B.N. SHIVANNA

v.

ADVANTA INDIA LIMITED & ANR.

(Criminal Appeal Nos. 1038-1039 of 2004)

MARCH 14, 2011

[P. SATHASIVAM AND DR. B.S. CHAUHAN, JJ.]

Contempt of Court Acts, 1971 – Criminal contempt – Lawyer betraying faith of his client – Appellant-Advocate committed fraud upon his client (respondent-company) and embezzled Rs. 72 lakhs by misusing orders of Court which he knew to be incorrect – Contempt proceedings – High Court convicted appellant under the Act and sentenced him to six months imprisonment – Justification of – Held: Justified – Appellant was beneficiary of the fraud and guilty of committing contempt of court – Conduct of the appellant was reprehensible and amounted to interference in administration of justice – No leniency permissible considering the gravity of the charges – Conviction and sentence upheld.

Contempt of Courts Act, 1971 – s.19 – New plea in criminal appeal before Supreme Court – Maintainability of – Contempt proceedings against appellant – Conviction by High Court – Challenged before Supreme Court on procedural grounds – Objection raised by appellant that the contempt proceedings had been conducted in utter disregard of the statutory rules framed for the purpose – Held: The appellant, for reasons best known to him, did not agitate the issue before the High Court – No explanation was furnished by the appellant as to under what circumstances, the question of fact was being agitated first time before the Supreme Court – Moreso, such an issue could not be agitated in absence of any application under s.391 of CrPC for taking additional evidence on record – No document was filed even before the Supreme Court to establish that the statutory provisions had

not been complied with – Objection raised by appellant was mere hyper-technical and did not warrant further consideration – Contempt of Court Act, 1971 – High Court of Karnataka (Contempt of Court Proceedings) Rules, 1981 – Rule 7.

Advocates – Duty of Advocate – Held: An Advocate is duty-bound to protect the dignity of the court and to behave towards his clients in an appropriate manner.

The appellant , an advocate practicing in the High Court of Karnataka, was engaged as a Retainer by respondent-company for its cases pending in various courts in Karnataka. It was alleged that by taking undue advantage of his position, the appellant played fraud upon the respondent-company by furnishing to it, copies of fabricated and forged orders purportedly passed by the Karnataka High Court and embezzled a huge sum of Rs. 72 lakhs under various pretexts including payment towards purchase of court fees from stamp vendor and payment of professional charges to other advocates; and as such, interfered with the administration of justice. The High Court initiated criminal contempt proceedings against the appellant, *suo motu* [CCC (Crl.) No. 12 of 2002] and also at the instance of the respondent-company the [CCC(Crl.) No. 7 of 2002] and ultimately convicted the appellant for committing criminal contempt of court and sentenced him to simple imprisonment for a period of six months. Hence, the instant appeals under Section 19 of the Contempt of Courts Act, 1971.

The appellant contended before this Court that the contempt proceedings had been conducted in utter disregard of the statutory rules framed for the purpose, namely, the High Court of Karnataka (Contempt of Court Proceedings) Rules, 1981, particularly Rule 7 thereof; that respondent company had also launched criminal prosecution against the appellant and his conviction herein would adversely affect his case in the said criminal

case; and further that some officials of the respondent-company hatched a conspiracy to amass wealth and that is why they had enroped the appellant and his relatives in these cases.

Dismissing the appeals, the Court

HELD:1. The appellant, for the reasons best known to him, did not agitate the issue as regards the application of the provisions of Rule 7 of the High Court of Karnataka (Contempt of Court Proceedings) Rules 1981, before the High Court and no explanation has been furnished by the counsel appearing for the appellant as under what circumstances, the question of fact is being agitated first time in criminal appeals before this Court. Moreso, such an issue cannot be agitated in absence of any application under Section 391 of CrPC for taking the additional evidence on record, nor any document has been filed even before this Court to establish that the said provisions have not been complied with. Therefore, the issue does not require any further consideration so far as the procedural aspects are concerned. The objection raised by the appellant is mere hyper-technical and does not warrant further consideration. [Paras 10, 15] [10-F-G; 12-D]

P.N. Duda v. P. Shiv Shanker & Ors. **AIR 1988 SC 1208;** *State of Kerala v. M.S. Mani & Ors.* **(2001) 8 SCC 82;** *Bal Thackrey v. Harish Pimpalkhute & Anr.* **AIR 2005 SC 396 and** *Amicus Curiae v. Prashant Bhushan & Anr.* **(2010) 7 SCC 592 – referred to.**

2. So far as merit is concerned, in view of the material on record, it is evident that huge amount of money was collected by the appellant in the name of his mother-in-law, the alleged stamp vendor, and the appellant was the beneficiary thereof as he had operated the Bank Account in her name. It is evident from the evidence on record that the appellant had been the beneficiary of fraud alleged in

these cases. Therefore, he is guilty of committing contempt of court. The appellant had been an employee of the respondent company and because of that relationship he had been retained as an Advocate and he has a duty towards his clients to behave in an appropriate manner and to protect the dignity of the court. The conduct of the appellant has been reprehensible and it tantamounts to as if the fence established to protect the crop starting to eat the crop itself. Thus, such misconduct has to be dealt with, with a heavy hand. [Para 19] [13-G-H; 14-A]

Re: Bineet Kumar Singh (2001) 5 SCC 501 – relied on.

3. It was the duty of the appellant to protect the dignity of the court through which he has earned his livelihood. There is no force in the submissions made by him that his conviction in these cases would prejudice his cause in the pending criminal trial for the reason that both cases are separate and offences are of a different nature. [Para 20] [14-B-C]

4. The further submission made by the appellant that the evidence recorded in the case lodged by the respondent company could not have been read in *suo motu* contempt proceedings initiated by the High Court, is preposterous, for the reason that they were not cross cases and in both the cases, criminal proceedings had been initiated on the basis of the same documents and the same allegations. It is a case of betrayal of faith by a lawyer of his clients, in a case of professional engagement. [Para 21] [14-D-E]

5. Also there is no force in the submission advanced on behalf of the appellant that he has already served 36 days in jail, thus, the punishment imposed by the High Court may be reduced. Considering the gravity of the charges, such a course is not warranted and no lenient view is permissible in the facts and circumstances of the

cases. The Chief Judicial Magistrate is directed to take the appellant into custody and send him to jail to serve the remaining part of the sentence forthwith. [Paras 22, 23] [14-F-G]

Case Law Reference:

AIR 1988 SC 1208	**referred to**	**Para 11**
(2001) 8 SCC 82	**referred to**	**Para 12**
AIR 2005 SC 396	**referred to**	**Para 13**
(2010) 7 SCC 592	**referred to**	**Para 14**
(2001) 5 SCC 501	**relied on**	**Para 18**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 1038-1039 of 2004.

From the Judgment & Order dated 18.8.2004 of the High Court of Karnataka at Bangalore in CCC (Crl.) No. 7 of 2002 C/w CCC (Crl.) No. 12 of 2004.

Tomy Sebastian, P. Vishwanatha Shetty, D. Bharat Kumar, Balasubrahmanyam Kamarsu, S.J. Aristotle, Abhijit Sengupta for the Appellant.

Naresh Kaushik, Aditya Vikaram, Alok Kaushik, Lalita Kaushik, Sanjay R. Hegde, Gurudatta Ankolekhar, V.N. Raghupathi for the Respondents.

The Judgment of the Court was delivered by

DR. B.S. CHAUHAN, J. 1. These two appeals have been filed against the judgment and order passed by the High Court of Karnataka at Bangalore in CCC(Crl.) Nos. 7 and 12 of 2002 dated 18.8.2004 by which the appellant has been convicted for committing criminal contempt of court and has been awarded the sentence of simple imprisonment for a period of six months along with a fine of Rs.2,000/-, in default, to undergo simple imprisonment for a further period of one month.

2. Facts and circumstances giving rise to these appeals are that the appellant was enrolled as an advocate on 14.8.1998 and since then he has been practicing in the High Court of Karnataka at Bangalore. Prior to joining the Bar, he had been working for the respondent company as Marketing Executive. Being well known to the officials of the company, he was engaged as Retainer for the Company and thus, the appellant used to report to the company's officials about the progress of its cases pending in various courts in Karnataka. However, on receiving some orders purported to have been passed by the High Court of Karnataka, the officials of the company became suspicious and verified from the original record, and then submitted a complaint to the High Court that the appellant had furnished to the company copies of fabricated and forged orders purported to have been passed by the Karnataka High Court. On the basis of the same, criminal contempt proceedings were initiated suo motu by the High Court against the appellant by registering a case CCC(Crl.) No. 12 of 2002, whereas CCC(Crl.) No. 7 of 2002 was initiated at the instance of the respondent company. The High Court took cognizance under the provisions of the Contempt of Court Act, 1971 (hereinafter referred to as 'Act 1971') against the appellant. The court proceeded with the allegations that the appellant had taken advantage of his position telling the said company's officials falsely that criminal cases have been launched in various courts in Karnataka against various purchasers and distributors of seeds under the Seeds Act for the alleged producing and selling of the spurious/sub-standard seeds by the agriculturists. The appellant made the officials of the respondent company believe that a large number of criminal cases had been filed against the company and its officials in various courts in Karnataka.

3. In this regard, it was alleged that the appellant sent a policeman possessing summons/warrants, almost on regular basis, to the Head Office of the company and thereby made the higher officials of the company believe that a number of

criminal cases had been filed against the company and its officials and that there was an urgent need to take immediate action in that regard. Subsequently, the appellant told the company officials that he would arrange for avoidance of the warrants being executed against them, though there was imminent danger of officials being arrested, which he had so far successfully avoided.

4. The appellant advised the company officials to file criminal petitions in the High Court of Karnataka for quashing of the said criminal proceedings alleged to be pending in the courts at Hubli, Mysore, Chitradurga, Bellary, Sandur, Raichur etc., and the appellant asked the company in writing to pay a sum of Rs.10,000/- towards the court fee in each case for filing of criminal petitions before the High Court in addition to other miscellaneous expenses like his professional fee, typing etc. The company having full faith in the appellant remitted the said amount of court fee of Rs.10,000/- in each case for purchasing the court fees from the vendor, namely, Smt. S. Gauri, who was none other than the mother-in-law of the appellant. The company sent cheques in the names of Smt. S. Gauri as well as the appellant towards the court fees and his professional charges and other expenses. As the appellant had told the officials of the company that more than 500 criminal cases had been filed by various persons against the company and its officials, a sum of Rs.62 lakhs was paid by the company through cheques in the name of the appellant as well as Smt. S. Gauri, the alleged stamp vendor. The appellant also got a huge amount from the company under the pretext of payment of professional charges to other advocates purported to have been engaged by him to represent the company in various subordinate courts of the State. Thus, in all, according to the company, a sum of Rs. 72 lakhs had been paid to the appellant apart from his professional charges. In order to justify his bonafides and to show the result of his professional engagement and on enquiry by the company, the appellant is alleged to have produced a copy of the order dated 3.10.2001, purported to have been

A passed by Hon'ble Mr. Justice G. Patri Basavanagowda of Karnataka High Court, showing that 341 criminal petitions filed by the company, had been allowed by the High Court and criminal proceedings launched against the company in those cases stood quashed.

B 5. It was, in fact, later on when the company's officials came to know that no court fee was payable in criminal cases filed before the High Court, that it made discreet inquiries and learnt that the amount had been collected by the appellant in the name of his mother-in-law Smt. S. Gauri, the alleged stamp C vendor, fraudulently. On further inquiry, said officials came to know that the alleged stamp vendor Smt. S. Gauri was only a housewife and not a stamp vendor and the bank account for which the cheques were issued in her name, was being operated by the appellant himself, and no case had ever been D filed in any subordinate court against the said company.

6. Being aggrieved, the company wrote a letter to the Registrar General of the High Court of Karnataka mentioning all the afore-mentioned facts submitting that the appellant had played fraud upon them by providing the forged and fabricated E order purported to have been passed by the High Court of Karnataka and as such, abused the process of law and interfered with the administration of justice. On coming to know about these facts, the High Court itself suo motu initiated criminal contempt proceedings against the appellant. Notices F were issued to the appellant and on his appearance, he denied the charges and was tried for the said allegations clubbing both the cases. The prosecution relied upon the evidence of 5 witnesses and marked a large number of documents. The appellant did not lead any oral evidence but marked several G documents. After completing the trial, the High Court convicted the appellant and sentenced him as mentioned hereinabove. Hence, these appeals under Section 19 of the Act 1971.

7. S/Shri Tony Sebastian and P. Vishwanatha Shetty, learned senior counsel appearing for the appellant, have H submitted that proceedings have been conducted in utter

disregard to the statutory rules framed for the purpose, namely, the High Court of Karnataka (Contempt of Court Proceedings) Rules, 1981 (hereinafter referred to as 'Rules 1981'). It has been submitted that Rule 7 thereof has not been complied with at the time of initiation of the proceedings. Rule 7 reads as under:

> "7. Initiation of proceedings on information - (i) Any information other than a petition or reference shall, in the first instance, be placed before the Chief Justice on the administrative side.
>
> (ii) If the Chief Justice or such other Judge as may be designated by him for the purpose, considers it expedient or proper to take action under the Act, he shall direct that the said information be placed for preliminary hearing."

In view of the above, it is submitted that none of the matter had been placed before the Hon'ble Chief Justice on the administrative side and the matter has been placed directly before the Division Bench which heard the matters after having some preliminary inquiry by the Registry of the High Court from the Secretary of Hon'ble Mr. Justice G. Patri Basavanagowda. Thus, the proceedings stood vitiated for non-compliance of the statutory requirement. It is further submitted that the respondent company has also launched a criminal prosecution against the appellant and the police after investigating the case, has filed the chargesheet against the appellant, and Smt. S. Gauri, his mother-in-law. However, the trial has not started in view of the pendency of these appeals before this Court. The appellant's conviction would adversely affect the case of the appellant in the said criminal case. In fact, some officials of the company have hatched a conspiracy to amass wealth and that is why they have enroped the appellant and his relatives in these cases. The appeals deserve to be allowed and the impugned judgment and order of the High Court is liable to be set aside.

8. On the other hand, S/Shri Naresh Kaushik and

A Gurudatta Ankolekar, learned counsel appearing for the respondents, have opposed the appeal contending that the appellant being an advocate, had indulged in criminal activity and succeeded in having embezzled huge amount of more than Rs. 72 lacs, thus, he committed fraud upon the company of B which the appellant had earlier been an employee and at the relevant time, a Retainer. His illegal activities amounted to interference in the administration of justice, thus, the High Court has rightly convicted the appellant and imposed the maximum sentence provided under the Act 1971. The facts and C circumstances of the case do not require any interference by this Court, the appeals lack merit and are liable to be dismissed.

9. We have considered the rival submissions made by learned counsel for the parties and perused the records.

D

The facts are not in dispute, the findings of fact recorded by the High Court do not require any interference for the reason that nothing has been shown to us on the basis of which it can be held that the findings are perverse, are based on no E evidence or are contrary to the evidence on record.

10. The issue regarding the application of the provisions of Rule 7 of the Rules 1981 has to be dealt with elaborately. The appellant, for the reasons best known to him, did not agitate this issue before the High Court and no explanation has been F furnished by the learned counsel appearing for the appellant as under what circumstances, the question of fact is being agitated first time in criminal appeals before this Court. More so, such an issue cannot be agitated in absence of any application under Section 391 of Code of Criminal Procedure, 1973 (hereinafter G called Cr.P.C.) for taking the additional evidence on record, nor any document has been filed even before this Court to establish that the said provisions have not been complied with.

11. In *P.N. Duda v. P. Shiv Shanker & Ors.*, AIR 1988 SC H 1208, this Court while considering the provisions of Section

15(1)(a) and (b) of the Act 1971 and the Contempt of Supreme Court Rules, 1975, held that if any information was lodged even in the form of a petition inviting the Court to take action under the Act 1971 or the provisions of the Constitution dealing with the contempt of court, where the informant is not one of the persons named in Section 15 of the Act 1971, it should not be styled as a petition and should not be placed for admission on the judicial side of the court. Such a petition is required to be placed before the Chief Justice for orders in Chambers and the Chief Justice may decide either by himself or in consultation with the other Judges of the Court, whether to take any cognizance of the information. Thus, in a case where the Attorney General/Advocate General refuses to give the consent to initiate contempt proceedings; the aforesaid course is mandatory.

12. In *State of Kerala v. M.S. Mani & Ors.*, (2001) 8 SCC 82, this Court held that the requirement of obtaining prior consent of the Advocate General in writing for initiating proceedings of criminal contempt is mandatory and failure to obtain the prior consent would render the motion non-maintainable. In case, a party obtains consent subsequent to filing the petition, it would not cure the initial defect and thus, the petition would not become maintainable.

13. In *Bal Thackrey v. Harish Pimpalkhute & Anr.*, AIR 2005 SC 396, this Court held that in absence of the consent of the Advocate General in respect of a criminal contempt filed by a party under Section 15 of the Act 1971, taking suo motu action for contempt without a prayer, was not maintainable.

14. However, in *Amicus Curiae v. Prashant Bhushan & Anr.*, (2010) 7 SCC 592, this Court has considered the earlier judgments and held that in a rare case, even if the cognizance deemed to have been taken in terms of the Supreme Court Rules, without the consent of the Attorney General or the Solicitor General, the proceedings must be held to be maintainable in view of the fact that the issue involved in the

A proceedings had far reaching greater ramifications and impact on the administration of justice and on the justice delivery system and the credibility of the court in the eyes of general public than what was under consideration before this Court in earlier cases.

B

15. In the instant case, the question of whether the matter had been placed before the Chief Justice in Chambers is a question of fact. The issue has not been agitated before the High Court, rather the complaint filed by the Registrar General of the High Court makes it clear that the complaint itself has C been filed on behalf of the High Court by the Advocate General. It is evident from the record that case CCC(Crl.) No. 12 of 2002 has been filed by the Registrar General of the High Court of Karnataka (suo motu) through the Advocate General of the State. Therefore, the issue does not require any further D consideration so far as the procedural aspects are concerned. Thus, in view of the above, the objection raised by the appellant is mere hyper-technical and does not want further consideration.

E 16. It is evident that the charges had been framed in accordance with law on 22.7.2002 and that the appellant has been given full opportunity to defend himself. All the documents placed before the High Court have been appreciated and considered.

F 17. So far as merit is concerned, we have been taken to various documents and to the evidence of the witnesses. There are certain documents to show that the appellant on certain occasions has also rendered a good service to the company. Some documents are also on record to show that some officials G had an intention to misappropriate the funds of the company for their personal gain with the connivance of the appellant. However, there is nothing on record to show that they could succeed to any extent. Therefore, the defence taken by the appellant remains unsubstantiated. In view of the material on H record, it is evident that the huge amount of money has been

collected by the appellant in the name of his mother-in-law, Smt. S. Gauri, the alleged stamp vendor, and the appellant has been the beneficiary thereof as he had operated the Bank Account in her name.

18. In *Re: Bineet Kumar Singh,* (2001) 5 SCC 501, while dealing with a case of similar nature, this Court held as under:

> "....The sole object of the court wielding its power to punish for contempt is always for the course of administration of justice. Nothing is more incumbent upon the courts of justice than to preserve their proceedings from being misrepresented, nor is there anything more pernicious when the order of the court is forged and produced to gain undue advantage. Criminal contempt has been defined in Section 2(c) to mean interference with the administration of justice in any manner. A false or misleading or a wrong statement deliberately and wilfully made by a party to the proceedings to obtain a favourable order would undoubtedly tantamount to interference with the due course of judicial proceedings. When a person is found to have utilised an order of a court which he or she knows to be incorrect for conferring benefit on persons who are not entitled to the same, the very utilisation of the fabricated order by the person concerned would be sufficient to hold him/her guilty of contempt, irrespective of the fact whether he or she himself or herself is the author of fabrication....." (Emphasis added).

19. It is evident from the evidence on record that the appellant had been the beneficiary of fraud alleged in these cases. Therefore, in view of the law referred to hereinabove, he is guilty of committing contempt of court. The appellant had been an employee of the respondent company and because of that relationship he had been retained as an Advocate and he has a duty towards his clients to behave in an appropriate manner and to protect the dignity of the court. The conduct of the appellant has been reprehensible and it is tantamount to

as if the fence established to protect the crop starting to eat the crop itself. Thus, such misconduct has to be dealt with, with a heavy hand.

20. We do find any force in the submissions made by learned counsel for the appellant that the conviction of the appellant in these cases would prejudice his cause in the pending criminal trial for the reason that both cases are separate and for offences of a different nature. It was the duty of the appellant to protect the dignity of the court through which he has earned his livelihood.

21. The submission made by learned counsel for the appellant that both complaints could not have been clubbed together and the evidence recorded in the case lodged by the respondent company could not have been read in suo motu contempt proceedings initiated by the High Court, is preposterous, for the reason that they were not cross cases and in both the cases, criminal proceedings had been initiated on the basis of the same documents and the same allegations. It is a case of betrayal of faith by a lawyer of his clients, in a case of professional engagement.

22. We also do not find any force in the submission advanced on behalf of the appellant that he has already served 36 days in jail, thus, the punishment imposed by the High Court may be reduced. Considering the gravity of the charges, such a course is not warranted and no lenient view is permissible in the facts and circumstances of the cases.

23. In view of the above, the appeals lack merit and are accordingly dismissed. We request the learned Chief Judicial Magistrate, Bangalore to take the appellant into custody and send him to jail to serve the remaining part of the sentence forthwith. A copy of the order may be transmitted by the Registry of this Court to the learned Chief Judicial Magistrate, Bangalore for taking appropriate further steps.

B.B.B. Appeals dismissed.