
K. Veera Raghava Reddy Vs State of Telangana

W.P. (Sr) No. 187755 of 2016

Court: Andhra Pradesh High Court

Date of Decision: Nov. 4, 2016

Acts Referred:

Constitution of India, 1950 - Article 121, Article 124 (4), Article 129, Article 211, Article 215, Article 218#Criminal Procedure Code, 1973 (CrPC) - Section 154, Section 197#Judges (Protection) Act, 1985 - Section 2, Section 3

Citation: (2016) 6 ALT 803 : (2017) 1 AndhLD 512

Hon'ble Judges: Ramesh Ranganathan, C.J. and Sri A. Shankar Narayana, J.

Bench: Division Bench

Advocate: Sri K. Veera Raghava Reddy, party-in-person, for the Petitioner; G.P. for Home (TG), for the Respondents

Final Decision: Disposed Off

Judgement

@JUDGMENTTAG-ORDER

Ramesh Ranganathan, C.J. - This Writ Petition is listed before us today, under the caption ""for Orders of Court"", on the objection of the Registry

regarding maintainability of the Writ Petition. The relief sought for in this Writ Petition is to declare the action of the Station House Officer,

Charminar police station in not registering the case, on the petitioner's complaint dated 03.10.2016, against respondents 5, 6 and 7 for offences

allegedly committed by them under Sections 166, 167, 217, 218, 219 read with Section 34 IPC, Section 17 of the Right of Children to Free and

Compulsory Education Act, 2009, ("2009 Act" for short), and for passing orders in W.P. No.17259 of 2015 dated 19.11.2015 and W.A.

No.1074 of 2015 dated 19.01.2016 contrary to Section 16 of the 2009 Act, as arbitrary and illegal.

2. Before we consider the submissions urged by the petitioner - party-in-person, it is necessary to note certain facts, albeit in brief.

The petitioner herein filed W.P. No.17259 of 2015, on behalf of his daughter, to declare the action of the Secretary and Principal, Jubilee Hills

Public School, in not releasing the progress reports of his child who studied 2nd class during the academic year 2014-15, and in not promoting her

to the 3rd class stating that the complaint lodged against them by the petitioner, before the Station House Officer, Jubilee Hills police station on

26.03.2015, be withdrawn, as arbitrary and illegal. The petitioner herein sought an interim order that the Secretary and Principal, Jubilee Hills

Public School be directed to release the progress reports of his daughter who studied 2nd class during the academic year 2014-15, and to allow

her into the 3rd class due to commence from 15.06.2015 onwards.

In the order, in W.P. No.17259 of 2015 dated 19.11.2015 a learned Single Judge of this Court (5th respondent herein) recorded the submission

of the Learned Counsel, appearing on behalf of the school, that the school had no objection to release the progress reports of the child in so far as

her 2nd class performance was concerned, and to permit her to take re-test, if necessary; no steps would be taken to expel the student or

pressurise the parents to remove her from the school; and depending upon the reexamination result, if any, the school would promote the child to

the 3rd class in the next academic year.

3. Aggrieved thereby the petitioner herein filed W.A. No.1074 of 2015 on behalf of his daughter, and a Division bench of this Court, (consisting of

respondents 6 and 7), after extracting the relevant contents of the counter-affidavit filed on behalf of the Jubilee Hills Public School, observed that

the Writ Petition was still pending; keeping in view the averments made in the counter-affidavit, and the nature of the order challenged in the

appeal, they found no reason to interfere with the same; and, in their opinion, the order impugned in the appeal was not adverse to the petitioner.

The appeal was, accordingly, dismissed.

4. Contending that the aforesaid orders were contrary to Section 16 of the 2009 Act, and respondents 5 to 7 had thereby committed offences

under the Indian Penal Code and Section 17 of the 2009 Act, the petitioner claims to have submitted a complaint to the Commissioner of Police,

Hyderabad, and to the Station House Officer, Charminar police station on 03.10.2016 against respondents 5 to 7. It is his grievance, in the

present Writ Petition, that the said complaint was not registered under Section 154 Cr.P.C. He seeks a direction to the Station House Officer,

Charminar police station to register an FIR under Section 154 Cr.P.C, against respondents 5 to 7, based on his complaint dated 03.10.2016.

5. As noted herein above, the order passed in W.P. No.17259 of 2015 is an interlocutory order, and the said Writ Petition is still pending on the

file of this Court. W.A. No.1074 of 2015, filed before the Division bench, was against the interlocutory order in W.P. No.17259 of 2015 dated

19.11.2015. The petitioner contends that the orders passed in W.P. No.17259 of 2015 dated 19.11.2015, and in W.A. No.1074 of 2015 dated

03.12.2015, are contrary to Section 16 of 2009 Act; and, therefore, respondents 5 to 7 should, among others, be prosecuted for offences under

the Indian Penal Code, and his complaint dated 03.10.2016 should be registered by the Station House Officer, Charminar police station under

Section 154 Cr.P.C.

6. While respondents 5 and 6 are sitting Judges of this High Court, the 7th respondent was hitherto the Acting Chief Justice of this High Court, and

is presently the Chief Justice of the Allahabad High Court. The orders, which the petitioner claims are contrary to Section 16 of the 2009 Act, are

judicial orders passed in Writ proceedings under Article 226 of the Constitution of India.

7. The submissions of the petitioner $\hat{A}\hat{A}\hat{A}\frac{1}{2}$ party-in-person, on the merits of the order passed in W.P. No.17259 of 2015 dated 19.11.2015 and in

W.A. No.1074 of 2015 dated 19.01.2016, cannot be examined in the present Writ Petition for it is well settled that an order passed by a Division

bench of the High Court, under Article 226 of the Constitution of India, can be corrected only by way of an appeal to the Supreme Court, or by

way of a review, and not in collateral proceedings in a subsequent Writ Petition before a coordinate bench of the High Court. It would be wholly

improper for a co-ordinate bench to sit in judgment over both the said orders, as a writ of certiorari cannot be issued to a Co-ordinate bench of

the High Court. One bench of a High Court cannot issue a Writ to a different bench of the same High Court. (Rupa Ashok Hurra v. Ashok Hurra,

(2002) 4 SCC 388; Agarwal Industries (P) Limited v. Deputy Commissioner (CT) (Judgment in W.P. No.31818 of 2010 dated: 25.01.2011).

The petitioner $\hat{A}\hat{A}\hat{A}\frac{1}{2}$ s remedy, against the order passed in W.A. No.1074 of 2015 dated 03.12.2015, is only to approach the Supreme Court; and

the correctness or otherwise, of both the aforesaid orders, cannot be examined in collateral proceedings i.e., in this Writ Petition.

8. The petitioner - party-in-person would rely on K. Veeraswami v. Union of India, (1991) 3 SCC 655, and Choudhury Parveen Sultana v. State

of West Bengal, AIR 2009 SC 1404, in support of his submission that there is no statutory bar to institute criminal proceedings against a sitting

Judge of the High Court, and neither Section 77 IPC nor Section 197 Cr.P.C, or for that matter Section 3 of the Judges Protection Act, confer

any immunity on them. He would rely on Lalita Kumari v. Govt. of Uttar Pradesh, 2014 (1) ALT (Cri.) 100 = (2014) 2 SCC 1 to contend that,

since the complaint made by him discloses commission of a cognisable offence by respondents 5 to 7, the Station House Officer, Charminar police

station was obligated to register his complaint dated 03.10.2016 under Section 154 Cr.P.C.

9. The questions which necessitate examination is whether the 4th respondent herein (the Station House Officer, Charminar police station) is

obligated to register a compliant under Section 154 Cr.P.C against sitting Judges of this High Court in relation to the judicial orders passed by

them in writ proceedings, and whether his failure/refusal to do so would confer any right on the petitioner to invoke the extra-ordinary jurisdiction

of this Court under Article 226 of the Constitution of India?

10. The observations of the Supreme Court, in *Lalitha Kumari*, (2014) 2 SCC 1, that a complaint, disclosing commission of a cognisable offence,

must be compulsorily registered, and the Station House Officer lacks discretion and latitude in conducting a preliminary enquiry before registering

the FIR, has no application to complaints made against sitting Judges of the High Court, that too in the context of the judicial orders passed by

them. In this context it is useful to note the various protections afforded to Judges to preserve independence of the judiciary. Judges have

protection from civil liability for any act done or ordered to be done by them in the discharge of their judicial duty whether or not such judicial duty

is performed within the limits of their jurisdiction. Section 1 of the Judicial Officers Protection Act, 1850 (hereinafter called the "1850 Act" for

short) relates to non liability to Suit of officers acting judicially, for official acts done in good faith, and of officers executing warrants and orders

and, thereunder, no Judge, Magistrate, Justice of the Peace, Collector or other person acting judicially shall be liable to be sued in any Civil Court

for any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction. Likewise,

Judges are protected from criminal liability for the acts performed by them judicially. Section 77 of the Indian Penal Code relates to the act of a

Judge when acting judicially and, thereunder, nothing is an offence which is done by a Judge when acting judicially in the exercise of any power

which is, or which in good faith he believes to be, given to him by law.

11. Apart from Section 1 of the 1850 Act, and Section 77 IPC, which protect Judges from civil and criminal liability for their judicial acts,

additional protection is conferred on them by the provisions of the Judges Protection Act, 1985 (Central Act 59 of 1985) (hereinafter called the

1985 Act"). Section 2 of the 1985 Act defines a "Judge" to mean not only every person who is officially designated as a Judge, but also every

person (a) who is empowered by law to give, in any legal proceeding, a definitive judgment, or a judgment which, if not appealed against, would

be definitive, or a judgment which, if confirmed by some other authority, would be definitive; or (b) who is one of a body of persons which body of

persons is empowered by law to give such a judgment as is referred to in Clause (a). Section 3 of the 1985 Act confers additional protection to

Judges and under sub-section (1) thereof, notwithstanding anything contained in any other law for the time being in force and subject to the

provisions of sub-section (2), no Court shall entertain or continue any civil or criminal proceeding against any person who is or was a Judge for any

act, thing or word committed, done or spoken by him when, or in the course of, acting or purporting to act in the discharge of his official or judicial

duty or function. Under sub-section (2) thereof, nothing in subsection (1) shall debar or affect in any manner the power of the Central Government

or the State Government or the Supreme Court of India or any High Court or any other authority under any law for the time being in force to take

such action (whether by way of civil, criminal, or departmental proceedings or otherwise) against any person who is or was a judge. Section 3(2)

of the 1985 Act has no application to the facts of the present case.

12. Apart from the aforesaid statutory provisions, Judges of the High Court are conferred protection under the Constitution also. Any discussion

on the conduct of Judges of the High Courts and the Supreme Court, in the discharge of their duties, shall not take place in the State legislatures or

in Parliament (Articles 121 and 211 of the Constitution of India). The High Courts and the Supreme Court have been constituted as Courts of

record with the power to punish anybody for committing contempt. (Articles 129 and 215 of the Constitution of India). The Contempt of Courts

Act, 1971 (Act 70 of 1971) also confers power on the High Court to take civil and criminal contempt proceedings. (K. Veeraswami 3).

13. Both Sections 77 IPC and Section 3(1) of the 1985 Act bar institution, and continuance, of criminal proceedings against a Judge for acts done

by him in the discharge of his official or judicial duties or functions. The Station House Officer, Charminar police station has rightly refused to

register the petitioner's complaint dated 03.10.2016 under Section 154 Cr.P.C, as there is an absolute bar, and total prohibition, to initiate civil

and criminal proceedings against sitting Judges of the High Court for their Judicial acts, or the Judicial Orders passed by them. (Nilesh C. Ojha v.

State of Maharashtra, 2015 ALLMR (Cri) 326).

14. As frivolous complaints against sitting Judges, including Judges of Superior Courts, are on the rise, it is also necessary to consider whether

criminal proceedings can be instituted against Judges of the High Court even for acts unconnected with their judicial functions, and whether an

F.I.R. can be registered against them in this regard, under Section 154 Cr.P.C?

15. Sanction of the President of India, after consultation with the Chief Justice of India, is a pre-requisite even for registration of complaints, under

Section 154 Cr.P.C, against Judges of High Courts even for acts unconnected with their judicial functions. The President of India has the power to

appoint Judges of the High Court by warrant under his hand and seal. Similarly, even after passing of an address by both the Houses of Parliament,

a High Court Judge cannot be removed from his office unless an order to that effect is passed by the President. Article 124(4) of the Constitution

of India stipulates that a Judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an

address by each House of Parliament, supported by a majority of the total membership of that House and by a majority of not less than two thirds

of the members of that House present and voting, has been presented to the President in the same session for such removal on the ground of

proved misbehaviour or incapacity. Article 124 (5) enables Parliament, by law, to regulate the procedure for the presentation of an address, and

for the investigation and proof of the misbehaviour or incapacity of a Judge under clause (4). Article 218 of Constitution of India relates to

application of certain provisions, relating to the Supreme Court, to the High Courts, and stipulates that the provisions of clauses (4) and (5) of

Article 124 shall apply in relation to a High Court as they apply in relation to the Supreme Court with the substitution of references to the High

Court for references to the Supreme Court.

16. As the President of India alone has the power to appoint as well as to remove a High Court Judge from his office on grounds of proved

misbehaviour or incapacity, as provided in Article 124(4) of the Constitution, he is deemed to be the authority to grant sanction for prosecution of

a Judge. In order to adequately protect a Judge from frivolous prosecution and unnecessary harassment the President is required to consult the

Chief Justice of India who, in turn, is required to consider all the material placed before him and, after being satisfied in the matter, tender his

advice to the President for giving sanction to launch prosecution or for filing FIR against the Judge concerned. The President is required to act in

accordance with the advice given by the Chief Justice of India. If the Chief Justice of India is of opinion that it is not a fit case for grant of sanction

for prosecution of the Judge concerned, the President shall not accord sanction to prosecute the Judge. The purpose of grant of previous sanction,

before prosecuting a Judge of the High Court, is to protect the Judge from unnecessary harassment and frivolous prosecution. (K. Veeraswami).

17. While there is a total embargo on institution of criminal proceedings, and registration of complaints under Section 154 Cr.P.C, against sitting

Judges of the High Court for their judicial acts, including judicial orders passed by them, even for matters unconnected with the judicial duties he

discharges, no complaint shall be registered under Section 154 Cr.P.C, against a Judge of the High Court or the Chief Justice of the High Court,

unless the Chief Justice of India is consulted by the President of India in the matter. If the Chief Justice is of opinion that it is not a fit case for

proceeding against the Judge, the case shall not be registered. There shall be similar consultation by the President of India, with the Chief Justice of

India, at the stage of examining the question of granting sanction for prosecution, and it is necessary and appropriate that the question of sanction is

guided by, and is in accordance with, the advice of the Chief Justice of India. (K. Veeraswami).

18. Reliance placed by the petitioner on Choudhury Parveen Sultana is misplaced. In the said case, the complaint was against the Deputy

Superintendent of Police belonging to the West Bengal Police Service. The Supreme Court held that, if the offences complained of were not part

of the duties of the investigating officer, while investigating the offence alleged to have been committed, the bar under Section 197 Cr.P.C. did not

apply. While sitting Judges of this Court are no doubt public servants under Section 21 of the IPC, the law laid down in Choudhury Parveen

Sultana cannot be made applicable as all Judges, including sitting Judges of this High Court, are provided immunity against civil liability and criminal

prosecution for their judicial acts, (including Judicial Orders passed by them), under Section 1 of the 1850 Act, Section 77 IPC and Section 3(1)

of the 1985 Act.

19. As we find that such frivolous and unwarranted complaints and writ proceedings against sitting Judges are on the rise, and such proceedings

appear to be instituted only to brow-beat the Judge, and prevent him from discharging his judicial functions without fear or favour, it is necessary to

thwart such attempts to intimidate the Institution of the Judiciary, and prevent the portals of this Court from being abused by unscrupulous litigants.

We reiterate that while no civil or criminal action can be instituted against a Judge of the High Court for his judicial acts, no compliant, under

Section 154 Cr.P.C., can also be registered against him even for matters unconnected with his judicial duties save with the sanction of the President

of India who is required to consult the Chief Justice of India before according any such sanction.

20. As the petitioner claims that the judicial orders passed by respondents 5 to 7 are contrary to law, the remedy available to him was only to

question the order of the Division Bench, in W.A. No.1074 of 2015 dated 19.01.2016 by way of an appeal to the Supreme Court. It was neither

open to him to institute criminal proceedings against Judges of the High Court for what he claims are orders passed by them contrary to statutory

provisions, nor to invoke the extra-ordinary jurisdiction of this Court, under Article 226 of the Constitution of India, questioning the failure of police

officials to register his complaint against them under Section 154 Cr.P.C. The Writ Petition as filed is not maintainable, it is wholly misconceived,

and is an abuse of the process of Court. The objection of the Registry to the maintainability of the Writ Petition is upheld.

21. For his unwarranted assault on the Judiciary in general, and on respondents 5 to 7 in particular, we dismiss the Writ Petition with exemplary

costs of Rs.25,000/- (Rupees Twenty five thousand only) which the petitioner shall pay to the High Court Legal Services Committee at Hyderabad

within four weeks from today, failing which the said amount shall be recovered from him in accordance with law. The miscellaneous petitions

pending, if any, shall also stand closed.