

2010 SCC OnLine Kar 5248 : (2011) 1 Kant LJ 433 (DB) : (2010) 4 AIR Kant R 386 : (2010) 4 KCCR 2674 (DB) : (2011) 3 CCR 65 (DB) : (2011) 3 CCC 62

In the High Court of Karnataka at Bangalore  
(Division Bench)  
(BEFORE K.L. MANJUNATH AND B.S. PATIL, JJ.)

High Court of Karnataka

*Versus*

Oceanus Dwellings Private Limited, Bangalore and Another

Criminal Contempt of Court Case No. 9 of 2007 in Revision Petition No. 115 of 2007

Decided on August 4, 2010



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#### ORDER

1. Heard the State Public Prosecutor on behalf of Advocate General for the complainant and Mr. Narayan, party-in-person accused.

2. A writ petition was filed by accused 1-M/s. Oceans Dwellings Private Limited, in W.P. No. 2735 of 2005. A learned Single Judge of this Court dismissed the said writ petition. Aggrieved by the same, W.A. No. 376 of 2007 was filed, which came to be dismissed by a Division



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Bench of this Court. Thereafter, R.P. No. 115 of 2007 was filed seeking review of the judgment. The accused Narayan was engaged by the writ petitioner both before the learned Single Judge as also before the Division Bench and even the review petition was also filed through the same Advocate. In the review petition, ground (c) raised reads as hereunder:

“The learned Single Judge is guilty of holding different yardstick for considering the same cause of action and thus the order of the learned Single Judge is perverse and biased and liable to be set aside on this ground alone”.

3. The Bench which dealt with revision petition was of the opinion that the aforesaid averments against the learned Single Judge is to undermine the Court and to scandalise the Judge and therefore criminal contempt proceedings are to be initiated under Section 2(c) of Contempt of Courts Act, 1971. In view of the order passed by the Division Bench, the Registrar General has filed the present petition against the accused.

4. The first accused-M/s. Oceans Dwellings Private Limited, had tendered an unconditional apology by filing an affidavit before framing charge. Hence, the proceedings against first accused came to be dropped.

5. The 2nd accused filed detailed objections. Though he contended that the words

used by him in the grounds of review petition was not with an intention to undermine the Court or to scandalise the Judge and he never intended to do so, in his additional affidavit filed on 6-12-2007, he has stated as hereunder:

"Wherefore, I once again reiterate that I have not used the offending word deliberately to undermine the authority of the Court or the learned Single Judge or scandalise this Hon'ble Court or the learned Single Judge. If the words "guilty of used had created any impression on any one that I am intending or intended to Undermine/scandalise the judiciary or any particular Judge, I sincerely apologise for the same".

6. Even though such unconditional apology was tendered, charge was framed on 18 -2-2009 on the ground that the apology tendered does not suggest an element of remorse on his part and he has not withdrawn the word "biased" used in the review petition. The charge framed reads as hereunder.—

"That you in the Review Petition No. 115 of 2007 on the file of this Court in ground (c) made the following averments.—

"The learned Single Judge is guilty of holding different yardstick for considering the same cause of action and thus the order of the learned Single Judge is perverse and biased and liable to be set aside on this ground alone".

By making the above allegations, you have committed an criminal offence punishable under Section 12 of the Contempt of Courts Act, 1971.



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And we hereby direct that you be tried by this Court on the said charge".

7. In order to prove the charge levelled against the accused, the Registrar General of High Court of Karnataka entered into witness-box as C.W. 1 on 11-6-2009 and he relied upon Exs. C. 1 to C. 3. Thereafter, the accused was examined on 17-9-2009. He was also cross-examined by the State Public Prosecutor. After closure of evidence, the matter was listed for arguments.

8. Mr. H.S. Chandramouly, learned State Public Prosecutor contends that charge framed against the accused is proved by the prosecution as the word "biased" used against the learned Single Judge has not been withdrawn by the accused and that the apology tendered in the affidavit prior to framing of charge is not unconditional and therefore such apology cannot be accepted by this Court.

9. *Per contra*, 2nd accused-Mr. Narayan submits that he never intended to cause aspersions on the Court or on the Judge and he never intended to undermine the Court of the learned Single Judge. Similarly, he had no intention to scandalise the Court or the Judge. He has also stated that if the apology tendered by him prior to framing of charge is not sufficient, he whole heartedly tender unconditional apology withdrawing the word "biased" used in the ground urged in the review petition. He has further submitted that he has got highest respect towards judiciary and the learned Judges of this Court. He also submitted that there may be error in using the word "biased" and at the time of filing the unconditional apology prior to framing of charge had it been noticed, he would have withdrawn the same. In the circumstances, the requests the Court to drop the proceedings in view of Section 12 of the Contempt of Courts Act, 1971.

10. Having heard the arguments of learned State Public Prosecutor and the 2nd accused, this Court has to consider as to whether the statements made by the accused in the review petition was with an intention to undermine the Court or scandalise the

Judge or to attribute motives towards the Judge? If it is so, when the accused tendered unconditional apology, whether he has to be punished for the offence punishable under Section 12 of the Contempt of Courts Act?

11. By looking into the tenor of objections filed by the accused herein and considering ground (c) urged in the review petition, it is no doubt true that in the grounds urged in the review petition he has stated that the learned, Judge is guilty of holding two different yardsticks in two different cases. To support his case, he has relied upon the order passed by the learned Single Judge in two different cases. In this context, he has used the said word but tendered unconditional apology even before framing charge. The conduct of the accused would only show that he never intended to scandalise or attribute motives on the Judge and to undermine the authority of the Court. Relying upon a judgment rendered in a matter, if a Counsel is able to demonstrate that the Judge



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has applied different yardsticks in cases involving similar questions arising out of same cause of action, he may be justified. But, an Advocate is required to use polite words and to be more careful while drafting an appeal or a revision petition. In his anxiety the accused has used the word "biased". This is apparent on the face of the record. But the tenor of apology filed by him before framing charge disclose that he, whole heartedly, tendered unconditional apology. However, we notice that he has not withdrawn the word "biased" used against the Judge.

12. Now, before us, he has stated that he never intended to attribute bias to the Judge and his anxiety was to get justice to his client and in that process while drafting the review petition such a thing has happened. Some times, such things happen. But, a learned Counsel should be more careful and cautious while drafting appeal or review petition. Since an unconditional apology is tendered now, we are inclined to accept the same as we are of the opinion that the apology so tendered by the accused has come from the bottom of his heart, which shows his *bona fide* act.

13. In the circumstances, accepting the apology tendered by the 2nd accused, further proceedings are dropped and the petition is closed.

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