

PETITIONER:
T. DEEN DAYAL

Vs.

RESPONDENT:
THE HIGH COURT OF ANDHRA PRADESH.

DATE OF JUDGMENT: 10/09/1997

BENCH:
A.S. ANAND, K. VENKATASWAMI

ACT:

HEADNOTE:

JUDGMENT:
THE 10TH DAY OF SEPTEMBER, 1997 PRESENT:
Hon'ble Dr. Justice A.S. Anand
Hon'ble Mr. Justice K. Venkataswami

Appellant-in-person
K. Ram Kumar, T.V.S. Narasimbhachari and Ms. Asha Nair, Adv.
for the Respondent

J U D G M E N T

The following Judgement of the Court was delivered:

J U D G M E N T

K. venkataswami. j.

This appeal under section 19 (1)(b) of the content of courts Act, 1971 (hereinafter called the 'Act') is preferred against the judgement dated 15.7.89 of the Division Bench of the Andhra Pradesh High Court punishing the appellant after finding him guilty of contempt of court with simple imprisonment for a period of three months.

The appellant contested the biennial election to Raiya Sabha held in the year 1984. In that connection, he filed an Election Petition No.1/84 on the file of the High Court of Andhra Pradesh. That Election Petition was tried by Mr. justice Upendralal Waghray. During the hearing of the said Election Petition, the appellant filed a Miscellaneous Application being S.R.No.16572/85 requesting the hon'ble Chief justice of Andhra Pradesh High Court to withdraw the said Election petition from the Court of Mr. Justice Upendralal Waghray and transfer the same to some other learned Judge. In the said Miscellaneous Application for transfer, the appellant made the following allegation:

"It is alleged that his lordship the Hon'ble Mr. Justice Upendralal Waghray is under the evil influence of Sri N.T. Rama Rao, Chief Minister of Andhra Pradesh, because of his relative, Mr. Shravan Kumar I.A.S., Chief secretary to the Chief Minister Sri N.T. Rama Rao, since the said Mr. Shravan Kumar is behind the fraud in connection with the registration of the 1st respondent, viz., Mr.

P.Radhakrishna from the membership of the A.P. Public Service Commission. In these circumstances, I submit that his lordship the Hon'ble Mr. Justice Upendralal Waghray cannot do justice to me in the above election petition and request that the Hon'ble Chief Justice, High Court of Andhra Pradesh, at Hyderabad may be pleased to withdraw the election petition from the file of the Hon'ble Mr. Justice Upendralal Waghray and make it over to some other judge....

On perusing these allegations, the learned judge felt that the allegations made against him were not only baseless but also made recklessly with a view to scandalise the Court. Accordingly, the learned Judge passed an order on 16.4.85 holding that the allegation made in the Transfer Application 'amounts to interference with and obstruction to administration of justice, amounting to 'criminal contempt' as defined in section 2(c) of the Act. Hence, the learned judge proposed initiation of contempt proceedings against the appellant and issued notice to the appellant to put forward his defence and adjourned the matter to 25.4/85. On the adjourned date, the learned judge directed the papers to be placed before the Hon'ble Chief Justice for placing the matter before any other learned Judge. In the first instance, the matter came up before Mr. Justice P.A.Choudhary, who passed an order directing the matter to be placed for hearing before a Division Bench, accepting the contention of the appellant that the matter being a criminal contempt was required to be dealt with by Division Bench. The matter was then heard by a Division Bench consisting of M.N. Rao. It appears that the appellant was not regular in appearing before Division Bench and the Division Bench, therefore, directed to issue a bailable warrant on 9.6.87 to secure the presence of the appellant. Thereafter, the case was listed before a Bench consisting of Mr. Justice Jeevan Reddy and Mr. Justice Neeladri Rao. Even before this Bench the appellant did not appear at the time of hearing and the court was compelled to issue a non-bailable warrant to secure his presence. In the meanwhile, it is seen from the records that the appellant moved this Court in Transfer Petition (criminal) No.147/87 for Transfer of the contempt case. This court requested the Chief justice of the High Court to fix a Division Bench for hearing the case to ensure an early disposal of the matter. He also filed Criminal Miscellaneous petition Nos. 2988-90 of 1988 in T.P. (Crl.) No. 147/87 for punishing Respondents 1&3 therein for not complying with the Order in T.P. (CRL.) No. 147/87. This Court again directed the High Court to dispose of the contempt petition within six weeks from 22.7.88. As noticed earlier, the appellant without disclosing the laches on his part is not appearing before the Court-bailable Warrants to secure his presence, seems to have moved this court for early disposal of the contempt petition. The case was ultimately heard on 3rd and 4th July, 1989 by the Division Bench.

It will be relevant to mention that a notice for initiation of proceedings under the Act was issued calling upon the appellant to show-cause. He was filed the Counter Affidavit the offence. In the counter Affidavit in para 4 he has stated as under:

"His Lordship the Hon'ble Mr. Justice Upendralal Waghray in his order dated 16.4.85, initiated contempt proceedings against me, quite in violation of Section 13 of the Contempt of Courts Act, 1971, allegedly because Sri.P. Upendra, M.P. (3rd respondent in Election Petition No. 1/84) paid a bride of Rs. 2 Lakhs, vide Crl.M.P.No.2988/88 in Transfer Petition (Criminal) No. 147/87 ordered by the Hon'ble Supreme Court of India, New Delhi, On 22.7.1988."

Before the High Court the appellant argued person and the learned Advocate General appeared for prosecuting the case. The learned Advocate General submitted before the High Court that having regard to the fact that the Contemnor made baseless allegations against the learned Judge in the Transfer Application and adding scurrilous allegation in the Counter Affidavit in the Contempt Application aggravating the offence, he should be dealt with severely.

The appellant appearing in person before the High Court challenged the jurisdiction of the learned Judge to initiate proceedings under the Act as, accordingly to him, the learned Judge was acting only as an 'authority' as contemplated by Article 329(b) of the Constitution of India. He further contended that the initiation of proceedings by the learned Judge was in violation of section 13 of the Act. His third contention was that by reason of the order dated 1.7.86 passed by P.A. Chaudary, J., the order dated 16.4.85 passed by Upendralal Waghray, J., "was defeated". He next contended that the proceedings were barred by limitation provided in Section 20 of the Act. His fifth contention was that the learned Judge while making an order of 16.4.85 partially denied the allegations and thereby indirectly admitted the order part of allegation made by him. The last contention was that while passing the order on 25.4.85 the learned judge has discharged him and thereafter the question of continuing the contempt proceedings will not arise.

The High Court rejecting the first contention held Article 329(b) cannot be constructed as precluding the parliament from conferring the jurisdiction to try an election petition, upon a court of a High Court and the expression 'authority' is not defined either in Articles 366 of the Constitution or in the General Clauses Act, 1897. On that basis the learned judges rejected the first contention and held that it was permissible for the Parliament to designate a Court, namely, the High Court, to try election petitions. On the second contention based on paragraph 4 of the Counter Affidavit, the learned Judges, after observing that the averment in that paragraph was extremely scandalous, and compound the gravity of the allegations, held that the contention was neither a legal contention nor a factual one against the charge levelled against him. Likewise, dealing with the third contention it was held that the order dated 1.7.86 passed by Mr. Justice P.A. Choudhary referring the contempt case to be heard by Division Bench, will not defeat the order dated 16.4.85 of Mr. Justice Upendralal Waghray. On the point of limitation based on Section 20 of the Act, the learned Judges held that Section 20 provides for limitation for initiation, but not for conclusion of contempt proceedings. While rejecting the fifth contention as irrelevant which could not be

entertained the learned Judges held that a contemnor cannot expect as learned Judge of the Court to reply to every one of his reckless allegations. As regards the last contention based on the order dated 25.4.85 of the learned single judge, the High Court found that contention was based on a misreading of the order dated 25.4.85 and from the material placed before the Court it was clear that the respondent was put on clear notice of the charge he has to meet and that the proceedings were not proceedings under section 14, but under Section 15 of the Act.

The High Court in its detailed judgement considered each and every one of the contention raised before it and ultimately came to the conclusion as under:

"We are of the opinion, that the allegations made in the affidavit. which we have extracted hereinabove, do constitute a clear case of criminal contempt. The respondent wanted to scandalise the learned judge and thereby lower the authority of the Court within the meaning of Sub-clause (i) of clause (c) in Section 2. the said statement also attracts sub-clauses (ii) and (iii) as well, since they interfere with the due course of a judicial proceedings and the administration of justice. At no stage, has the respondent offered any apology, or expressed regret. On the other hand, he was made graver allegations in his counter, saying that the learned Judge has received a bribe of Rs. 2 lakhs. It is clear that the respondent is a totally irresponsible person. Who has no respect for Court and, he is bent upon scandalising the Court and brow beating its Judges. It is evident that when his petition for additional issues was dismissed, he resorted to the said scandalous allegations with a view to stall the trial of the election petition. His attitude as exhibited in his counter-affidavit and his argument before us, indicate that he is an incorrigible person who has to be dealt with severely. We are equally satisfied that the contempt is of such a nature that it has substantially interfered with the due course of justice. The parties cannot be allowed to resort to such strategems, either with a view to get an adjournment or to obtain a change of the Judge.

For the above reasons, we hold the respondent, Sri. T. Deen Dayal, guilty of contempt of Court. We are of the opinion that the deserves no leniency and that substantial punishment should be imposed him. Accordingly, we

punish him with simple imprisonment for a period of three months. The sentence shall be carried out forthwith."

The learned Judges after pronouncing judgement holding the appellant guilty of contempt of court, at the request of the appellant, suspended the order to enable him to approach this Court by way of appeal for a period of two weeks.

The appellant has thereafter filed this appeal. When the appellant opened the case, we asked him whether he would take the legal assistance. He challenged the order under appeal contending that inasmuch as this Court's orders in Transfer Petition (Clr.) No.147/87 and Criminal M.P. No.2989/88 in Transfer Petition No. 147/87 having not been complied with within the specified time, the order under appeal must be set aside on that ground. We not find any substance in this argument as the orders of this Court, directed the High Court to dispose of the contempt Petition at an early date giving specific time. We find from the order under appeal, the delay was on the part of the appellant also in not appearing before the Court on the dates of hearing, necessitating the High Court to issue initially bailable warrant and later on non-bailable warrant to secure his presence. Therefore, it does not lie in the mouth of the appellant to make any complaint against the delay in the disposal of the Contempt Petition by the High Court.

The appellant next argued that the Chief justice of High Court has not authorised the Division Bench which delivered the order under appeal to hear the Contempt Application. We are at a loss to know on what basis this argument was advanced. It is a known fact that the Chief Justice constitutes the Benches for disposal of cases and without the orders of Chief Justice, the Contempt Application would not have been posted before the Bench for disposal. This contention also, therefore, rejected.

The appellant then argued that under Article 329-A of the Constitution, the disputes arising out of electoral matters are to be decided by 'an authority' provided under any law made by the appropriate legislature. Therefore, notwithstanding Section 80 A of the Representation of People Act, 1951 investing the High Court with the jurisdiction to try an election petition. It must be deemed that the High Court is functioning as an 'authority' only and not as a court and, therefore, has no jurisdiction to issue suo moto notice under the contempt of Courts Act. Here again, the High Court has dealt with this point in detail and expressed its opinion as under:

"80-A. High Court to try election Petitions:-

(1) The court having jurisdiction to try an election petition shall be the High Court.

(2) Such jurisdiction shall be exercised ordinarily by a single judge of the High Court and the Chief Justice shall, from time to time, assign one or more judges for that purpose;

Provides that where the High Court consists only of one Judge, he shall try all election petitions presented to that Court.

(3) The High Court in its discretion may, in the interests of

justice or convenience, try an election petition, wholly or partly, at a place other than the place of seat of the High Court".

This section expressly says that "the court having jurisdiction to try an election petition shall be the High Court." It says further such jurisdiction shall be exercised ordinarily by a single Judge of the High Court. The jurisdiction to try an election petition is thus given to a 'Court', viz., the High Court. In such a situation, the argument that the judge trying the election petition should be deemed to be an 'authority' and not a 'Court', is contrary to the express language in the enactment. We see no substance in the contention that because clause (b) in Articles 329, employs the expression 'authority', the parliament was not competent to confer the said jurisdiction on a court, or that the Court empowered by the parliamentary enactment, should still be treated as an 'authority'. We do not find any such limitation in Article 329(b). It cannot be construed as precluding the parliament from conferring the jurisdiction to try an election petition, upon a Court or a High Court. The expression 'authority' is not defined either in Articles 366 of the Constitution, or in the General Clauses Act, 1897. Having regard to the context and the purpose underlying Article 329(b), we are inclined to hold that it was permissible for the parliament to designate a Court, viz., the High Court, to try election petitions. The first objection is, accordingly.

We agree with the above view expresses by the High Court and also ass that the authority designated being High Court, it has jurisdiction to take action for contempt of court as a 'court record' under Articles 215 of the Constitution. While trying an election petition.

After inviting our attention to Section 98 of the Representation of People Act, 1951, the appellant argued that the High Court while exercising the power can pass orders as contemplated in that Section and nothing and nothing more. This argument also lacks substance. As pointed out earlier, the High Court has jurisdiction under Article 215 additionally to initiate proceedings for contempt of court.

Lastly, it was argued that the petition was barred by time under Section 20 of the Act. As rightly pointed out by the High Court Section 20 of the Act merely provides for limitation to initiate the proceedings and not for the conclusion of contempt proceedings. The proceedings were initiated by Order dated 16.4.85 whereas the allegations

constituting contempt were contained in an affidavit filed on 27.3.1985. Therefore, the time taken for disposal beyond one year partly on account of the appellant himself, as pointed out earlier, cannot be permitted to argue that application was barred by limitation.

Having regard to the passage of time since the date of initiation of contempt proceedings, we thought that the appellant would take a reasonable stand. To our utter dismay, the appellant reiterated the allegations with same vehemence, refusing to express any repentance of regret.

We have extracted the allegations constituting the contempt in the beginning of this order. We are satisfied they are ex facie contumacious and the scurrilous attack was intended to scandalise the court within the meaning of criminal contempt under Section 2(c) of the Act. Such attack as seen above, is punishable as contempt for the reason that it tends to create distrust in the popular mind and impairs confidence of the people in courts which are prime importance to the litigants in the protection of their rights and liberties. This Court in *RE S. Mulgaokar* (1978 (3) SCC 339) observed as follows:-

"The sixth consideration is that, after evaluating the totality of factors, if the court considers the attack on the Judge of Judges scurrilous, offensive, intimidatory or malicious beyond condonable limits, the strong arm of the law must, in the name of public interests and public justice, strike a blow on him who challenges the supremacy of the rule of law by fouling its source and stream."

on the facts of this case, we are of the view that the above test squarely applies and therefore, the order of the High Court should be confirmed. Accordingly, the appeal is dismissed. Appellant shall be taken into custody to undergo the sentence imposed by the Division Bench of the High Court. However, there will be no order as to costs.