dated 08.01.2005. Ultimately, the Executing Court has convicted the judgment debtor and others. The matter is still pending before this Court. The complainant has also alleged that after the order passed on the application filed by the first accused became final, a decree was sought to be executed to take the possession of the premises. At this juncture, the second accused has filed another application taking another plea and according to his counsel, the subject matter covered in the application is different from the earlier one and that the identity covered in the eviction petition and the claim made in the application filed by the first accused before the Executing Court is entirely different. In other words, it is the defence that the order passed on the earlier application filed by the first accused does not come in the way of Executing Court to

independently consider the application of the second accused in order to determine the rights of the parties. In the preliminary order, the Division Bench rejected the said contention and *prima facie* found that it is untenable in law in view of the earlier application filed under Order XXI Rule 9 of Civil Procedure Code, 1908 by the first accused and concluded that the earlier application and the present application have to be treated as one and the same. After adverting to the respective stand of the parties, various decisions of this Court, in the preliminary order dated 09.06.2006, the Division Bench has concluded thus:

“10. We have carefully perused the record and the documents produced by the complainant and also the accused persons. After careful perusal of the averments made in the complaint and the statement of objections and the orders passed by this court in the eviction proceedings and also the order passed in the proceedings and the law laid down by the Supreme Court in the cases referred to supra, upon which strong reliance is rightly placed by the complainant, we feel that there is *prima facie* case against the accused to proceed further, frame charge and to try them for criminal contempt for abuse of the process of law.

11. Call after two weeks for framing charges against the accused.”

That was the position on 09.06.2006. Meanwhile, Mr. M. Channappa, who was the complainant in CCC No. 32 of 2005 passed away and his children were brought on record as his legal representatives. Inasmuch as the impugned order does not contain adequate reasons and materials as found in the preliminary order by another coordinate Bench dated 09.06.2006, it is useful to extract the exact impugned order of the Division Bench which is as follows:

“Without reference to merit of the contents taken in the second application, we hold to suffice that the grounds made out in the second application is under different circumstances. The identity of the property is disputed. Factually, we find that the accused cannot be attributed with unlawful intention of abuse of process of the court. In the view of the matter we do not find any good ground to hold the contempt u/s 2(e) of the Contempt of Courts Act. Accordingly, petition is dismissed and the accused is acquitted.”

8) We have already referred to the stand of the complainant, his specific assertion with reference to earlier orders and the defence of the respondents/accused as well as the prima facie conclusion by the Division Bench that the complainant has made out a case against the accused to proceed further and adjourned the matter for two weeks for framing charges. When such is the position, it is not understandable how

another coordinate Bench after two years without any discussion and adverting to the relevant materials relied on by earlier coordinate Bench passed a cryptic order by dismissing the contempt petition. We are satisfied that when the coordinate Bench on earlier occasion, that is, on 09.06.2006, based on the acceptable materials *prima facie* concluded that charges have to be framed, it is but proper by the present Bench to arrive and take a final decision in the light of the materials formulated by the earlier Bench. We are not saying that the complainant has made out a case for guilty of contempt of courts but the *prima facie* conclusion arrived by the earlier Bench in the year 2006, based on the acceptable materials, cannot be ignored by another Bench at the time of the passing the final order as if it is an Appellate Court. In view of the same, we have no other option except setting aside the impugned order and remitting the matter to the High Court for passing fresh order.

9) In the light of what is stated above, the impugned order of the High Court dated 18.06.2008 made in CrI. CCC No. 32 of 2005 is set aside and the matter is remitted to it for fresh disposal. We request the High Court to restore CrI. CCC No. 32 of 2005 on its file and dispose of the same on merits in accordance with law by passing a speaking order after affording opportunity to both the parties. The appeal is allowed to this extent.

.....J.
(P. SATHASIVAM)

.....J.
(J. CHELAMESWAR)

NEW DELHI;
JANUARY 16, 2012.