

PETITIONER:
J. VASUDEVAN

Vs.

RESPONDENT:
T.R. DHANANJAYA

DATE OF JUDGMENT 08/09/1995

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
HANSARIA B.L. (J)

CITATION:
1996 AIR 137 1995 SCC (6) 249
JT 1995 (7) 484 1995 SCALE (5) 245

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Shri S. Swatantra Rao has appeared in person and has filed an affidavit. He is examined. On his attention being drawn to what finds place in the order of this Court passed on 1.9.1995, he states that what has been mentioned therein as regards his meeting one of us (K. Ramaswamy, J.) is correct. On being further asked as to whether he had met on his own or at the instance of anybody, his reply is that he had done so on his own and then brings to our notice the statements made by him in the affidavit.

2. We have perused the affidavit which was verified at Bangalore on 7.9.1995. It has mentioned the "sequence of events" leading to his meeting Hon'ble Mr. Justice K. Ramaswamy. It states that having read in the newspaper, while on tour to West Bengal, about the judgment of this Court imposing sentence on Shri J. Vasudevan, on his return to Bangalore he tried to contact Shri Vasudevan to console him. He was informed that Shri Vasudevan was not available in Bangalore and that he was still in Delhi.

3. On 29.8.1995 it was told to the deponent that Shri Vasudevan was in a shock and despair and that the sentence imposed would be implemented within a day or two. This led the deponent to feel that Shri Vasudevan might not bear the punishment and something untoward could happen during his imprisonment. Being a colleague and friend of Shri Vasudevan, he could not curb his concern and started wondering whether something could be done to help him.

4. The affidavit then mentions about the long and cherished desire of the deponent to meet Hon'ble Mr. Justice K. Ramaswamy to seek his good wishes and blessings whom he had met about last four decades ago. It is the concern for Shri Vasudevan and long and cherished desire to meet Hon'ble Ramaswamy, J. which prompted him to come to Delhi and he left Bangalore by East West Airlines on 30.8.1995 which was scheduled to depart at 8 P.M. As the flight was delayed, he

reached Delhi around mid-night and being of the view that if he were to go to Karnataka Bhavan, he might have to wait for long as its employees would be asleep, he proceeded to Kanishka, an ITDC Hotel, and checked in. Next day morning he rang up Shri Vasudevan at Karnataka Bhavan but he was told that Shri Vasudevan had left the room around 7 A.M. As such there was no chance for him to get in touch with him.

5. The deponent states that thereafter he met Hon'ble Mr. Justice K. Ramaswamy at his residence and the object of this visit was to seek his Lordship's blessings and good wishes and also "to beg some mercy for Shri J. Vasudevan". No sooner did he realise that Hon'ble Mr. Justice K. Ramaswamy resented the prayer for mercy, than he sincerely apologised and left the place and left for Bangalore in the afternoon.

6. It is reiterated that neither Shri Vasudevan nor anybody else had suggested him to approach Hon'ble Mr. Justice K. Ramaswamy and it was his "un-subdued concern as a colleague" which, inter alia, had prompted him to meet Hon'ble Mr. Justice K. Ramaswamy.

7. The further averments made in the affidavit are that the deponent had no intention of influencing the judiciary and he sought apology for the embarrassment caused to Hon'ble Mr. Justice K. Ramaswamy and for the violations made on the judicial ethics. The affidavit ends by saying that the deponent would be careful in future and has prayed "to pardon him for the improprieties" committed under the above circumstances.

8. The affidavit thus is clear on one aspect and the same is that the deponent had not met one of us (K. Ramaswamy, J) at the instance of Shri Vasudevan. There cannot however, two opinions that the act of meeting K. Ramaswamy, J. was most reprehensible and has to be disapproved in the strongest terms. As, however, the deponent has realised the gross mistake committed by him, we are of the view that we may not proceed further with the matter and close the same by ordering that an entry would be made in his CCR about the gross impropriety committed by him in meeting K. Ramaswamy, J.

9. We have heard Shri Nariman, learned senior counsel for the petitioner, to at least remit the sentence, for which purpose our mercy jurisdiction has been invoked, and invoked very forcibly and fervently. We are aware that even under the proviso to Section 12 of the Contempt of Courts Act, 1971, the punishment awarded may be remitted on apology being made to the satisfaction of the Court. He mentioned about this legal provision despite the fact that we had invoked our constitutional power in the matter at hand. We would agree with Shri Nariman that in an appropriate case the prayer for remission of sentence imposed on a contemnor may be considered when the Court is satisfied, on the facts of that case, that it requires to be done.

10. The entire emphasis of Shri Nariman is that the petitioner had acted the way he had done on legal advice; more so, in the background of the judgment of the High Court of Karnataka passed in W.P. No.15458/1991 and batch rendered on 31.3.1994. Shri Nariman has taken us through the relevant part of that judgment in which the High Court accepted that the claim of one M. Venkatesh was fully protected, despite the order which had been passed by this Court on 26.7.1993 in I.A. No.3. In the order which we had passed on 24.8.1995 this fact had been noted, to which our attention was drawn by Shri Santosh Hegde, who had then appeared for the petitioner. In the order we stated that after Venkatesh had been promoted nothing could have reasonably stood in the way of T.R. Dhananjaya to get appointed to the supernumerary

post which had been created by the Bangalore Corporation pursuant to the order passed by this Court. That was, however, not done. Shri Nariman's submission is that this was not done by the petitioner, not because he did not desire to comply with this Court's order, but because he had been advised by his counsel to act the way he subsequently did and which ultimately resulted in the proceeding dated July 10, 1995, the purport of which has been noted by us in the order in question.

11. Shri Nariman strenuously urges that the petitioner's sentence for imprisonment be remitted because he acted under wrong legal advice, and not mala fide. It may be pointed out that in our order we had not attributed mala fide to the petitioner but had concluded that he was quality of willful disobedience. As to the advice by the counsel, which is said to be available in the file, may we mention, as noted in our earlier order, that a submission had been made before this Court itself on May 10, 1995 by Shri Hegde to grant time till after vacation for implementation of the order. We had allowed this prayer. According to us, therefore, nothing was left except to implement the order which had not been done. The fact that the order has been implemented subsequently has no relevance.

12. Shri Nariman urges that in the aforesaid background his submission is only to remit the sentence in exercise of our mercy jurisdiction. It is mentioned that the petitioner has only few years to retire and imprisonment would affect him adversely. According to us, this cannot be a ground to show mercy because in every case of government servant this plea would be advanced and in no case a government servant who is found to have wilfully disobeyed the orders of the court would be sentenced to imprisonment.

13. It may be stated that while awarding the sentence of imprisonment we had considered the submission of Shri Hegde to show leniency so far as the question of sentence is concerned and it was stated in the order passed on August 25, 1995 there were no "extenuating circumstances", as after promoting Venkatesh nothing at all could have reasonably stood in the way of T.R. Dhananjaya to get appointed to the supernumerary post of Addl. Chief Engineer created by the Corporation.

14. Coming to the mercy jurisdiction, let it be first stated that while awarding sentence on a contemnor, the court does so to uphold the majesty of law, and not with any idea of vindicating the prestige of the Court or to uphold its dignity. It is really to see that unflinching faith of the people in the courts remain intact. But, if the order of even the highest court of the land is allowed to be wilfully disobeyed and a person found guilty of contempt is let off by remitting sentence on plea of mercy, that would send wrong signals to everybody in the country. It has been a sad experience that due regard is not always shown even to the order of the highest court of the country. Now, if such orders are disobeyed, the effect would be that people would lose faith in the system of administration of justice and would desist from approaching the court, by spending time, money and energy to fight their legal battle. If in such a situation mercy is shown, the effect would be that people would not knock the door of the courts to seek justice, but would settle score on the streets, where muscle power and money power would win, and the weak and the meek would suffer. That would be a death knell to the rule of law and social justice would receive a fatal blow. This Court cannot be a party to it and, harsh though it may look, it is duty bound to award proper punishment to uphold the rule of law,

how so high a person may be. It may be stated, though it is trite, that nobody is above the law. The fact that the petitioner is an I.A.S. officer is of no consequence, so far as the sentence is concerned. We would indeed think that if a high officer indulges in an act of contempt, he deserves to be punished more rigorously, so that nobody would take to his head to violate court's order. May we also say that a public officer, being a part of Government, owes higher obligation than an ordinary citizen to advance the cause of public interest, which requires maintenance of rule of law, to protect which contemnors are punished.

15. In the aforesaid circumstances, we are constrained to reject the prayer fervently advanced by Shri Nariman in his usual vehemence and dismiss the petitions.

JUDIS