C.N. Presannan Vs K.A. Mohamed Ali

Court: High Court Of Kerala

Date of Decision: March 14, 1991

Citation: (1991) CriLJ 2205

Hon'ble Judges: K. Sukumaran, J; G. Rajasekharan, J

Bench: Division Bench

Advocate: K. Sudhakaran, General and V. Jayakumar, Govt. Pleader, for the Appellant;

Judgement

K. Sukumaran, J.
The respondent stands charged with a commission of a criminal contempt of Court, as defined in the Contempt of

Courts Act, 1959. The gist of the charge is that he contemptuously addressed the Judicial Second Class Magistrate, Fort Cochin and threatened

the Magistrate by standing close to the dais and shouting at him the words:

Why can"t you write down my questions? Why are you afraid to write down my question? Why should the Court have a fear"";

and he shouted aggressively and in an in-disciplined manner:

You must record my questions

2. The Magistrate made a reference to this Court. On 27-3-1989, a Division Bench of this Court, Justice Paripoornan and Justice Nayar, ordered:

We are satisfied that a prima facie case is made out"".

Notice was accordingly issued to the respondent. Sri M. K. Damodaran appeared on his behalf. Arguments in the matter were heard, presumably

on a preliminary basis on various days. On 13-6-1989, the Court posted the case for order to be pronounced on 14-6-1989. On that day, the

advocate who appeared for the respondent (Sri M. K. Damodaran and Sri K.P.G. Menon), withdrew their vakalath. The respondent was given

time to engage another counsel if he so desired. On 26-6-1989, the respondent appeared in person and submitted that he wanted to conduct the

case personally. There were further adjournments even thereafter. A request for verification of the records, which had been called for, had been

granted by the Court. The inability of the Advocate-General to appear in the case resulted in some postponements. The Court heard arguments on

behalf of the respondent on 28-7-1989 and 2-8-1989. Unfortunately, due to the inability of the Advocate-General to appear in the matter on

various occasions, the case drifted for almost one year from 2-8-1989 to 19-6-1990. It was thereafter that the Court directed the matter to be

placed before another Bench. This Bench accordingly took up the matter, framed the charges and proceeded with the case.

3. The respondent was adamant in filing petitions more with a view to obstruct the proceedings than for having any genuine grievance redressed.

The Court had necessarily to pass orders on all such petitions like C.M.P. Nos. 16657, 16658, 16659, 16660, 16850 and 16851 of 1990. A

schedule for the trial was fixed on 5-11-1990.

4. In the light of the respondent''s plea that he is not guilty of the charge, the Court had to consider the charge, the evidence and materials placed

before the Court in substantiation of the charge framed against the respondent and the defence plea and evidence.

5. The charge, as noted above, is based on an incident which occurred in the open Court. The events, antecedent and subsequent, may have an

overall bearing in the appreciation of the plea and the assessment of the evidence. We shall proceed on the basis that the attempt of the respondent

to bring in many matters, which are neither relevant, nor necessary for the determination of the crucial issue in the case, had been made with bona

fides and with a view to project and protect his view point. We have been over-indulgent in accommodating many of his requests. It is safer to err

on the side of over-liberality even when there is over-liberality to a fault.

6. The persons directly involved in relation to the incident are the Magistrate and the respondent. Both of them have given evidence in the case, the

former as PW4 and the latter as RW3. PWs 1 to 4 gave evidence in substantiation of the charge. The respondent examined on his side, RWs 1 to

3, RW 3 being the respondent himself. The documents on either side are respectively Exts. P1 and P2 and R1 to R16.

7. Shri E. V. Joseph, an advocate aged 34 and with six years standing at the Bar, gave evidence as PW 1. He could be treated as an independent

witness. He spoke about the words as employed by the respondent in his excited exhortation to the judicial officer. There were fairly large number

of persons in the Court. When asked about the tone in which the respondent expressed himself, he stated:

I felt that such a statement should not have been made to any such judicial officer.

Minor discrepancies in relation to the time at which the incident happened, are not good grounds to discredit his testimony. Even in the course of a

searching cross-examination, he spoke about the reason which made him remember the question attributed as an improper one;

I happened to remember this question as I felt that it was improper for a counsel to make a statement like that to the Magistrate.

He is one of the persons who gave preliminary evidence in the enquiry conducted by the Addl. District Judge Sri Hariharan Nair. We are inclined

to accept his testimony as a true and correct version.

8. PW 2 is the Bench Clark. He is an innocuous person who could not remember anything sensibly and clearly. He proved the diary maintained

during the relevant period, Ext. R1, and proved the entries Exts. R1(a) and R1(b). The one suggestion made by respondent to that witness is:

Is not the respondent in the habit of making submissions in a raised voice. Ans. It is so.

Confirmation of some of the facts constituting the charge is available from his testimony.

9. P.W. 3 was, during the relevant time, an Addl. District Judge, Ernakulam. He conducted an enquiry in being directed to do so by the High

Court. The report submitted by him is Ext. P1. The respondent''s suggestion to the witness that the enquiry conducted by him was vitiated by

illegality, is not really made out by the evidence in the case. The enquiry is only of a limited scope and effect. It was to enable the High Court to

have the necessary facts collected and collated. We do not find anything irregular or improper in the enquiry conducted by that experienced officer.

The detailed character of the enquiry held by him cannot, however, escape notice of the Court. The report had been submitted by him to the High

Court. The suggestion of the respondent that the witness -- a District Judge -- was having a soft corner to the Magistrate, was mischievous and

baseless.

10. PW 4 is the principal person who could give direct, evidence in the matter. The respondent was at pains to emphasise his partisan character.

We shall approach his evidence with all the care and concern needed, when there is a probability of his evidence partaking of partisan character.

We are, however, satisfied that such a judicial officer, who had very good training and enlightenment while working for a long period in the office

of the Advocate-General, could be relied on in the circumstances. He spoke, naturally enough, about the events and instances constituting the

charge. When the testimony has got sufficient support from independent witness like PW 1, it would be safe to accept such evidence and act upon

it.

11. RW 1 is the retired Chief Judicial Magistrate. He has no direct knowledge about the incident. He has been examined mainly for the purpose of

indicating that on 12-10-1987, the respondent had made a complaint about the Magistrate. He had submitted a report in the matter and forwarded

to the High Court. The High Court was not satisfied that any action need be taken against the Magistrate. It is not open to the respondent to

collaterily attack the view taken by the High Court on its administrative side, on an advertence to all materials including the report of the Chief

Judicial Magistrate himself. His testimony persuades up to feel the truth and substance in P.W. 4''s statement that RW-1 C.J.M. and the

respondent were on terms, more cordial than that exists between a judicial officer and the member of a profession. The complaint, Ext.R12, the

report of the C.J.M., Ext.R13, the remarks of the Magistrate, Ext.R 14 have been proved through this witness. The judgment of RW 1 in S.T. 132

of 1986 (Ext.R 15) and the remarks of the Magistrate in Crl. M.C. 837/85 before the High Court would indicate the hostility on the part of RW 1

towards the Magistrate. However, the witness has no information on the precise point which is to be assessed in the case, namely the use of words

and gestures in the matter towards the Magistrate as indicated in the charge, his expressions of views on other matters do not have any serious

influence on the evidence on the crucial point.

12. RW 2 is the Head Constable, in the course of whose examination the incident happened. The Head Constable did not notice anything

unnatural. He stated:

The accused''s counsel spoke in a. loud voice.

In cross-examination, he admitted that he could not recollect any of the questions asked by the respondent. His demeanour in the box and the

hesitancy with which he answered the questions, persuade us to believe that he has been won over by the respondent. (A copy of the judgment will

be forwarded to the Inspector General of Police, for considering the appropriate action to be taken against him, having regard to his conduct in the

case).

13. RW 3 is the respondent himself. There is one aspect which has to be emphasised about his testimony. He has not, in his evidence, even

formally denied about the threatening gesticulations referred to in the charge. The complaint which has been enquired into by the District Judge,

notified the actual words used by him. Yet, in his statement, Ext. P2 filed before the District Judge, who conducted the enquiry in the matter, he

significantly omitted to refer to the actual words he had used. Only after the proceedings started, and only in the reply affidavit, did he give his

version about the actual words used, he denied having used the expression ""you"" or ""(vernacular matter omitted)"" as against the Magistrate. He

disputes that he had not even raised his voice. He, however, levelled another charge against the Magistrate that the Magistrate ante-dated the

report to the High Court about the incident. The suggestion is absolutely frivolous and baseless, particularly in the light of the explanation offered by

the Magistrate as PW 4 with reference to the facts and files.

14. Whether the respondent is guilty of the charge or not, has been considered by us on the basis of the evidence available. It is therefore

unnecessary to look into the antecedent activities which ultimately resulted in the reference and in the trial before us. A preliminary enquiry was

made by the District Judge on receipt of a complaint of the Magistrate about the offensive conduct on the part of the respondent. The report of the

Addl. District Judge in that enquiry has been marked as Ext. P1. In the inquiry so conducted, the respondent had filed a detailed statement, as

noted earlier. Pages 29 to 30 contained in the document, covered counter-al-legations against the Magistrate. Statements were taken from 8

witnesses. According to the enquiry officer, four of the witnesses (two advocates, one advocate clerk and a police constable) confirmed that ""they

were present in court at the relevant time on 18-11-1988 and that the incident reported by the Magistrate did happen"". There other advocates,

who were examined, stated that they were not present in court at the relevant time. The advocates clerk, Yahia, supported the version of the

Magistrate though he could not recollect the exact words used by the respondent. Ultimately, the conclusion (no doubt, a preliminary one) was

recorded:

These statements and the circumstances of the case enable a conclusion that the Magistrate''s report is true and correct and that the behaviour and

conduct of Sri. Mohamed AH were derogatory to the dignity and decorum of the Court.

The report also indicated about another unhealthy development noticed by the Enquiry Officer, namely a close liaison in the conduct of the cases

between the respondent and the lady A.P.P. of the Court, a former junior of the respondent. The Enquiry Officer commented that though the

respondent denied the allegations, ""the statements of his disinterested colleagues deserve more weight"". Understandably, there was a petition

C.M.P. 16658/90 from the respondent, dated 18-10-1990, praying for the removal of that report on the ground that it is not part of the reference.

The petition has been duly disposed of by separate order. The report was one which was obtained after a preliminary enquiry, by a responsible

officer of the cadre of a District Judge as a step to ensure fairness to the respondent. The materials collected in the course of the enquiry, enabled

the authorities to decide on the course of action to be taken against the respondent. The finding of guilty has been entered by us on the basis of a

specific and tangible evidence before this Court.

15. We have already indicated that these proceedings are not intended to adjudicate the question whether the Magistrate erred in declining to

record the question in the background of the rival versions about the wording and background of the same. We may, however, indicate that the

version of the Magistrate has been established to be the only acceptable one.

16. Arguments were advanced on behalf of the respondent, giving an undue hue to many of the incidents. It was claimed that the conduct of the

Magistrate was such that it provoked him into a transport of passion. We are not satisfied in the least that there was such a conduct on the part of

the Magistrate. It is within the competence and jurisdiction of the judicial officer to consider the admissibility of a question and to admit or reject

the same. In the exercise of that admitted power, the judicial officer may err. Even if the view taken by the judicial officer is ultimately found

untenable, that will not enable counsel who is an officer of the Court to disrespect the ruling and to disregard the directive of the Court. In the

present case, there was not merely a stern disregard of the order of the Court but also a strikingly threatening posture towards the judicial officer

and utterance of words which bring down the reputation of the judicial institution. This Court shall not permit such denigration of the judicial

institutions or the personnel manning them. This approach is not for the reason that judiciary is insensitive to or intolerant of a critical comment or

adverse criticism. Permitting judicial officers to be mal-treated in the manner done by the respondent with objectionable words and threatening

pose, will bring down the reputation, the dignity and independence of the judicial institution. Therein lies a serious vice.

17. Court scenes have furnished some of the more exciting and excitable anecdotes of lives of great men. The public, generally, take more interest

in the trial proceedings in the Courts, in England. The Court halls would be packed to capacity and quite often overflowing the limited curial space

when important or sensational trials take place. The tension and anxiety on the part of counsel appearing for the defence, particularly, is easily

understandable. Quite often, such situations have generated heat in the atmosphere of the Court. One such incident is recorded in the biography of

Lord Russell of Killown, at pages 38 and 39. That eminent lawyer, who later became an eminent Judge, endeavoured to convey to the judicial

officer -- a fairly obstinate judicial officer -- his view point with greater force but without any objectionable feature. The passage is worth recording

as an aid in the understanding of a fearless counsel''s assertions, but without in any way questioning the authority of the Judge, or belittling his

dignity in open Court.

Russell then had a passage of arms with the Bench.

Russell (to Campbell) : Who sent you to Antrim?''

Mr. Crommelin (Chairman): ''I will not allow the question.''

Russell : "Really, your Worship, if I am not allowed to cross-examine the witness in my own way, it is no use going on with the case. This is a

broad issue, and you will by and by see the object of my questions, though I do not consider it my duty to tell you that object now."

Mr. Crommelin : "I cannot allow anything beside the case".

Russell: "If you will allow me to go on my own way it will shorten the case."

Mr. Crommelin : "We cannot listen to irrelevant matter."

Russell: "What may appear to you irrelevant matter may turn out very relevant by and by. You must be aware that in the higher Courts the fullest

latitude is allowed to an advocate in cross-examination, as long as his questions are not immoral or improper, the judge naturally supposing that

counsel has an urgent motive for asking such questions."

Mr. Crommelin : "I know such things are done, but I will not allow it."

Russell : "Nevertheless, a tolerably wise and able judge -- Chief Justice Blackburne --thinks differently."

Such anecdotes deserve to be more often quoted than questioned, it is not unknown to the engineers of spoken word and the artists of advocacy

that, quite often, short words smote like sledge-hammers. As counsel with thorough preparation shakes a witness as a terrier shakes a rat. That

persevering performance is one which the opposing counsel and even the Judge would only view with understanding, if not always with

appreciation. The dignity of the Court, doubtless, becomes the first casualty, the moment a disrespectful word or uncomely comment happens to

be employed by learned counsel. All judicial officers cannot be like Baron Pollock described as the most stately of judges. Some judges have been

of an intolerant temperament as was the case dealt with in "The Remiscence of Sir Henry Hawkins Brampton", where it is recorded :

Even the rustling of a newspaper would cause him to direct the reader to study in some other part of the building.

Philip Woodruff, writing on ""The Men Who Ruled India"", refers to a judge trained as a Magistrate in India asking questions himself, and warning

the witness of ""counsel"s carefully laid trap"" explaining to witness what a question means and himself diligently seeking for the truth. We have left

behind these early days, and are now equipped with very well trained judicial officers. We have necessarily to appreciate the position of a

Magistrate, who has been described in very early times as one who is ""always in touch with the smaller sins of humanity"" ""There is a simple faith in

the ability of the kindly magistrate to apply the healing salve"" (See London Sidelights by Clarence Rook, pp. 106 to 108). History has presented

pictures of judges with some unwelcome features. Lord Justice Mathew used his position to attack such an eminent lawyer like Marshal Hall in

what appeared to be a vindictive and calculated manner. Justice Swift was accused by some members of the Bar that he could not resist the

temptation to play the advocates'' role, even as a judge. Justice Darling was described by another judge as a person who looked rather like a legal

jocky, whose mind darted like quick silver. (See "The Great Defamers, p. 30). Kinder sentiments have been expressed in the words of A.F. Scott

at page 53 of ''Topics and Opinions''.

Every Judge is himself John Citizen, a member of the community and he is subject to the same limitations of human intelligence and has all the

failings of our common lot"".

Lord Campbell has discussed at length about the weakness of the Judge (See ''Lives of Chief Justice of England, p. 401). It is hot without reason

that with all the understanding of the difficulties and limitations of judicial officers, a well ordained society insulates the judicial institution, from every

wanton reference to the dignity. A shouting tone to a judicial officer in an unruly way and treating him contemptuously in the open Court is a bad hit

to the Rule of Law. It is in that view that (SIC)e had taken a serious note of the entire episouc(SIC) Quite often, marginal difficulties oh either side

are sincerely forgotten, the moment the scene changes and the temperature drops. Unfortunately for all concerned, the conduct of the respondent

did not permit such a course to develop in its own way. We have had therefore the not too pleasant task of judging the liability of the respondent

under the Contempt of Courts Act on the basis of the materials and evidence available.

18. At the end of the day, we come to the conclusion that the respondent Is guilty of the charge.

19. Much time has been consumed by all alike, in the light of the offensive and punishable conduct of the respondent. We, as in the connected

case, against the very same respondent, exercised the maximum restraint in the matter of punishment. We consciously declined to sentence him to

undergo imprisonment. We impose on him, a fine, the maximum that is permissible under the law, of Rs. 2,000/-. In default, he will undergo

imprisonment for one month. We additionally charge him with the payment of the costs in the case. We shall at least partially, replenish to the Court

and public institutions, the financial costs involved in the dealing with various facets of the respondent''s objectionable conduct in the Court hall on

17-11-1988. We direct that he shall pay a sum of Rs. 5,000/- by way of costs, of which Rs. 2,000/- shall be paid within one month from today

and the balance within an outer period of six months, to the credit of the Kerala Legal Aid Board.

20. We have been indicated the course which may be open to the Courts below, when there is a serious threat by members of the profession to

undermine the authority of the courts and to shake the mansions of the Rule of Law. They are, for that reason, not repeated here.

The matter is disposed of in the above terms.