

Sri K. Ramadas Shenoy vs The Chief Officer, Town Municipal ... on 19 August, 1975

Equivalent citations: AIR1976SC994, 1976CRILJ722, (1976)1SCC24, 1975(7)UJ705(SC), AIR 1976 SUPREME COURT 994, (1976) 1 SCC 24, 1975 UJ (SC) 705, (1975) 1 ALL LR 546, 1975 SCC(CRI) 746

Bench: A.N. Ray, K.K. Mathew, Y.V. Chandrachud

JUDGMENT

K.K. Matthew, J.

1. This is an application to take proceedings in contempt against the four respondents on the ground that they have disobeyed a judgment passed by his Court on 9-8-1974 in C. A. No. 2232 of 1973. That judgment was rendered in an appeal from the decision of the High Court of Mysore in a writ petition filed by the petitioner challenging the validity of certain resolution passed by the Municipality of Udipi. The High Court quashed three of the resolution impugned in the writ petition but held that the resolution passed by the Municipality allowing the conversion of the Kalyana Mantap-cum-lecutre hall in question into a cinema hall was valid and dismissed the writ petition to that extent. The appeal to this Court was directed against that order and respondents 1 to 3 in this application were parties to that appeal.

2. This Court found that the resolution allowing the convert on of Kalyana Mantap-cum-lecture hall into a cinema hall was bad for the reason that the conversion contravened the Town Planning Scheme and allowed the appeal. Against the order dated 14-3-1973 granting a licence to 3rd respondent for exhibiting films in the hall in question the petitioner had filed a writ petition before the High Court of Karnataka (Writ Petition No. 755 of 1973) praying for a writ of certiorari quashing the same. When the writ petition came up for hearing before the High Court on 27-8-1974, the 3rd respondent applied for adjourned of the case in order to enable him to file a petition in this Court for review of the judgment of this Court. The Court allowed the adjournment and passed an order as follows :

The Respondent No. 2 (Respondent No. 3 here) should not however exhibit the cinema shows in the building in question beyond 5-9-1974, unless Supreme Court issues an order permitting them to do so beyond 5-9-1974. The above order is passed without prejudice to the rights of the petitioner to move the Supreme Court to take action against respondent No. 2 for contempt of Court and also without prejudice to the powers of the District Magistrate under law.

On 12-8-1974, the petitioner wrote a letter to respondent No. 4., who was then the District Magistrate enclosing a photostat of a copy of the judgment of this Court and praying for revocation of the licence granted under the Cinematograph Act to exhibit films in the hall. On 23-8-1974, the respondent No. 3 applied to the District Magistrate to renew the licence under the Cinematograph Act and the District Magistrate granted a renewal of the licence from 2-9-1974 till 5-9-1974. On 23-8-1974, the 1st and 2nd respondents (i.e. Chief Officer and President respectively of Town Municipal Council, Udipi) called for an urgent meeting of the Municipal Council. The Council met and passed resolution recommending to Government that the Town Planning Scheme may be revoked. The Scheme was actually revoked by the Government on 11-4-1975.

3. In the petition for taking proceedings in contempt the allegation against respondents 1 and 2 was that they called a meeting of the Municipal Council and got a resolution passed recommending to Government the revocation of the Town Planning Scheme, and that they did not issue direction to the 3rd respondent to stop the exhibition of films in the hall. The case against the 3rd respondent was that he willfully disobeyed the judgment of this Court by exhibiting films in a building which this Court held could not have been converted into a cinema theatre. And as against the 4th respondent the allegation was that even inspite of the fact that a photostat of a copy of the judgment of this Court was given to him, he refused to take necessary action prohibiting the exhibition of film in the hall.

4. All the respondents have filed counter affidavits in this Court denying that they have committed any contempt.

5. So far as respondents 1 and 2 are concerned, we do not think that they have committed any contempt in calling a meeting of the municipal council and the council passing a resolution recommending to government to revoke the Town Planning Scheme. Nor do we think that they committed any contempt in not issuing a directive to respondent No. 3 to stop exhibition of films in the hall, as they had no power to do so.

6. As regards the 3rd respondent, it is clear that he was aware of the judgment of this Court as he was a party to it. But he submitted that a licence under the Cinematograph Act was granted to him on 14-3-1973 which authorize him to exhibit films in the hall and that he bona fide thought that he could do so notwithstanding the judgment of this Court. Respondent No. 3 contended that this Court only quashed the resolution of the Municipal Council authorizing the conversion of Kalyan Mantap-cum-lecture hall into a theatre but that did not in any way affect the validity of this licence granted to him under the Cinematograph Act to exhibit films in that building. We think that the effect of the judgment of this Court was that the building in question could not be used as a Cinema theatre and that the 3rd respondent should therefore have stopped the exhibition of films in hall. The licence under the Cinematograph Act to exhibit films in the hall was granted on the basis of the validity of the resolution authorizing the conversion of the building into a cinema hall. When that resolution was quashed, we think the 3rd respondent was not justified in exhibiting films in the building and therefore he was guilty of contempt. But, at the same time, we see no reason to

disbelieve the 3rd respondent when he stated that he bona fide thought he could exhibit films in the hall on the basis of the licence granted to him under the Cinematograph Act as nothing was said by this Court about its validity and the petitioner had himself filed a writ petition challenging its validity in the High Court and that was pending when this Court passed the judgment, If the 3rd respondent thought that quashing the resolution converting the building into a theatre would not ipso facto cancel the licence granted under the Cinematograph Act, we are not prepared to hold that he was lacking bona fide in entertaining that belief. The 3rd respondent has also tendered a conditional apology stating that in case it is found that he has committed any contempt, he may be pardoned. We think that the apology tendered, though conditional, is sufficient in view of the explanation to Section 12 of the Contempt of Courts Act 1971 which reads :

An apology shall not be rejected merely on the ground that it is qualified or conditional if the accused makes it bonafide.

We accept the apology and discharge the rule nisi.

As regards the 4th respondent, when the petitioner filed the petition to revoke the licence with a photostat copy of a copy of the judgment, the petitioner was told that a certified copy of the judgment must be produced so that respondent No. 4 might take further action on his petition. The petitioner agreed that he would produce a certified copy of the judgment; but he never did so. In the counter-affidavit filed by respondent No. 4, he has categorically asserted that:

It has been the practice and procedure in Karnataka State not to act on true copies or the alleged true copies or the photostat copies of any order unless it is duly certified by the contempt authorities as the order of the Supreme Court or there has been a direct communication from the concerned courts in regard thereto. In the instant case, at the relevant time no such certified copy was produced before me nor was there any intimation to that effect from the Supreme Court.

We cannot therefore, legally hold that he has been guilty of contempt of court in not acting upon an uncertified copy of the judgment. Nor do we think that he is guilty of contempt merely because he granted a renewal of the licence to exhibit films under the Cinematograph Act from 2-9-1974 to 5-9-1974. The order of the High Court only prohibited the 3rd respondent to exhibit films after 5-9-1974. And that was without prejudice to the right of the petitioner to move this Court for contempt and without prejudice to the right and the powers of the District Magistrate under law. The 4th respondent's plea is that he bona fide thought the High Court had permitted the 3rd respondent to exhibit films in the hall upto 5-9-1974 and it was on the basis that he granted a renewal of the licence from 2-9-1974 to 5-9-1974. We do not think that in the circumstances the 4th respondent wilfully disobeyed the judgment of this Court and committed contempt.

We dispose of the petition as above but make no order as to costs.