

Rachapudi Subba Rao vs The Advocate-General, Andhra Pradesh on 10 December, 1980

Equivalent citations: 1981 AIR 755, 1981 SCR (2) 320, AIR 1981 SUPREME COURT 755, 1981 (2) SCC 577, 1981 (2) SCR 320, 1981 CRIAPPR(SC) 46, 1981 SCC(CRI) 566, 1981 BBCJ 39, (1981) LS 1, (1981) MAD LJ(CRI) 340, (1981) 2 SCJ 27, (1981) CURLJ(CCR) 60, 1981 CRI. L. J. 315, (1981) 2 SCR 320 (SC) 1981 CRILR(SC MAH GUJ) 87, 1981 CRILR(SC MAH GUJ) 87

Author: Ranjit Singh Sarkaria

Bench: Ranjit Singh Sarkaria, O. Chinnappa Reddy

PETITIONER:

RACHAPUDI SUBBA RAO

Vs.

RESPONDENT:

THE ADVOCATE-GENERAL, ANDHRA PRADESH

DATE OF JUDGMENT 10/12/1980

BENCH:

SARKARIA, RANJIT SINGH

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SARKARIA, RANJIT SINGH

REDDY, O. CHINNAPPA (J)

CITATION:

1981 AIR 755

1981 SCR (2) 320

1981 SCC (2) 577

ACT:

Contempt of Courts Act 1971-Sections 2(c), 3 and 13-
Scope of-Contemner attributed mala fides to a judicial
officer in a judgment which went against him-Notice issued
by the contemner during pendency of execution proceedings-
Whether amounts to contempt.

Words and Phrases : "due course of justice"-meaning of

HEADNOTE:

The appellant was the plaintiff in a suit for
declaration of title in respect of a building. The defendant
in that suit filed another suit claiming damages against the

appellant. Both the suits were heard by the Additional Sub-Judge who by a common judgment, dismissed the appellant's suit and decreed the defendant's suit.

The appellant thereupon issued notice to the Additional Sub Judge alleging that he (the Additional Sub-Judge) "created new facts", had "intentionally and with bad faith and maliciously disordered the existing oral and documentary evidence with a view to help the plaintiff" in the second suit, had "maintained different standards even with regard to self-serving statements" and that these acts could not be said to have been done in the discharge of his judicial duties within the limits of his jurisdiction in good faith and threatened to seek redress if damages claimed by him were not paid.

The Additional Sub Judge submitted this notice to the High Court for suitable action being taken against the appellant. At the instance of the High Court the Advocate General instituted contempt proceedings against the appellant. Negativising the appellant's defences the High Court convicted him holding that the passages in the notice were per se scandalous and scurrilous, that the notice was a deliberate and determined attempt to scandalise the Judge and the Court by imputing lack of good faith and mala fides to a judicial officer in the discharge of his judicial duties and that what the appellant had stated in the notice was clearly 'criminal contempt' as defined in section 2(c) of the Contempt of Courts Act.

In appeal to this Court the appellant contended (i) that bad faith and malice stated by him in the notice were facts constituting the cause of action; (ii) that in any event since the suit had been disposed of, execution proceedings did not constitute a pending matter and, therefore, what he stated fell within the exception of section 3, particularly the Explanation and lastly, (iii) assuming that his action technically amounted to contempt of court no sentence could be imposed on him in view of section 13 of the Act under which a person cannot be convicted for contempt under the court is satisfied

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that it substantially interferes or tends substantially to interfere with the due course of justice.

Dismissing the appeal,

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HELD : The tone, temper and contents of the notice imputing malice, partiality and dishonesty to the Subordinate Judge constitute a deliberate attempt to scandalise the Judge, to embarrass him and to lower the authority of his office and the Court. The act and conduct of the appellant in issuing the impugned notice fell squarely within sub-clauses (i) and (ii) of the definition of 'criminal contempt' in section 2(c) of the Contempt of Courts Act. [326G-H]

The contempt committed by the appellant is serious and

gross. He has recklessly imputed mala fides and lack of good faith to the judicial officer who had decided the case against him. The imputations were per se scandalous, actuated by bad faith. He did not even pretend to give any reason either in the notice or in the counter-affidavit for the alleged malicious attitude on the part of the judicial officer. Even in this court he has not relented. He has not adopted, even obliquely, an attitude of contrition or a pretence of remorse. [329 H]

1. Section 1 of the Judicial Officers' Protection Act, 1850 affords protection to two broad categories of acts done or ordered to be done by a judicial officer in his judicial capacity, namely (1) acts which are within the limits of his jurisdiction and (2) acts which though not within his jurisdiction were done or ordered to be done believing in good faith that he had jurisdiction. The protection afforded by the statute to the first category is absolute and no enquiry will be entertained that the act in question was erroneous or done without behaving in good faith. [325 B-E]

The expression "jurisdiction" has been used in the section in a wide sense meaning "generally the authority of the judicial officer to act in the matters". If the judicial officer had the general authority to enter upon an enquiry into the cause, action etc. in the course of which the impugned act was done, his act, even if erroneous, would still be within his "jurisdiction". The mere fact that it was erroneous would not put it beyond his "jurisdiction". Therefore, if the judicial officer is found to have been acting in the discharge of his judicial duties, then, in order to exclude him from the protection of this statute, the complainant has to establish that (a) the judicial officer was acting without any jurisdiction whatsoever and (b) he was acting without good faith in believing himself to have jurisdiction. [325 H]

In the instant case the judicial officer had jurisdiction to try the suits. The acts characterised by the appellant as "wrong", "malicious", and "dishonest" were acts done in the discharge of his judicial duties i.e. within the exercise of his jurisdiction and, therefore, those acts enjoy absolute protection against civil action. The notice in question can not be said to have been issued bona fide as a preliminary lawful step to the filing of a suit against the subordinate Judge. [326 D]

2. Section 3(2) is not applicable to this category of contempt which falls under sub-clause (i) of section 2(c) or which is otherwise of a kind different from those mentioned in section 3(1).

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In the instant case though the contempt committed was not in connection with any pending proceeding, it primarily and squarely fell under sub-clause (i) though the aforesaid residuary phrase in sub-clause (iii) may also be attracted. An unfounded imputation of mala fides, bias, prejudice or

ridiculing the performance of a Judge or casting aspersions on his integrity is always considered to mean scandalising the Court and lowering the authority of his Court by bringing him and his office into disrespect and disrepute. Vilification of the Judge, even in administrative matters or decided judicial matters, may amount to "criminal contempt" under sub-clause (i) of section 2(c) as it lowers or tends to lower the authority or dignity of the Court by undermining public confidence in the capacity of the Judge to mete out evenhanded and impartial justice. [328 H]

3. The amplitude of the words "due course of justice" in section 13 is wider than the words "due course of any judicial proceedings" or "administration of justice" used in sub-clause (ii) or (iii) of section 2(c). The contempt of court committed by the appellant falls under sub-clause (i) and also within the amplitude of sub-clause (iii). If the act complained against scandalizes the judicial officer in regard to the discharge of his judicial functions, thereby substantially interferes or tends to interfere with "due course of justice" which is a facet of the broad concept of the "administration of justice" it is punishable under section 13. [329 F-G]

JUDGMENT :

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 172 of 1975.

From the Judgment and Order dated 23-4-1975 of the Andhra Pradesh High Court in Contempt Case No. 14/1975.

Appellant in person.

P. Ram Reddy, and G. N. Rao for the Respondent. The Judgment of the Court was delivered by SARKARIA, J. This appeal by Rachapudi Subba Rao is directed against a judgment, dated April 23, 1975 of the High Court of Andhra Pradesh, whereby the appellant was convicted for committing gross contempt of court under Section 12 read with Sections 10 and 15 of the Contempt of Courts Act, 1971, (hereinafter referred to as the Act) and sentenced to undergo one month's imprisonment. It arises out of these facts :

The appellant filed Original Suit No. 101 of 1973 in the Court of the Subordinate Judge, Vijayawada, against five persons for declaration of his title and for injunction in respect of a building. The 1st defendant in that suit instituted Original Suit No. 275 of 1972 in the same Court against the appellant for possession of the same building and for recovery of damages for use and occupation. The 1st Additional Subordinate Judge, Vijayawada, heard the two suits together and by a common judgment, dated October 31, 1974, dismissed the appellant's suit and decreed the suit of the then 1st defendant against him with costs. The decree-holder filed petition for execution of his

decree against the appellant. The latter filed an application for stay of the execution.

When the execution and the appellant's application for stay were pending, the appellant on December 25, 1974 issued notice to the Additional Subordinate Judge, who had decided the suits against him. In that notice which is a lengthy document, he inter alia made these allegations against the Judge :

"3. In the said judgment (O.S. Nos. 101/73 and 275/ 72) your honour created new facts by making third version without evidence as detailed below among others."

"4. Your honour has intentionally, with bad faith and maliciously, disordered the existing oral and documentary evidence with a view to help the plaintiff in O.S. 275/72 causing damage and injury to me."

"5. Your honour has maintained different standards in the same judgment with regard to Exs. B.9, B.10, B.13 and A.15 to A.19 and A.20 to A.22 and B.11 and B.12 in para No. 25."

"6. Your honour has maintained different standards even with regard to self-serving statements."

"16. Your honour has side-tracked the binding direct decisions of the High Courts and the Supreme Court disordering the contents of the said decisions."

"18. So under these circumstances it cannot be said that these acts done by your good-self in the discharge of your honour's judicial duty within the limits of your honour's jurisdiction in good faith; for the above said acts themselves prove that your honour has done these acts with mala fide exercise of powers without jurisdiction."

In the concluding paragraphs of the notice, he stated :

"Your honour has done these acts in excess of jurisdiction knowing the law regarding your own powers and duties. So, your honour is liable in tort to pay damages for the heavy monetary loss incurred by me and for the injury.

Hence, I request your honour to pay a sum of Rs. 30,000 by way of damages for the heavy monetary loss incurred by me and for the injury within a reasonable time, or else I will be compelled to seek legal redress for the same.

I hereby reserve my rights to take available legal actions against your honour under the other enactments."

After receiving this notice, the 1st Additional Subordinate Judge sent it to the High Court for necessary action. The High Court requested the Advocate-General to institute contempt proceeding.

The Advocate-General then filed a Contempt Petition No. 14 of 1975, supported by an affidavit and prayed that the appellant be committed for Contempt of Court of the Additional Subordinate Judge, Vijayawada and be punished under Section 12 read with Sections 10 and 15 of the Act.

In his counter-affidavit filed before the High Court, the appellant not only tried to justify the issuance of the notice to the Subordinate Judge, but also asserted that the notice was intended to uphold the purity of administration of justice and to safeguard the interests of the litigating public. The High Court found that the passages extracted above were per se scandalous and scurrilous and the notice was undoubtedly a deliberate and determined attempt on the part of the appellant "to scandalise the Judge and the Court for having held against him, by imputing lack of good faith and mala fides to a judicial officer in the discharge of his judicial duties;" that it was also an attempt to frighten the judicial officer by threatening to file suit for damages for Rs. 30,000/- and to undermine his self-confidence in dealing with causes that might come up before him for trial in future. The High Court concluded that what the appellant has stated in the notice in question, is clearly and squarely "criminal contempt" as defined by Section 2(c) of the Act. It negated the defence raised by the appellant and convicted him as aforesaid.

Before us, the appellant has argued his case in person. He has also submitted written arguments which he has orally elaborated and supplemented. As before the High Court, here also the appellant intransigently maintains that there is nothing scandalous in the contents of the notice. In the written arguments he reiterates the imputation that the Subordinate Judge had deliberately delivered "a dishonest Judgment" against him and the Judge was "guilty of serious misbehaviour in the performance of his duties;" that the allegations of "bad faith" "malice" etc. in the notice were facts constituting the cause of action, which were essential to be stated under Section 80, C.P.C. for the suit for damages which the appellant proposed to file against the Subordinate Judge; that the giving of the notice containing such statements of material facts being a mandatory requirement of Section 80 of the Code of Civil Procedure the issuance of such notice to the Subordinate Judge could not be characterised 'scandalous' so as to constitute Contempt of Court.

The contention is clearly unsustainable. Section 1 of the Judicial Officers' Protection Act, 1850 provides :

"No Judge, Magistrate, Justice of the Peace, Collector or other person acting judicially shall be liable to be sued in any Civil Court for any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction :

Provided that he at the time, in good faith, believed himself to have jurisdiction to do or order the act complained of; and no officer of any Court or other person, bound to execute the lawful warrants or orders of any such Judge, Magistrate, Justice of the Peace, Collector or other person acting judicially shall be liable to be sued in any Civil Court, for the execution of any warrant or order, which he would be bound to execute, if within the jurisdiction of the person issuing the same."

As pointed out by this Court in *Anwar Hussain v. Ajoy Kumar Mukerjee & Ors* the Section affords protection to two broad categories of acts done or ordered to be done by a judicial officer in his judicial capacity. In the first category fall those acts which are within the limits of his jurisdiction. The second category encompasses those acts which may not be within the jurisdiction of the judicial officer, but are, nevertheless, done or ordered to be done by him, believing in good faith that he had jurisdiction to do them or order them to be done. In the case of acts of the first category committed in the discharge of his judicial duties, the protection afforded by the statute is absolute, and no enquiry will be entertained as to whether the act done or ordered to be done was erroneous, or even illegal, or was done or ordered without believing in good faith.

In the case of acts of the second category, the protection of the statute will be available if at the time of doing, ordering the act, the judicial officer acting judicially, in good faith believed himself to have jurisdiction to do or order the same. The expression "jurisdiction" in this Section has not been used in the limited sense of the term, as connoting the "power" to do or order to do the particular act complained of, but is used in a wide sense as meaning "generally the authority of the Judicial Officer to act in the matters". Therefore, if the judicial officer had the general authority to enter upon the enquiry into the cause, action, petition or other proceeding in the course of which the impugned act was done or ordered by him in his judicial capacity, the act, even if erroneous, will still be within his 'jurisdiction', and the mere fact that it was erroneous will not put it beyond his "jurisdiction". Error in the exercise of jurisdiction is not to be confused with lack of jurisdiction in entertaining the cause or proceeding. It follows that if the judicial officer is found to have been acting in the discharge of his judicial duties, then, in order to exclude him from the protection of this statute, the complainant has to establish that (1) the judicial officer complained against was acting without any jurisdiction whatsoever, and (2) he was acting without good faith in believing himself to have jurisdiction.

In the instant case, the Subordinate Judge had unquestionably, the jurisdiction to try and decide the suits concerned. It is further not disputed that the findings which the appellant characterises as "wrong", "malicious" and "dishonest", are acts done by the Subordinate Judge in the discharge of his judicial duties i.e. within the exercise of his jurisdiction. This being the position, the acts of the Subordinate Judge, done by him in his judicial capacity, on the basis of which the appellant was threatening to bring an action for damages against the Judge, enjoy absolute protection against civil action. Nor would the fact that the appellant had the temerity to ridicule and characterise the findings and decision of the Subordinate Judge as "malicious" "dishonest" and motivated 'to help the plaintiff in O.S. No. 275/ 1972', without stating any particulars or facts on which these scurrilous allegations were founded, give him the locus to bring a civil action for damages against the Subordinate Judge. In the circumstances, it is not possible to accept the appellant's contention that the notice in question, was bona fide issued by him as a preliminary lawful step to the filing of a suit against the Subordinate Judge.

We agree with the High Court that the tone, temper and contents of the notice, particularly of the passages extracted earlier, which impute, malice, partiality and dishonesty to the Subordinate Judge in the judicial adjudication of the aforesaid suits against the appellant, constitute a deliberate attempt to scandalise the judge to terribly embarrass him and to lower the authority of his office and the Court. The act and conduct of the appellant in issuing this notice therefore, fell squarely within

sub- clauses (i) and (ii) of the definition of "criminal contempt" given in Section 2(c) of the Act, reproduced below:

"2(c) 'criminal contempt' means the publication (whether by words, spoken or written, or by signs, or by visible repre-

sentations' or otherwise) of any matter or the doing of any other act whatsoever which :-

(i) scandalises or tends to scandalise or lowers or tends to lower the authority of, any court; or

(ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding.

(iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner;"

It is noteworthy, that in the categorisation of contempt in the three sub-clauses (i) to (iii), only category (ii) refers to "judicial proceeding". Scandalizing of Court in its administrative capacity will also be covered by sub-clauses (i) and (iii). The phrase "administration of justice" in sub-clause (iii) is far wider in scope than "course of any judicial proceeding". The last words "in any other manner" of sub-clause (iii) further extend its ambit and give it a residuary character. Although sub-clauses (i) to (iii) describe three distinct species of 'criminal contempt', they are not always mutually exclusive. Interference or tendency to interfere with any judicial proceeding or administration of justice is a common element of sub-clauses (ii) and (iii). This element is not required to be established for a criminal contempt of the kind falling under sub-clause (i).

The next contention of the appellant is that his act in question falls within the exemption of Section 3, particularly the Explanation to that Section, since the suits in respect of which the notice was issued had already been decided and the execution of the decree against the appellant, though pending, did not constitute a pending matter for the purpose of availing the protection of Section

3. The material part of Section 3 is as follows:

"3(1). A person shall not be guilty of contempt of court on the ground that he has published (whether by words spoken or written or by signs or by visible representations or otherwise) any matter which interferes or tends to interfere with, or obstructs or tends to obstruct, the course of justice in connection with any civil or criminal proceeding pending at the time of publication, if at that time he had no reasonable grounds for believing that the proceeding was pending.

(2) Notwithstanding anything to the contrary contained in this Act or any other law for the time being in force, the publication of any such matter as is mentioned in

sub-section (1) in connection with any civil or criminal proceeding which is not pending at the time of publication shall not be deemed to constitute contempt of court."

(3)

Explanation: For the purposes of this Section a Judicial proceeding-

(b) which has been heard and finally decided shall not be deemed to be pending merely by reason of the fact that proceedings for the execution of the decree, order or sentence passed therein are pending." Section 3 is in the nature of an exception to those categories of "criminal contempt" which fall under sub- clause (ii) and to certain categories of "criminal contempt"

which come under sub-clause (iii) of Section 2(c), but not to that category of contempt which falls under sub-clause

(i) of Section 2(c). This is clear from a comparison of the language of section 3(1) with that of Section 2(c). The words "interferes or tends to interfere with the course of justice in connection with any proceeding pending" in section 3(1) substantially reiterate the language of sub-

clause (ii) of Section 2(c). Similarly, the words "interferes or tends to interfere with, or obstruct or tends to obstruct" in Section 3(1) are a reproduction of the first limb of sub-clause (iii) of Section 2(c). The phrase "the administration of justice in any other manner" used in Section 2(c) (iii) has been substituted in Section 3(1) by the narrower phrase "the course of justice in connection with any civil or criminal proceeding pending at the time of publication". But there are no words in Section 3 which may be referable to that species of "criminal contempt" which would fall within sub-clause (i) of the definition given in Section 2(c). Subsection (2) of Section 3 expressly confines its operation to those categories of contempt which are referred to in sub-section (1). Section 3(2) therefore, is not applicable to that category of contempt which falls under sub-clause (i) of Section 2(c), or which is otherwise of a kind different from those mentioned in Section 3(1).

In the instant case, the contempt committed, though not in connection with any pending proceeding, primarily and squarely falls under sub-clause (i) though the aforesaid residuary phrase in sub-clause (iii) may also be attracted. Unfounded imputation of mala fides, bias, prejudice or ridiculing the performance of a Judge or casting aspersions on his integrity as has been done by the appellant in the notice in question-are always considered to mean scandalising the Court, and lowering the authority of his court by bringing him and his office into disrespect and disrepute. Vilification of the Judge, even in administrative matters or decided judicial matters, may amount to "criminal contempt"

under sub-clause (i) of Section 2(c) as it lowers or tends to lower the authority or dignity of the Court by undermining public confidence in the capacity of the judge to mete out even-handed and impartial justice.

For the aforesaid reasons, we negative this contention of the appellant.

The last argument urged by the appellant is that even if his act technically amounted to contempt of court, no sentence could be imposed on him in view of Section 13 of the Act which reads as follows :

"Notwithstanding anything contained in any law for the time being in force, no court shall impose a sentence under this Act for a contempt of court unless it is satisfied that the contempt is of such a nature that it substantially interferes, or tends substantially to interfere with the due course of justice."

The appellant contends, that the High Court has not given any finding in regard to this contention which was raised by him there, also.

The contention must be repelled.

The High Court has dealt with this contention. It has rightly pointed out that the amplitude of the words "due course of justice" used in Section 13 is wider than the words "due course of any judicial proceeding" or "administration of justice" used in sub-clauses (ii) or

(iii) of Section 2(c). We have held that the contempt of court committed by the appellant falls both under sub-clause

(i) and also within the amplitude of sub-clause (iii). If the act complained scandalizes the judicial officer in regard to the discharge of his judicial functions, it thereby substantially interferes or tends to interfere with the "due course of justice" which is a facet of the broad concept of the "administration of justice", and as such, is punishable under Section 13.

We agree with the High Court that the contempt of court committed by the appellant is serious and gross as he has recklessly imputed mala fides and lack of good faith to the judicial officer who had decided the cases against him. The imputations levelled were per se scandalous and actuated by bad faith. The appellant did not even pretend to give any reason for the alleged malicious attitude on the part of the judicial officer, either in the notice or in the counter-affidavit. Even in this Court he has not relented. He has not adopted, even obliquely, an attitude of contrition or a pretence of remorse.

For the foregoing reasons, we dismiss this appeal and maintain the conviction and sentence of the appellant.

P. B. R.

Appeal dismissed.