Parithi Ilamvazhuthi vs Thiru.Rajendra Kumar on 29 October, 2004

Bench: M.Karpagavinayagam, S.R.Singharavelu

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29/10/2004

CORAM

THE HONOURABLE MR.JUSTICE M.KARPAGAVINAYAGAM
AND
THE HONOURABLE MR.JUSTICE S.R.SINGHARAVELU

Contempt Petition No.397 of 2001

Parithi Ilamvazhuthi .. Petitioner

-vs-

1. Thiru.Rajendra Kumar,
Inspector of Police (L & O),
G-1, Vepery Police Station,
Chennai-7.

2. Thiru.Muthu Karuppan,
Commissioner of Police,
Chennai City, Chennai. .. Respondents

Contempt Petition filed under Article 215 of the Constitution of India and under Sections 2(c), 12 and 15 of the Contempt of Courts Act, for punishing the respondents for having committed criminal contempt, as stated therein.

For petitioner : Mr.R.Shanmugasundaram,
Senior Counsel for
Mr.R.Girirajan.

For respondent-1: Mr.Aravind P.Dattar,
Senior Counsel for
Mr.A.K.S.Thahir.

For respondent-2: Mr.I.Subramanian,
Senior Counsel for
Mr.P.T.Ramkumar.

:O R D E R

A sitting M.L.A. has filed this petition seeking to punish the Inspector of Police and the Commissioner of Police for contempt.

2. The false statement made on oath by the Inspector of Police before this Court on the basis of which this Court ordered stay of the bail order passed by the Sessions Judge, Chennai, in favour of the petitioner, the M.L.A. recently elected, has virtually prevented him from taking oath in the Assembly in the presence of the Speaker. This is the subject matter of the contempt petition.

3. The short facts are these:

> "Parithi Ilamvazhuthi, the petitioner herein was elected as M.L.A. of the Egmore Constituency, Chennai in the Elections held on 10.5.2001 to the Tamil Nadu State Legislative Assembly. He belongs to D.M.K. Party. There was a large scale violence and attempt of booth capturing on the day of elections. There were violent incidents. The case in Crime No.958 of 2001 was registered against his opposite candidate John Pandian and others for various offences. Similarly, a complaint was given by the opposite party man, one David against the petitioner and others which was registered in Crime No.960 of 2001. The petitioner thereafter filed an application for anticipatory bail before the Sessions Court, Chennai in respect of the offences in Crime No.960 of 2001. However, the same was dismissed on 16.5.2001. On 17.5.2001, the Inspector of Police, the first respondent herein arrested the petitioner. He moved an application for bail before the XIV Metropolitan Magistrate, who in turn dismissed the same on 21.5.2001. The petitioner filed an application before the Principal Sessions Court, Chennai on 22.5.2001 seeking for bail mainly on the ground that he has to attend the Assembly which has commenced on 22.5.2001 to take oath. On 23.5.2001,after hearing the counsel for the parties and City Public Prosecutor, the Sessions Court released the petitioner on bail on some condition. Next day itself, i.e. on 24.5.2001, the first respondent filed an application before the High Court for cancellation of bail and sought for stay. Justice Packiaraj, Vacation Judge mainly on the basis of the ground that the victim is in a serious condition and the petitioner is in police custody granted stay of the bail order and ordered notice. On receipt of the said notice, the petitioner filed a counter on 28.5.2001 pointing out that the statement made by the Inspector of Police in his affidavit regarding police custody is false. On 29.5.2001, reply affidavit had been filed by the first respondent admitting that it is a mistake. On 30.5.2001, the petition for cancellation of bail was dismissed by this Court holding that no ground was made out for cancellation of bail. Only thereafter, he was released on bail. Thus, he was in continued detention from 23.5.2001 to 30.5.2001, i.e. for 7 days. In view of the stay order obtained on the basis of the false statement made by the Inspector of Police, the petitioner was not allowed

to come out from jail due to the continued detention for 7 days and thereby, he was prevented from taking oath in the Assembly on 22.5.2001 on which date, the first Session of the Assembly commenced. Aggrieved over this, the petitioner filed the contempt petition on 6.6.2001."

4. The crux of the imputation as against the respondents 1 and 2 is as follows:

(1) The Inspector of Police, the first respondent herein in his affidavit seeking for cancellation of bail dated 24.5.2001 made a false statement that the petitioner was in police custody by the order of the Magistrate dated 23.5.2001 and the same would expire on 28.5.2001 and in spite of the fact that this was brought to the notice of the Sessions Court, without even referring to the ground, the Sessions Court granted bail. There was no police custody ordered nor such an objection was raised before the Sessions Court. So, the first respondent is liable to be punished for contempt.

(2) The Commissioner of Police owes his responsibility who exercised supervision over the functions of the subordinate Police Officers in Chennai.

Without his instruction and guidance, the Inspector of Police would not have moved the High Court by making a deliberate falsehood in his affidavit in order to get the bail order stayed. Since this was done with the active connivance of the Commissioner of Police, the second respondent herein, the second respondent also is liable to be punished for contempt.

5. In elaboration of these two imputations, the arguments were advanced by the counsel for the petitioner at length.

6. Even at the beginning, Mr.Aravind P.Dattar,the learned senior counsel appearing for the first respondent and Mr.I.Subramanian, the learned senior counsel appearing for the second respondent would raise the question regarding the maintainability of this contempt petition. Both the counsel would strenuously contend that under Section 15 of the Contempt of Courts Act, the consent of the Advocate General is necessary and since the same has not been obtained, the contempt petition has to be dismissed in limine. Both would cite the following authorities:

1) STATE OF KERALA v. M.S.MANI (2001(8) S.C.C.82);

2) OM PRAKASH JAISWAL v. D.K.MITTAL (2000(3) S.C.C.171);

3) PALLAV SHETH v. CUSTODIAN (2001(7) S.C.C.549);

4) DR.L.P.MISRA v. STATE OF U.P. (1998(7) S.C.C.379).

7. In reply to the said submission, Mr.R.Shanmugasundaram, the learned senior counsel appearing for the petitioner would cite the authorities in S.K.SARKAR,

MEMBER, BOARD OF REVENUE v. VINAY CHANDRA MISRA (1981 S.C.C.(Cri) 175) and P.N.DUDA v. P. SHIV SHANKAR (1988 S.C.C.(Cri.)589) in order to show that in the absence of the appointment of Advocate General, the private party can file a contempt petition and in any event, in this case, the contempt action has been initiated suo motu by the Division Bench of this Court and as such, the question of consent by the Advocate General does not arise.

8. Before dealing with the merits of the matter, it would be better to settle the preliminary issue raised by the counsel for the respondents.

9. The perusal of the records would show that initially, when the application for contempt was filed on 6.6.2001, the Registry did not incline to number it, as there is no sanction from the Advocate General. On the request of the counsel for the petitioner, the matter was posted before the Division Bench to decide about the question of maintainability. When the matter was posted before the Division Bench headed by R.Jayasimha Babu,J., it looked into the papers and summoned the records from the XIV Metropolitan Magistrate in order to verify whether police custody was sought and granted which is the ground for stay. After receipt of the records, the Division Bench perused the same and satisfied that no police custody was sought and granted. Therefore, by the order dated 20.6.2001, the Division Bench took suo motu cognizance of its own and issued show cause notice to both the Inspector of Police, the first respondent and the Commissioner of Police, the second respondent on whose instruction, the first respondent acted.

10. The relevant observation made by the Division Bench in the order dated 20.6.2001 headed by R.Jayasimha Babu, J. would clearly indicate that the Bench found out the prima facie case to conclude that the first respondent-Inspector of Police filed a false statement with intent to mislead the court and the said false statement would not have been made without the knowledge of the Commissioner of Police. Thus, it is clear that the cognizance has been taken under Section 15 of the Contempt of Courts Act (hereinafter referred to as 'the Act') by the Division Bench of this Court suo motu and as such, the absence of sanction from the Advocate General would not stand in the way of deciding the other issues raised in this case.

11. Let us now refer to the submissions regarding the accusation made against the respondents 1 and 2. It would be better to deal with the accusation against both of them and their explanation one by one.

12. According to the petitioner, the Inspector of Police, first respondent herein arrested the petitioner on 17.5.2001. Then, he was remanded to judicial custody. He filed the bail petition before the XIV Metropolitan Magistrate and the same was dismissed on 21.5.2001. Since on 22.5.2001, the Assembly Sessions commenced, he moved before the Sessions Court for bail on 22.5.2001. The only objection raised by the City Public Prosecutor was that the victim who was discharged from the General

Hospital, Madras was readmitted in Palayamkottai Hospital. However, the Sessions Court granted bail to the petitioner to enable him to take oath in the Assembly imposing some conditions. In order to prevent the release from jail and to take oath in the Assembly, the Inspector of Police rushed to the High Court and filed a petition for cancellation of bail with false affidavit stating that the petitioner was in police custody by the order of the Magistrate dated 2 3.5.2001 which expires on 28.5.2001 and the same was brought to the notice of the Sessions Court, but without referring to the objection, the Sessions Court granted bail. Only on the basis of this statement through the affidavit, the High Court granted stay of the bail order. The petitioner after verification from the lower Court, filed a counter on 29.5.2001 that no such custody was granted and such an objection was never raised on that ground before the Sessions Court. On 2 9.5.2001, the first respondent filed a reply admitting the same as a mistake and the said mistake was due to oversight. The order passed by Justice Packiaraj on 24.5.2001 would clearly indicate that but for the ground that the petitioner was in police custody on the date of the bail order dated 23.5.2001, which was not taken into consideration by the Sessions Judge, the stay order would not have been passed. Due to the stay order, the release of the petitioner was restrained from 24.5.2001, thereby he was prevented from taking oath in the Assembly. Ultimately, Justice Malai Subramaniam by the order dated 30.5.2001, dismissed the application for cancellation of bail as no ground was made out. The false statement was made with ulterior motive and mala fide intention to detain the petitioner as long as in prison as well as to prevent him from taking oath and participation in the Assembly as an M.L.A. during the first Session of the Assembly. As such, the false statement before this Court was made in order to get a favourable order knowing fully that it is a false one. Therefore, the first respondent is liable to be convicted for contempt.

13. The explanation given by the first respondent with regard to the imputation made against him is as follows:

"He never instructed the Government Advocate, High Court that the petitioner was in police custody. He requested him to file an application for cancellation of bail only on the ground that the victim was in a serious condition. The Government Advocate has not drafted the affidavit properly. The order of stay passed by the High Court dated 2 4.5.2001 was not on the basis of the affidavit filed by the first respondent, but on the basis of the wrong submission made by the Government Advocate. Therefore, he is not responsible for the submission made by the Government Advocate regarding police custody. Further, the application for cancellation of bail was moved as against all the accused. Hence, a common affidavit was prepared. At that time, the first respondent informed the Government Advocate that the police custody was ordered for the other accused. But, the Government Advocate made a wrong submission before the Judge inside the Chamber that the petitioner was in police custody. As such, the detention of the petitioner till 30.5.2001 was not on account of his statement made before the Court. He had already admitted the mistake found in the

affidavit before this Court and expressed regret. Therefore, there is no contempt."

14. On the basis of the explanation given by the first respondent in his three affidavits which were periodically filed, Mr.Aravind P. Dattar, the learned senior counsel appearing for the first respondent would submit that it was purely a mistake committed by the Government Advocate as the affidavit was prepared as a common affidavit for all the accused and it was wrongly mentioned about the custody which would relate to the other accused. He has also filed written submission elaborating his points.

15.Refuting this submission, Mr.R.Shanmugasundaram, the learned senior counsel appearing for the petitioner would submit that the suo motu cognizance was taken by the Division Bench and on perusal of the records summoned from the XIV Metropolitan Magistrate, the Division Bench found prima facie case for issuing notice to both the respondents holding that false statement was made before the Court, which in turn granted stay of the bail order and in the absence of valid explanation, the respondents are liable to be punished for contempt.

16. We have heard the counsel for the parties and perused the typed set and records.

17. Before dealing with the merit of the explanation given by the first respondent, it would be worthwhile to refer to the order of cognizance by the Division Bench issuing show cause notice to the first respondent, which is as follows:

> "The information placed before the Court after a preliminary examination, warrants the issue of notice to Rajendra Kumar, S/o S. Alagarsubbu, Inspector of Police (Law & Order), G.1, Vepery Police Station, Chennai, to show cause as to why contempt proceedings against him should not be initiated for having made false statements with intent to mislead the Court and for having made scandalous statements derogatory of the dignity and sanctity of the Courts, in the affidavit dated 24 th May, 2001 filed in Crl.O.P. against the order made by the learned Principal Sessions Judge, Chennai in Crl.M.P.No.6277 of 2001.
>
> 2. In paragraph 4 of that affidavit, he has averred thus:
>
> "I further submit that the learned XIV Metropolitan Magistrate, Egmore, Madras, the Remanding Magistrate was pleased to order police custody on 23.5.2001 directing the accused to be produced on 28.5.2001 for further investigation i.e., for the purpose of recovery of weapons etc."

3. In paragraph 5 of that affidavit, it has, inter alia, been averred thus:

> ".....Further it was represented that the XIV Metropolitan Magistrate, Egmore was pleased to order police custody. But, the learned Judge failed to take into account the seriousness of the condition of the victim in the hospital and the order of police custody. But, the learned Judge further was pleased to grant bail to the respondent/

> accused with bias and prejudiced approach."

Police custody has been referred to not once, but thrice in his affidavit. Imputations are made against the learned Sessions Judge for not having taken note of that alleged police custody of the accused Paruthi Ilamvazhuthi.

4. The said Rajendrakumar had sought to explain away the reference to police custody in his affidavit dated 29th May, 2001 filed in Crl. M.P.No.2974 of 2001, wherein, he has stated at paragraph 5 thus:

> "I submit that the application seeking police custody of other 8 accused was made on 23.5.2001. It was stated so in the affidavit filed in support of the petition to cancel the bail that the police custody was also obtained in respect of the respondent/accused-1 is a mistake by oversight that the respondent/accused-1 is also in it and the same is neither wilful nor wanton."

The application made on 23.5.2001 before the learned Magistrate referred to in that paragraph 5 was an application seeking police custody of 5 persons. On the day the application is said to have been made, all of them had been granted bail by the learned Sessions Judge who had granted bail to Paruthi Ilamvazhuthi against which order the Crl. M.P. had been filed. The application filed before the learned Magistrate does not mention the fact that bail had been granted. The Magistrate had not ordered police custody of even those five pursuant to that application.

5. It is, therefore, prima facie clear that the explanation sought to be given for the wrong statement made in the affidavit is also not a tenable or a true one.

6. Even in that affidavit of 29th May, 2001, not a word of apology is said for having made a scandalous statement attributing bias and prejudice to the Sessions Court which allegation had been made solely on the ground that the learned Judge had failed to take note of the police custody that had been ordered in respect of the said Paruthi Ilamvazhuthi.

7. By reason of the false affidavit filed by the said Rajendra Kumar and relying on the same, the learned Judge of this Court had suspended the bail order, as a consequence of which, the said accused's detention was prolonged till that suspension of the bail order was vacated on the 30th of May."

18. The perusal of the order passed by the other Division Bench dated 20.6.2001 would indicate the following factors:

> (i) Police custody of the petitioner has been referred to in the affidavit filed in support of the petition for cancellation of bail thrice.

Imputations have been made against the Principal Sessions Judge for not having taken note of the police custody of the petitioner.

(ii) The explanation given in his reply affidavit dated 29.5.2001 in the cancellation of bail petition is that it was a mistake due to oversight. The police custody application has been filed on 23.5.2001 before the learned Magistrate for five persons alone and not for the petitioner. This application does not mention the fact that bail had been granted. The learned Magistrate had not actually ordered police custody for even those five persons on the said date.

(iii) So, the explanation sought to be given for the wrong statement made in the affidavit is not tenable and true.

(iv) Even in the affidavit dated 29.5.2001, not a word of apology or regret is given for the said mistake.

(v) Due to the said false affidavit, the single Judge of this Court suspended the bail order, as a consequence of which, the petitioner' s detention was prolonged for 7 days, i.e. till that suspension of the bail order was vacated on 30.5.2001.

19. In the light of the above observations, we have to see whether sufficient materials are available to find the contemners guilty for the contempt and whether the explanations given by the contemners are satisfactory.

20. Let us first take the affidavit dated 24.5.2001 filed in the High Court by the Inspector of Police,the first respondent herein seeking for cancellation of bail:

> "4. I further submit that the learned XIV Metropolitan Magistrate, Egmore, Madras, the Remanding Magistrate was pleased to order police custody on 23.5.2001 directing the accused to be produced on 28.5.2001 for further investigation i.e., for the purpose of recovery of weapons etc."

5. I submit that the respondent/accused filed bail petition before the learned Sessions Judge, Chennai in Crl.M.P.No.6277/2001 on 22.5.20 01 and it came up for hearing on 23.5.2001. On my instructions, the learned Public Prosecutor represented before the court that the victim namely David has been admitted in the Government Hospital, Palayamkottai as his condition was serious and as such the accused not to be released on bail in the interest of justice. Further it was represented that the XIV Metropolitan Magistrate, Egmore was pleased to order police custody. But, the learned Judge failed to take into account the seriousness of the condition of the victim in the hospital and the order of police custody. But, the learned Judge further was pleased to grant bail to the respondent/accused with bias and prejudiced approach. I submit that if the respondent/accused is allowed to go on bail, the investigation will be futile and frustrated. Therefore, it is just and necessary to cancel the bail granted to the respondent/ accused."

21. The above wordings contained in the affidavit sworn to by the first respondent would indicate that a specific mention was made in the petition for cancellation of bail that the petitioner was in police custody on 24.5.2001 by the order of the Magistrate dated 23.5.2001. The stay order passed by Justice Packiaraj dated 24.5.2001 also would indicate that the fact that this Court while granting

stay took into consideration the fact that the police custody of the petitioner expires on 28.5.2001 was not considered by the Sessions Judge at all. So, the reading of both the affidavit by the first respondent and the order of this Court dated 24.5.2001 would clearly reveal that the statement that the petitioner is in police custody by the order of the Magistrate was taken as a main ground for granting stay of the bail order.

22. The explanation by the first respondent, as indicated above, could be reiterated at this stage:

> (i) I have not given such instruction to the Government Advocate regarding police custody of the petitioner.
>
> (ii) The order of stay was based upon the wrong submission made by the Government Advocate and not on the basis of the affidavit filed by the first respondent.
>
> (iii) On 23.5.2001, he moved an application for police custody only for five accused and not for the petitioner. This was informed to the Government Advocate. The Government Advocate wrongly drafted.
>
> (iv) Originally, the petitions for cancellation of bail were moved for all the accused. When the common affidavit has been filed for all the accused, this mistake has crept in. But subsequently, it was decided to move an application for cancellation of bail granted to the petitioner (A1) alone.

23. This Division Bench by the order dated 14.8.2001 having found that the first respondent put a blame on the Government Advocate through his affidavit, directed Mr.Raja, the Government Advocate to file his statement with regard to the above explanation given by the first respondent. Accordingly, Mr.Raja, the Government Advocate filed three affidavits on various dates before this Court.

24. It has been specifically stated by him in these affidavits that only on the instruction of the first respondent that the petitioner was in police custody, he drafted the same and after settling the affidavit, it was read over to the first respondent, who in turn admitted the same to be correct and thereafter signed and at that time, both the Assistant Commissioner of Police and the Deputy Commissioner of Police were present.

25. Mr.Raja in all his affidavits did not state that it is a mistake crept in because of the reason that a common affidavit was filed. On the other hand, he specifically stated that the first respondent only gave instruction in the presence of the Assistant Commissioner of Police and the Deputy Commissioner of Police that bail has been granted in spite of the police custody of the petitioner and that therefore, he drafted and settled the affidavit seeking for cancellation of bail for the petitioner alone mentioning that as a main ground.

26. In the light of the statement made by Mr.Raja, the Government Advocate of the High Court, who is sufficiently experienced having worked as a City Public Prosecutor for some years and

Government Advocate for number of years in this High Court and as there is no reason to reject his statement, we are constrained to conclude that this explanation given by the first respondent is palpably false.

27. The above view of ours is further strengthened by the fact that this explanation that he never instructed the Government Advocate regarding the police custody of the petitioner and the mistake had been crept in because of the reason that the common affidavit has been filed, had not been mentioned in his earlier reply affidavit dated 29.5 .2001 filed in the petition for cancellation of bail.

28. The specific assertion of the first respondent in his reply affidavit dated 29.5.2001 in the petition for cancellation bail is as follows:

> "I submit that the application seeking police custody of other 8 accused was made on 23.5.2001. It was stated so in the affidavit filed in support of the petition to cancel the bail that the police custody was also obtained in respect of the respondent/accused-1 is a mistake by oversight that the respondent/accused-1 is also in it and the same is neither wilful nor wanton."

29. This earlier statement would indicate that the Inspector of Police, the first respondent admitted in the first affidavit filed by him on 24.5.2001 that he made a statement that the petitioner also is in the police custody and the same was a mistake due to oversight. Having admitted the same as a mistake in the earlier affidavit, we are at a loss to understand as to why the first respondent strangely has to change his stand by giving a new explanation which is altogether different from the earlier affidavit by merely putting the blame on the Government Advocate.

30. To contend that the order of stay was passed not on the basis of his affidavit, but on the basis of the wrong submission made by the Government Advocate before the Judge inside the Chamber is not only unfortunate, but also mischievous. Yet another strange stand taken by the first respondent is that the affidavit filed by him in the cancellation of bail petition would not indicate that the petitioner was in police custody, but it indicated the other accused only. There is no basis for this. As noted above, first respondent himself mentioned in his reply affidavit dated 29.5.2001 that it meant the police custody of the petitioner only and it is a mistake.

31. One other strange feature is that the first respondent in his affidavit dated 24.5.2001 blamed the Principal Sessions Judge also stating that he did not refer to the objection to the grant of bail made by the City Public Prosecutor to the effect that the petitioner was in police custody. When he admitted in the reply affidavit dated 29.5 .2001 that police custody would not refer to the petitioner, how can there be an objection to the Sessions Judge on that ground? The stand by the first respondent in his reply affidavit dated 29.5.2001 is that it was wrongly mentioned by mistake that the petitioner was in police custody in the affidavit dated 24.5.2001. But, taking advantage of the wordings contained in the stay order "In addition to the above fact mentioned in the affidavit that the accused is in police custody expires on 28.5.2001", it is now sought to be contended on behalf of the first respondent that the learned single Judge did not act upon the affidavit, but only acted upon the wrong submission made by the Government Advocate and as such, he cannot be held

responsible. We could only say that the first respondent wants to escape somehow or other by putting blame on someone or other.

32. According to the first respondent through the affidavit dated 30 .7.2001 filed before this Court, he already expressed regret for the alleged mistake committed by him, in the reply affidavit dated 29.5.2 001. But, the perusal of the said reply affidavit dated 29.5.2001 would indicate that he did not express any regret nor tendered apology for the said mistake.

33. In this context, the observation of the Division Bench in its first order dated 20.6.2001 is quite relevant, which is as follows:

> "Even in that affidavit of 29th May, 2001, not a word of apology is said for having made a scandalous statement attributing bias and prejudice to the Sessions Court which allegation had been made solely on the ground that the learned Judge had failed to take note of the police custody that had been ordered in respect of the said Paruthi Ilamvazhuthi."

Thus, it is clear that he is making another wrong statement that already he expressed regret for the alleged mistake, in the reply affidavit.

34. We find yet another reason to entertain a doubt over the statements of the first respondent making improvements and taking different stands. In the first counter affidavit in the contempt petition filed by the first respondent on 30.7.2001, he mentioned as if he straightaway walked into the Public Prosecutor's office on 24.5.2001 and briefed the Government Advocate about the facts and instructed him to file an application for cancellation of bail. He did not mention on whose instruction, he went to the Public Prosecutor's office to request the Government Advocate.

35. Mr.Raja, the Government Advocate filed an affidavit dated 6.12.2

001. He specifically mentioned in it that the affidavit was drawn purely on the instruction of the Inspector of Police, first respondent herein and the Deputy Commissioner of Police Mr.Chandrasekar and the Assistant Commissioner of Police Mr.Anthonysamy were with him by then. Only thereafter, the first respondent filed an affidavit dated 10.4 .2003 stating that he got direction from the Assistant Commissioner of Police and went to the Public Prosecutor's office and gave the instructions to the Government Advocate in the presence of the Deputy Commissioner of Police and the Assistant Commissioner of Police.

36. Even in the said affidavit, no details were given as to how the Assistant Commissioner of Police and the Deputy Commissioner of Police came to the Public Prosecutor's office. Only when the details were asked for by this Court, the first respondent filed another affidavit dated 11.9.2004 stating that he intimated about the release of the petitioner to his immediate officer Anthonysamy,the Assistant Commissioner of Police on the morning of 24.5.2001 and then, on his direction, he proceeded to the High Court and gave instruction to the Government Advocate in the Public Prosecutor's office and at that time, both the higher ranking officers were present.

37. The fact that the Deputy Commissioner of Police and the Assistant Commissioner of Police were present in the Public Prosecutor's chamber and in their presence, the Inspector of Police gave instructions and signed in the affidavit settled by the Government Advocate itself would clearly indicate that there was some anxiety on the part of the higher ranking police officers to approach the High Court immediately to see that the order of bail is stayed.

38. Admittedly, these details were not in the earlier affidavits filed by the first respondent. Only when Mr.Raja, the Government Advocate came out of the particulars that he was given instruction by the higher ranking officials like the Deputy Commissioner of Police and the Assistant Commissioner of Police, the first respondent came out with other details. Therefore, the contention of the first respondent that the Government Advocate drafted the affidavit wrongly would amount to making a false statement again before this Court.

39. Another explanation given by the first respondent is that the affidavit for cancellation of bail was prepared as a composite application for cancellation of bail of all the accused including the petitioner and therefore, the facts relating to the police custody have been wrongly mentioned in the affidavit and the comparison of the other petitions filed in respect of other accused with the present petition would make it clear that both are identical.

40. This contention has to be rejected on three reasons:

(1) This stand has not been taken in the earlier affidavit filed by the respondent.

(2) Mr.Raja, the Government Advocate did not admit in his affidavits that the same was a mistake and it was committed since the common affidavit has been prepared for filing cancellation of bail for all the accused.

According to him, the only affidavit prepared and settled was in respect of the petitioner alone.

(3) When this Court compared the affidavits for cancellation of bail for other accused which were filed later and the affidavit for cancellation of bail in respect of the petitioner which was filed on 24.5.2001, they would clearly indicate that they are not identical and they were prepared on different dates. The facts given in the other applications have not been given in the petition relating to the petitioner. On the other hand, in the petitions for cancellation of bail in respect of the other accused, it is clearly mentioned that as against the petitioner, the cancellation of bail was already moved in the year 2001 and the stay of the bail order was granted in that application. This would indicate that they are not identical and the same were prepared on different dates. As such, the contention that composite application for cancellation of bail for all the accused was prepared one and the same time is clearly untrue.

41. There is no dispute in the fact that the petitioner was arrested on 17.5.2001 itself. Either on 17.5.2001 or on 23.5.2001, no application was filed seeking police custody of the petitioner. Now, the present explanation in the second affidavit dated 11.9.2004 by the first respondent is that they did not ask for police custody of the petitioner and they merely asked for judicial custody keeping in

mind that he was an elected M.L.A. and a political activist. It is also explained that since tense situation was prevailing on 17.5.2001, police custody was not sought and they thought that they could ask for police custody later within 15 days.

42. This explanation again is quite artificial. The F.I.R. has been registered on 10.5.2001. The perusal of the printed F.I.R. would show that only five identifiable unknown persons involved in the crime. As a matter of fact, the petitioner was not arrayed as an accused in the printed F.I.R. Though originally, the case was registered under Section 324 I.P.C., it is said that the same was altered into one under Section 307 I.P.C. on 11.5.2001 on the basis of the further statement obtained from David, the complainant. Even in the further statement as found in the alteration report, the petitioner was not implicated and there is no mention that the petitioner used any weapon. When that was so, there Was no necessity for the first respondent to seek for police custody for the petitioner. That must be the reason as to why the first respondent did not choose to seek for police custody of the petitioner in the application filed by him on 23.5.2001 seeking for the custody of the other five accused persons who had surrendered on 21.5.2001. When such is the fact situation, how could we accept his explanation that at the initial stage, they did not ask for police custody since he was an elected M.L.A. and political activist? Admittedly, up to 23.5.2001, no person implicated the petitioner as he was using any weapon to attack the witnesses. Instead of highlighting that reason, it is now sought to be explained that police custody was not sought because there was tense situation. This explanation, in our view, is only preposterous which is liable to be rejected.

43. As noted above, when the application for cancellation of bail was filed showing the alleged police custody of the petitioner, the counter was filed by the petitioner on 28.5.2001 by the petitioner stating that no such police custody was granted and as such, it is a false statement. Strangely, only thereafter, the first respondent filed an application for police custody hurriedly on 29.5.2001 before the XIV Metropolitan Magistrate, probably to justify his false statement made in the affidavit filed earlier and to inform the Court on 30.5.20 01 that the police custody was granted for one day. When the XIV Metropolitan Magistrate ordered for production of the five surrendered accused before the Court to consider police custody, there is no reason as to why the first respondent did not care to pursue the application seeking for police custody for them, even though they were attributed with specific overt acts with dangerous weapons.

44. Similarly, the first respondent claimed to have filed applications for cancellation of bail inthe High Court in respect of the other accused who used weapons in Crl.O.P.Nos.9474 and 9475 of 2001. The perusal of those bundles would indicate that they were filed only on 29 .5.2001 and the same were periodically adjourned on the request of the Government Advocate till 6.7.2001. Subsequently, those applications have not been posted before this Court. As such, the first respondent did not show any interest in pursuing the matter.

45. Curiously, on behalf of the first respondent, it is submitted that since the cancellation of bail petition as against the petitioner was dismissed, they did not pursue the matter. This submission also, in our view, is quite artificial. As a matter of fact, the specific stand taken by the first respondent before the XIV Metropolitan Magistrate through the application dated 23.5.2001 was that the weapons have to be recovered only from the other five accused and as such, police custody

of the said five accused is necessary. In that application, order has been passed directing the other accused to be produced before the Court on 28.5.2001 to consider police custody. But, in the petition for cancellation of bail, it is stated that police custody was already ordered. Even assuming that it would relate to some other accused, that statement also is false statement since police custody was not granted in respect of any accused. In any event, the case of the other accused with reference to the police custody stands in a different footing than that of the petitioner.

46. It is incidentally mentioned that the petition for cancellation of bail was not only filed on the ground of police custody, but also on the ground that the victim was in a serious condition. Admittedly, no materials were placed either before the Sessions Court or before this Court to show that the victim was in a serious condition. The wound certificates were not produced. The Inspector of Police did not choose to record the statement of the Doctor who treated at General Hospital, Chennai and the Doctor at Palayamkottai, where he was subsequently admitted. Then, how could there be a representation before this Court that the victim was in a serious condition and as such, bail has to be cancelled? When the victim was admitted in the General Hospital, Chennai through the police memo, why the victim got discharged and readmitted in the Palayamkottai Hospital? Now, it is said that out of fear,the victim himself got discharged and got himself admitted in the Palayamkottai Hospital. Then, how was further statement obtained from the victim at the Palayamkottai Hospital? Why the Inspector of Police did not choose to record the statement of the Doctor to give the details of the serious condition? This shows that without any material whatsoever, the first respondent made an incorrect and false statement before the High Court in order to get the bail order suspended to see that the petitioner does not come out from jail and take oath in the Assembly.

47. In view of the detailed discussion made above, we are to concur with the view of the Division Bench which issued contempt notice against the first respondent, that the first respondent filed the false affidavit knowing fully well the contents of the affidavit are false in order to mislead the Court for preventing the petitioner, an M.L.A. from coming out from the jail, thereby restrained him from attending the Assembly.

48. Let us now come to the explanation given by the second respondent, the Commissioner of Police.

49. Mr.I.Subramanian, the learned counsel appearing for the second respondent, as projected through his affidavit and written submission, would submit that the Commissioner of Police, the second respondent was never consulted by the subordinate Police Officers before filing of the application for cancellation of bail an d he was not aware of the contents of the said affidavit and as such, he was not responsible. It is further submitted that when the incorrect statement made in the affidavit filed in support of the petition was brought to his notice by Mr.Christopher Nelson, Deputy Commissioner of Police on 28.5.2 001, he directed him to give instruction to the Inspector of Police to file a proper affidavit and as such, he was never a party to the said false affidavit and therefore, he is not liable for contempt.

50. We have heard the counsel for the petitioner on this aspect.

51. There is no doubt in the fact that in the election held on 10.5.2001, the petitioner was declared elected as an M.L.A. on 13.5.2001 and the second respondent assumed office as the Commissioner of Police on 17.5.2001 and on the same day, the petitioner was arrested by the first respondent in respect of the case registered on 10.5.2001 and in the meantime, A.I.D.M.K. Party formed the Government. It is also not disputed that the arrest of the petitioner was given wide publicity through media.

52. According to the second respondent, he was never consulted by the subordinate officers before filing of the application in the High Court to cancel the bail granted to the petitioner by the Sessions Court. However, he does not dispute about the intimation given to him about the arrest of the petitioner.

53. Admittedly, the duty of the Commissioner of Police as enjoined in the Order 631(2) of the Tamil Nadu Police Standing Orders that he is bound to inform to the Speaker of the Assembly as well as to the Chief Secretary of the Government the particulars about the arrest or release of a member of the Legislative Assembly. Now, in the written submission made by the second respondent, he admitted that he was informed about the arrest of the petitioner and the same has been conveyed to the Speaker as well as to the Chief Secretary. This means, the Commissioner of Police must have been informed by the subordinate Police Officers not only the arrest of the petitioner, but also his release by the Sessions Court to enable him to inform the Speaker and the Government. However, the second respondent would not clearly indicate either in the counter or in the written submission that he was informed about the bail order passed by the Sessions Court on 23.5.2001. Curiously, the second respondent has taken a strange stand that he was never consulted by the subordinate Police Officers for moving a petition for cancellation of bail before the High Court. According to him, he did not give any permission to his subordinates for moving an application for cancellation of bail before the High Court.

54. As pointed out by the counsel for the petitioner, in the light of the general duties contemplated in the Standing Orders relating to the Public Prosecutor as communicated in G.O.Ms.No.607 dated 28.3.198 1, the Commissioner of Police on his being satisfied has to instruct the Public Prosecutor to appear in a particular case. The perusal of the above G.O. would indicate that it is the second respondent, the Commissioner of Police to instruct the Public Prosecutor to file necessary application before the High Court for cancellation of bail.

55. Now, it is contended that the Public Prosecutor was not appointed then and only Government Advocate who was appointed on 23.5.2001 was available and as such, it would not apply to the Government Advocate. This contention does not merit consideration, in view of the fact that as per the definition under Section 2(u) of Cr.P.C., "Public Prosecutor" means any person appointed under Section 24, and includes any person who appears on behalf of the Public Prosecutor representing the State.

56. According to Mr.Raja,the Government Advocate through his affidavit, he was instructed by the Inspector of Police, first respondent, in the presence of the Assistant Commissioner of Police and the Deputy Commissioner of Police. The reading of his affidavit would show that in view of the urgency

shown by the higher ranking officers, namely Deputy Commissioner of Police and Assistant Commissioner of Police who came to the Public Prosecutor's chamber and the request made by them to the Government Advocate to file an application immediately, the lunch motion was taken and only after obtaining lunch motion, the application for cancellation of bail was moved in the Chamber of the Vacation Judge. Unless the Government Advocate was instructed by the higher ranking officers, there is no necessity for the Government Advocate to ask for lunch motion and get an interim order to stay the order of the release of the petitioner.

57. As indicated above, according to the second respondent, he was never consulted and he never gave any permission to file an application for cancellation of bail and as such, he was not a party to the filing of a false affidavit for moving cancellation of bail for an M.L.A. This stand of the second respondent is quite strange. According to the first respondent, immediately after the arrest, he intimated it to his immediate superior, namely Assistant Commissioner of Police. Now, both Mr.Raja, Government Advocate and the first respondent would admit that when the instructions were given in the Public Prosecutor's office, Deputy Commissioner of Police and Assistant Commissioner of Police were also present.

58. It is true that the first respondent also stated that he was not instructed by the Commissioner of Police to file an affidavit. But, the question as to why the Deputy Commissioner of Police and the Assistant Commissioner of Police have come to the picture by making their appearance in the Public Prosecutor's chamber to request the Government Advocate to file an application for cancellation of bail, had arisen.

59. When this question cropped up, this Court was constrained to seek clarification from Mr.Anthonysamy, Assistant Commissioner of Police and Mr.Chandrasekar, Deputy Commissioner of Police. They were asked to file their respective affidavits. Accordingly, they filed the same on 24.9.2004. The relevant portions of their affidavits would clearly indicate that Assistant Commissioner of Police intimated the release of the petitioner to his superior officer, namely Deputy Commissioner of Police and he in turn, intimated and consulted his superior officer, namely the Commissioner of Police, the second respondent, before filing of the cancellation of bail application.

60. As a matter of fact, the Deputy Commissioner of Police Mr. Chandrasekar would categorically state in paragraph 4 of his affidavit thus:

> "I came to know through the Assistant Commissioner of Police, Kilpauk that Mr.Parithi Ilamvazhuthi has been granted bail by the learned Principal Sessions Judge, Chennai, and considering the seriousness of the case and after discussion with the superior officers, it has been decided to move an application for cancellation of bail in the Honourable High Court."

This clearly indicates that only on the basis of the discussion that he had with the Commissioner of Police and on the direction given by the Commissioner of Police, both Deputy Commissioner of Police and Assistant Commissioner of Police came to the Public Prosecutor's chamber and requested the Government Advocate to prepare an application for cancellation of bail.

61. The officer superior to the Deputy Commissioner of Police in Chennai City is only the Commissioner of Police. Further, as noted above, under Order 631(2) of the Tamil Nadu Police Standing Orders, the Commissioner of Police alone is expected to intimate the fact of arrest or release of any member of the Legislative Assembly to the Speaker as well as to the Government. Therefore, all the more reason, the fact that the petitioner was released on bail by the Sessions Court must have been intimated by the Deputy Commissioner of Police to the Commissioner of Police,in order to facilitate him to intimate the same to the Speaker and the Government.

62. It is the specific stand taken by the Assistant Commissioner of Police and the Deputy Commissioner of Police that they consulted their senior officer and decided to file an application for cancellation of bail. This means, the said decision could not have been taken without the permission of the Commissioner of Police who is the Head of the City Police. In other words, but for the direction given by the Commissioner of Police, there is no necessity for these Deputy Commissioner of Police and Assistant Commissioner of Police to be present in the Public Prosecutor's office to file the affidavit through the Inspector of Police seeking for cancellation of bail granted to the M. L.A.

63. One more factor to be noticed in this context. Another Deputy Commissioner of Police, viz., Mr.Christopher Nelson, who was in charge on 20.6.2001 in the place of Mr.Chandrasekar, Deputy Commissioner of Police, who went on leave, filed an affidavit before this Court stating as follows:

> "I respectfully submit that on the very same day, I informed the Commissioner of Police, the second Respondent about the allegations of mistake in the affidavit filed by the investigation officer, the first Respondent herein. I was directed by the second Respondent herein to instruct the Assistant Commissioner of Police and Inspector of Police to file a fresh affidavit, if necessary before the Hon'ble High Court, explaining the alleged mistake in the affidavit filed by the first Respondent earlier."

These would indicate that the person who is holding the post of Deputy Commissioner of Police would use to get instruction directly from the Commissioner of Police. When such is the factual situation, the Commissioner of Police cannot plead ignorance about the decision and the filing of the cancellation of bail petition before the High Court.

64. As indicated above, it is the Commissioner of Police to inform the authorities concerned about the arrest or release of an M.L.A. That was the reason as to why the Commissioner of Police must be constantly informed about the every development in the matter of arrest or release of an M.L.A.

65. Curiously, the second respondent would state in his written submission filed before this Court that the stand taken by the two officers, namely Deputy Commissioner of Police and Assistant Commissioner of Police through their statement that they contacted the superior officer, is a belated one it was made only to save their skin. From this, it is clear that the second respondent admits that the senior officer for Deputy Commissioner of Police is the Commissioner of Police only.

66. This could be viewed from yet another angle. As noted above, the Commissioner of Police must be apprised of the arrest or release of an M.L.A. After getting the particulars, he must give

intimation to the Speaker and the Government. According to the second respondent, he was never consulted before filing of an application for cancellation of bail. This means, without his permission, an application has been filed for cancellation of bail to prevent the release of an M.L.A. If that is so, the Commissioner of Police should have taken appropriate action against the subordinate officers for having filed a petition for cancellation of bail and obtained stay order of the bail for an M.L.A. without his permission. Admittedly, no action has been taken. In the absence of any satisfactory explanation for this, there is no reason for this Court to reject the statement of Mr. Chandrasekar, the Deputy Commissioner of Police that he consulted his superior officer indicating the Commissioner of Police before filing of the cancellation of bail petition.

67. In the light of the above statement, it cannot be stated that the second respondent is not a party to the affidavit filed by the first respondent containing false statement on the basis of which the stay order was passed. Further, as discussed above, the Commissioner of Police has gone to the extent of making another false statement before this Court by stating that he was never consulted before filing of the application for cancellation of bail.

68. It is contended that show cause notice has not been issued to the second respondent and only a notice has been issued to him for clarification. But, this submission is clearly wrong in the light of the observation made by the Division Bench in the order dated 20.6.2001. The observation is this:

> "Notice shall also issue to the Commissioner of Police, as the averments of an elected M.L.A. being in police custody could not reasonably have been made prima facie without the knowledge of the Commissioner, more so, when the election had just taken place and the elected member was required to take oath, but by reason of his detention was being prevented from taking oath. The extent to which the Commissioner had knowledge of the filing of the petition for the cancellation of the bail, the instructions, if any, he had given in that regard, the persons to whom such institutions had been given, and the nature of the institutions shall also be disclosed by the Commissioner in his affidavit."

The above observation would clearly indicate that the Division Bench found out prima facie case not only against the first respondent who has filed the false statement with intent to mislead the Court, but also against the second respondent holding that the said false statement would not have been made without the knowledge of the Commissioner of Police, more so, when the election had just taken place and the elected member was required to take oath in the Assembly.

69. Thus, the reading of the entire order passed by the Division Bench dated 20.6.2001 would indicate that the show cause notices were sent to both the respondents. Notice issued to the second respondent also is only to find out the extent to which the Commissioner had knowledge of the filing of the petition for the cancellation of bail.

70. Thus, it is clear that only under his direction, the cancellation of bail application was filed by the first respondent with some false averments and in order to escape from the contempt proceedings, the second respondent has now falsely stated before this Court that he was never consulted.

71. In the light of what is stated above, we are to hold that the second respondent was a party to the filing of the false affidavit and only with his direction and knowledge, the said false affidavit had been filed before the Court in order to get the stay of the bail order so as to prevent the petitioner to attend the Assembly.

72. Mr.R.Shanmugasundaran, the learned senior counsel appearing for the petitioner would cite the following decisions to establish that mere filing of false affidavit and on the basis of which, a favourable order is obtained, which caused irreparable loss to the person concerned, would amount to contempt. The decisions are:

1) AFZAL v. STATE OF HARYANA (A.I.R.1996 S.C.2326);
2) DHANANJAY SHARMA v. STATE OF HARYANA (1995 S.C.C.(Cri) 60 8);

3) U.P.RESIDENTS EMPLOYEES COOP. HOUSE BUILDING SOCIETY v. NOIDA (2 004(9) S.C.C. 670);

4) HIRA LAL CHAWLA v. STATE OF U.P.(1990(2) S.C.C.149);

5) MURRAY AND COMPANY v. ASHOK KR. NEWATIA AND ANOTHER (J.T.2000 (1) S.C.337).

73. On the other hand, Mr.Aravind P.Dattar, the learned senior counsel appearing for the first respondent and Mr.I.Subramanian, the learned senior counsel appearing for the second respondent would cite number of authorities to show that unless it is established satisfactorily that any deliberate and wrong statement was made and in consequence of their statement, there is a favourable order, the said false statement would not amount to contempt and in this case, the materials would not be sufficient to hold that there is a prima facie case for contempt. The authorities are:

1) DEBABRATA v. STATE (A.I.R.1969 S.C.189= 1969 Cri.L.J.401);

2) A.V.RAMAN ALIAS A.VENKATARAMAN(1997 W.L.R.227);

3) NARAINDAS v. GOVT. OF M.P.(A.I.R. 1974 S.C.1252);
4) MRITYUNJOY DAS v. SAYED HASIBUR RAHAMAN (2001(3) S.C.C.739);
5) ALIGARH MUNI. BOARD v. EKKA TONGA MAZDOOR UNION (1970(3) S.C.C.98.

74. The important principles given in the decisions cited by the senior counsel for the petitioner in dealing with the action of contempt over the filing of the false statement could be summarized as follows:

(A) The swearing of false affidavits in judicial proceedings not only has the tendency of causing obstruction in the due course of judicial proceedings, but has also the tendency to impede, obstruct and interfere with the administration of justice. The filing of false affidavits in judicial proceedings in any court of law exposes the

intention of the party concerned in perverting the course of justice. Anyone who makes an attempt to impede or undermine or obstruct the free flow of the unsoiled stream of justice by resorting to the filing of false affidavit, commits criminal contempt of the court and renders himself liable to be dealt with in accordance with the Act. (B)Filing of false affidavits on oath in courts aims at striking a blow at the rule of law. No court can ignore such conduct which has the tendency to shake public confidence in the judicial institutions because the very structure of an ordered life is put at stake. It would be a great public disaster if the fountain of justice is allowed to be poisoned by anyone resorting to filing of false affidavit or giving of false statement in a court of law.

(C) The stream of justice has to be kept clear and pure and anyone soiling its purity must be dealt with sternly so that the message percolates loud and clear that no one can be permitted to undermine the dignity of the court and interfere with the due course of judicial proceedings or the administration of justice.

(D) It is a matter of concern that even senior police officials of the status of Superintendent of Police and Deputy Superintendent of Police should not realise their obligations to the courts and indulge in blatant falsehood with a view to mislead the court. This attitude on their part has to be strongly condemned. They had not only chosen a wrong path for themselves contrary to the principles of the institution to which they belong, but they also tried to detract from divulging the truth to mislead the High Court which was concerned with the liberty of a citizen.

(E) In recent times, our administrative system is passing through a most critical phase, particularly, the policing system which is not as effective as it ought to be and unless some practical correctional steps and measures are taken without further delay, the danger looms large when the whole orderly society may be in jeopardy.

(F) Anyone who takes recourse to fraud deflects the course of judicial proceedings; or if anything is done with oblique motive, the same interferes with the administration of justice. Such persons are required to be properly dealt with, not only to punish them for the wrong done, but also to deter others from indulging in similar acts which shake the faith of people in the system of administration of justice.

(G) "Criminal contempt" has been defined in Section 2(c) of the Act. It means, interference with the administration of justice in any other 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 prejudice or interfere with the due course of judicial proceedings, as it would undoubtedly tantamount to interference with the due course of judicial proceedings. The police officer being a responsible officer is required to make truthful statement before the Court and if he made obviously false statement, it would amount to committing criminal contempt of judicial proceedings of the Court. (H) The law of contempt of Court is essentially meant

for keeping the administration of justice pure and undefiled. While on the one hand, the dignity of the court has to be maintained at all costs, it must also be borne in mind that the contempt jurisdiction is of a special nature and should be sparingly used.

75. As indicated above, the counsel for the respondents 1 and 2 would cite several authorities to indicate that the power of the contempt has to be cautiously used and unless the petitioner who asserts a contempt shall prove that the lapse is deliberate, the contempt cannot be invoked. The principles laid down in those decisions are as follows:

> "(I) In proceedings for initiating action for criminal contempt, the Court must be satisfied whether the act complained of was calculated to obstruct or had an intrinsic tendency to interfere with the course of justice.

The standard of proof required to establish the charge of criminal contempt is the same as in any other criminal proceeding.

(II) Punishment under the law of contempt is called for when the lapse is deliberate and in disregard of one's duty and in defiance of authority. It is only a clear case of contumacious conduct not explainable otherwise arises that the contemner must be punished.

(III) A contempt of court is an offence of a criminal character. A man may be sent to prison for it. Therefore, it must be satisfactorily proved. Exercise of powers under the Contempt of Courts Act shall have to be rather cautious and use of it rather sparingly after addressing itself to the true effect of the contumacious conduct. The court must otherwise come to a conclusion that the conduct complained of tantamounts to obstruction of justice which if allowed, would even permeate in our society.

(IV) Powers under the Contempt of Courts Act should be exercised with utmost care and caution and that too rather sparingly and in the larger interest of the society and for proper administration of justice delivery system in the country. Exercise of power within the meaning of the Act shall thus be a rarity and that too in a matter on which there exists, no doubt, as regards the initiation of the action being bona fide."

76. As indicated above, both these officers made a successful attempt to impede and to obstruct the free flow of the unsoiled stream of justice by resorting to the filing of the false affidavit in order to get a favourable order to prolong the detention of an elected M.L.A. in jail. It would be a great public disaster if the fountain of justice is allowed to be poisoned by anyone resorting to filing of false affidavit in a court of law.

77. As the Supreme Court would point out, the stream of justice has to be kept clear and pure. It is the mandate of the Supreme Court that anyone soiling its purity must be dealt with sternly so that the message will go all round to make it clear that no one can be permitted to undermine the dignity of the court and interfere with the due course of judicial proceedings or the administration of justice.

78. It is a matter of great concern that even the senior police officers of the status of Commissioner of Police and others do not realise their obligation to the court and indulge in filing of the false affidavit through the Inspector of Police with a view to mislead the court and to obtain an order causing grave injustice not only to the institution, but also to the petitioner who was to be detained for 7 more days in the prison. This attitude on the part of the Inspector of Police and the Commissioner of Police on whose direction, the false affidavit has been filed, has to be strongly condemned.

79. In recent times, the trend of filing of false affidavits is on the increase. The policing system is not as effective as it ought to be. Unless these things are sternly dealt with, the danger would loom large, resulting in the whole orderly society goes into jeopardy.

80. In the light of the above principles, if we look at the facts of the case and the materials dealt with in the earlier paragraphs, we have no hesitation to come to conclusion that the first respondent filed a false affidavit regarding the police custody of the petitioner after consultation with the second respondent and thereby obtained stay of the bail order preventing the petitioner from coming out of the jail to take oath in the Assembly and discharge his duty as an M.L. A. for 7 days.

81. Therefore, both the respondents are found guilty of the offence under Section 2(c) of the Act and they are sentenced u/s 12 of the Act to undergo simple imprisonment for 7 days.

82. With this, the contempt petition is disposed of.

Index :Yes Internet :Yes mam