

In Re: G.S. Desingu, President, DRT/DRAT Bar Association

Court: Madras High Court

Date of Decision: Nov. 27, 2013

Citation: (2014) 2 CTC 793 : (2014) 2 LW 168 : (2014) 3 MLJ 736 : (2014) 2 MLJ(Cri) 387

Hon'ble Judges: R.K. Agrawal, C.J; M. Sathyanarayanan, J

Bench: Division Bench

Judgement

@JUDGMENTTAG-ORDER

1. The members of the legal fraternity, Chennai, submitted a letter dated 11.07.2013 stating as follows:

Respected Chief Justice,

We would like to present before your Lordship a letter dated 28th June 2013 received by the members of the Bar Association of DRT, DRAT,

Chennai but exposes the questionable tactics of one of the Member of the Bar in approaching the Presiding Officers of the DRT for certain

favours.

The Subject letter, placed before your Lordship, is sent by the Hon"ble Presiding Officer, Debt Recovery Tribunal-II, Chennai concerning the

conduct of the President of the DRT/DRAT Bar Association. The contents would clearly go to show that a serious offence had been made out and

the same is not in the interest of the Bar & the Bench, and is also a clear and direct attempt to interfere with the administration of justice. The letter

also speaks about intimidating acts against the Hon"ble Presiding Officer by the person named therein, who is acting under the aegis of Elected Bar

President. The said issue is also reported in the newspapers bringing a disgrace to ourselves.

We request your Lordship to issue directions to initiate necessary action in this regard as deemed fit to protect the interests of Bar, the Bench and

the litigants.

The above said letter dated 11.07.2013 was directed to be placed before the First Bench on 12.07.2013 for initiating Suo Motu contempt. On

12.07.2013, the Suo Motu Contempt Petition was listed before the First Bench. Mr. S. Ramaswamy, learned Senior Counsel assisted by Ms. R.

Anitha, learned counsel appearing for the contemnor, namely, G.S. Desingu, President of DRT/DRAT Bar Association has accepted the notice

and the matter was directed to be 03.09.2013 and in the meantime, the contemnor was directed to file his reply and his personal appearance was

also dispensed with for the present. On 03.09.2013, the contemnor filed his affidavit dated 05.08.2013 and was represented by Mr. S.

Ramasamy, learned Senior Counsel. The First Bench of this Court directed the Registry to forward a copy of the affidavit of the contemnor to the

learned presiding Officer, DRT-2, Chennai, namely, Mr. E. Jacob R. Daniel for eliciting his response and directed, listing of the matter on

18.09.2013.

2. On 13.09.2013, it was felt that since this Court initiated. Suo Motu contempt proceedings, the assistance of an Amicus Curiae is necessary and

therefore, requested Mr. Arvind Pandian, Senior Advocate to act as Amicus Curiae to render assistance. The Presiding Officer of DRT-Z has also

filed his response to the affidavit of the contemnor and also filed two typed set of documents, namely, Annexures 1 and 2. The Registry was

directed to serve the entire papers relating to the case, except the compact disc to the learned Amicus Curiae as well as to the contemnor and at

the request made by the learned counsel for the contemnor, the matter was directed to be listed on 07.10.2013.

3. On 07.10.2013 it was represented by the learned Amicus Curiae that DRT/DRAT Bar Association, Chennai-2 wants to intervene in the above

said proceedings and therefore, it was adjourned to 24.10.2013. The application filed by the above said Association for intervention was

numbered as Sub-Application No. 659/2013 and Mr. P.S. Raman learned Senior Counsel appeared for the intervenor. On 24.10.2013, in

response to the counter affidavit of the Presiding Officer, DRT-2, the contemnor filed his rejoinder and the learned Amicus Curiae prayed for time

and therefore the matter was adjourned to 18.11.2013 and from that date, it was adjourned to 19.11.2013. On 19.11.2013, this Court heard the

submission of the learned Amicus Curiae, Mr. S. Prabhakaran, Co-president of Bar Association of India and the orders were reserved.

4. The contemnor, namely, G.S. Desingu, President of DRT/DRAT Bar Association, Chennai has filed his affidavit dated 05.08.2013 stating

among other things that he is elected as President of DRT/DRAT Bar Association for 8 times including the current period and he has played active

role in the functioning of all the three DRTs in Chennai, and also Debt Recovery Appellate Tribunal and claims that he was instrumental in starting

the DRT and DRAT Bar Association, Reference Library and also commenced e-library for the benefit of the members. The contemnor further

claims that but for his upright conduct, impeccable disposition and non-partisan attitude, the members of the Bar would not have elected him as

President of DRT/DRAT Bar Association for the 8th time. The contemnor would further state that he never approached the Presiding Officer for

any personal favour/benefit and used to meet the Presiding Officers with the office bearers of the Association only for espousing the cause of the

members of the Association.

5. Insofar as the contents of the letter dated 26.06.2013 sent by the Presiding Officer, DRT-Z and members of the DRT and DRAT Bar

Association, Chennai, which led to the initiation of contempt proceedings, it is stated by the contemnor that on having elected as the President of

DRT and DRAT Bar Association in the year 2012, he met the Presiding Officer and requested to have uniform procedure in the functioning of

DRTs and the said suggestion was rejected by all the Presiding Officers. The Presiding officer of DRT-Z (Mr. E. Jacob R. Daniel) and DRT-1

installed surveillance cameras and closed circuit TVs at the entrance of DRT and in the way of Court halls and the Presiding Officer of DRT-I also

installed cellphone jammers in the Court hall and the members of the Association opposed to the said move and at the request, a General Body

Meeting was convened wherein unanimous resolution was passed calling for the removal of CCTVs and cellphone jammers and though it was

brought to the knowledge of the above said Presiding Officers, they refused to remove under the pretext that they need it for their administration

requirements.

6. It is further stated by the contemnor that during 3rd week of January 2013, he sent his office bearer to the Chambers of the Presiding Officers of

DRTs, Chennai requesting for their participation in the republic day celebration and all of them had avoided, besides holding the Government

Officer. The contemnor has also stated that on 22.01.2013, there was a scuffle between one of the Advocates and Mr. T. Rajukumar, Recovery

Officer, DRT-2, Chennai and in this regard, the concerned advocate, namely, Arvind Ghos, has sent his complaint dated 22.01.2013 to the

Presiding Officer, DRT-2, praying for appropriate action and hence, Extraordinary General Meeting was held on 06.02.2013 and the concerned

recovery officer attended the meeting and tendered his apology and it was accepted and the said issue was closed and it was also communicated

to the Ministry or finance.

7. It is the categorical submission of the contemnor that the presiding Officer, DRT-2, Chennai, conducts the court proceedings in an autocratic

manner and even in the course, of the proceedings before him, Presiding Officer, DRT-2, Chennai used to boast that he is only the upright officer

and through his conduct with CBI, he could deal with anybody who is acting against his view and the contemnor and the office bearers made a

request to him to maintain cordial relationship with the Bar and on account of the same, the said official has developed hatred towards him and sent

a letter dated 26.06.2013 to the Association with a copy marked to the office bearers and other members who are inimical to him only with a view

to humiliate and harass him and ultimately, denied the allegations contained in the said letter as false and frivolous, apart from being scathingly

defamatory.

8. The contemnor would further state that with regard to the allegations contained in the letter dated 26.06.2013 that he used to address the

Presiding Officers of DRT as ""Kurunila Mannargal"", it is entirely false and baseless. In respect of the allegation in S.A. No. 67/2012 and O.A. No.

160/2010, it is stated by the contemnor that the SARFAESI Appeal was transferred on the application filed by the concerned appellant with

regard to the conducting of auction in the Court itself and it took place long back and insofar as O.A. No. 160/2010, he was not the counsel on

record and consequently, he is nothing to do with the said proceedings. The contemnor further stated that he never claimed that he is close to the

other Presiding Officers.

9. Insofar as the allegation that an office bearer has clandestinely recorded the conversation while they met the Presiding Officer, DRT-2 on

31.12.2012, it is stated by the contemnor that admittedly he was not present and therefore, the allegation is highly presumptive and illusory and it

speaks about the volume of personal vendetta developed as Presiding Officer, DRT-2, Chennai against him.

10. Insofar as the allegation that he used to meet the Presiding Officer, DRT-2 under the pretext that he is the President of DRT and DRAT Bar

Association, it is stated by the contemnor that he never entered into the chambers of the Presiding Officer, DRT-2, Chennai for any purpose and

the fact that he marked a copy of his letter dated 26.06.2013 to the group of Advocates who are inimical to him shows that he joined hands with

them to settle his personal course. The Secretary of the Association has called for Extraordinary General Body Meeting to discuss about the letter

dated 22.06.2012 written by the Presiding Officer, DRT-2, Chennai and it was held on 19.07.2013 and he was called to express his views

wherein he offered his explanation and the general body accepted his explanation, but also condemned the unsavory remark and scathing personal

attack made by the Presiding Officer, DRT-2, Chennai, in the said letter.

11. It is the specific stand of the contemnor that the letter dated 26.06.2013, is not even worthy of the paper on which it is written, in as much as

the same is wrought with falsehood and unmitigated cold lies and built upon illusion and hallucination and he is deeply hurt and irreparably injured

due to the defamatory acts of the said official and also took a categorical stand that he has not interfered with the judicial functions of the Presiding

Officer, DRT-2, Chennai either directly or indirectly and he always holds higher regard to the institution of judiciary as a whole and prays for recall

and withdrawal of Suo Motu contempt proceedings.

12. In response to the affidavit of the contemnor, Mr. E. Jacob R. Daniel has submitted his detailed response dated 16.09.2013 stating among

other things that the affidavit of the contemnor is couched in intemperate language and he used the opportunity to indulge in personal attacks and

used words unbecoming of an Advocate, has further stated by the Presiding Officer, DRT-2, Chennai that getting elected for the 8th time for the

DRT and DRAT Bar Association, cannot be a certificate for honesty and integrity, though he was not Privy to the method adopted for conduct of

election of office bearers of the Bar Association. It is the stand of the Presiding Officer, DRT-2, Chennai that the contemnor has met him alone,

unaccompanied by any other office bearer or Advocate and in support of his stand, filed the affidavit of his Private Secretary, Mr. S. Ganesh

Kumar and Mr. R. Vijayaraghavan, Multi Tasking Staff attached to his office.

13. As regards the resolution passed by the Association for removal of CCTVs and cellphone jammers is concerned, it is stated by the Presiding

Officer, DRT-2, Chennai that it is purely an administrative matter and having found that illegal and clandestine activities are going on especially with

regard to the auction of immovable properties and involvement of real estate mafia, who threatened the bidders not to participate in the auction

proceedings, the installation of CCTVs became absolutely necessary and necessary letters were also sent to the controlling Ministry. It is further

stated that one of the Advocate, namely, Mr. Arvind Ghos has sent a complaint against the recovery officer and having found that he was at fault,

the Presiding Officer, DRT-2, Chennai made a recommendation to the Ministry for his premature repatriation and it is an administrative act and

therefore, the association under the guise of holding the meeting, cannot summon him and get his explanation and the contemnor has shown

extraordinary interest in the administrative matter of the Tribunal as stated above. The Presiding Officer, DRT-2, Chennai would further state that

the letter dated 26.06.2013 was not aimed at humiliating or harassing the contemnor and when he was awaiting permission from the Government

of India to visit Holy land (Egypt, Jordan, Israel and Palestine), he came to know that an anonymous letter along with the conversation recorded in

CD had been sent to the Ministry and some of the members of the Association has informed him that the contemnor had brought the said letter

along with CD during last week of March 2013 and proclaiming that it would be sent to the concerned Ministry for taking action. It is the stand of

the Presiding Officer, DRT-2, Chennai that the letter dated 26.06.2013 was written by him only to bring it to their notice about the misuse of

position by the contemnor as the President of the Bar Association and his intention was not to humiliate or embarrass him.

14. The Presiding Officer, DRT-2, Chennai has also elaborated about the proceedings in S.A. No. 67/2012 and O.A. No. 160/2010 and would

submit that in respect of the above said two cases, contemnor met him alone in the chamber under the guise of discussing Bar Association matter

and sought favour in those cases and it was refused to be acceded. The Presiding Officer, DRT-2, Chennai, would further state that recording of

conversation clandestinely was done when the office bearers, namely, Mr. Shanmugasundaram - Secretary, Mr. Girish Kumar Treasurer, Mr.

Sugumaran-Librarian, Mr. Kesavan - Executive Committee Member and Mr. Antony Selvam-Executive Committee member of the Bar

Association came to his chamber during lunch hours on 31.12.2012 to invite him to attend the New Year day celebration usually arranged by the

Bar Association and the conversation recorded in the CD lasted for about; 1 hour and 8 minutes and it has been stealthily recorded by one of the

five office bearers, who were present in the chamber. Though he was ready to forgive G. S. Desingu of all what he had done, the contemnor again

started interfering in the administrative affairs in support of a corrupt Recovery Officer Mr. Rajukumar, who has since been prematurely repatriated

and in order to wreak vengeance only has recorded the said conversation clandestinely. The Presiding Officer, DRT-2, Chennai would further

state that the Presiding Officer, DRT-Z, Chennai was very cordial in his attitude towards the practicing Advocates and the Bar Association in

particular, despite the space crunch, the Bar Association had been allowed to function and the electricity charges for the Association is borne by

DRTs.

15. The contemnor, in response to the reply submitted by the Presiding Officer, DRT-Z, Chennai, filed his rejoinder reiterating the stand taken in

the affidavit and would further state that when the Ministry of Finance refused permission to go to the holy lands, he developed unsolicited deep

anger and antipathy towards him, which had induced him to write the letter dated 26.06.2013 to the office bearers of the Association as well as

some of the Advocates who are inimical to him. It is further stated in the rejoinder that after coming to know about the contents of the letter dated

26.06.2013, the Association convened extraordinary general meeting on 19.07.2013 and though he has not presided over the said meeting, later

on he was called to offer his explanation and accordingly, he offered his explanation and on being satisfied with it, the Association has passed

unanimous resolution to make an appeal to drop and close the contempt proceedings.

16. Mr. P.S. Raman, learned Senior Counsel, who wants to intervene on behalf of the Secretary, DRT and DRAT Bar Association, has filed Sub-

Application No. 659/2013 and submitted that in the extraordinary general meeting held on 19.07.2013, the explanation offered by the Contemnor

G.S. Desingu was accepted and an unanimous resolution was passed to approach this Court to drop and close the *Suo Motu* proceedings and

further submitted that the Presiding Officer, DRT-2, Chennai has made false and unwarranted allegations against, the office bearers of the

Association and in order to meet the same, the Sub-application No. 659/2013 for intervention is to be taken on file.

17. Mr. P.H. Arvind Pandian, learned senior Advocate/*Amicus Curiae* filed his written statement and formulated the following issues:

(a) propriety of interference by an advocate in the discharge of administrative functions/exercise of disciplinary powers by a judicial officer.

(b) Propriety of language allegedly used by the contemnor.

(c) Desirability of private visits to the chambers of judicial officers by advocates.

The preliminary issue was also raised in respect of Sub Application No. 659/2013 filed at the instance of the DRT and DRAT Bar Association.

The learned *Amicus Curiae*, with regard to the preliminary issue, has invited the attention of this Court to the judgment rendered by the Division

Bench of this court in *The Advocate-General of Tamil Nadu, Madras Vs. R.M. Krishna Raju and Others*,) and would submit that the contempt

proceedings were initiated against R.M. Krishna Raju-Advocate and the Madras Bar Association and the Madras High Court Advocates"

Association wanted to intervene and it has been held as follows:

14. Another undesirable, but inevitable concomitant of the unrestricted entry of third-parties in contempt proceedings would be that they may

overstep their limits and canvass the Court to adopt a harsh and severe attitude towards the contemnor even in those cases where the Court is

inclined to treat the matter lightly and discharge the contemnor of the contempt notice, or prevail upon the contemnor by applying pressure on him

not to express regret and tender apology even in those cases where a contemnor wants to exhibit *locus poenitentiae* and seek the pardon of Court.

It is needless for us to say that contempt proceedings stand on a footing of their own and cannot be equated with other proceedings since the

Court is not engaged in deciding a cause between two parties, but is engaged in exercising its jurisdiction and powers to vindicate the majesty of

law in its active manifestation against obstruction or outrage. In one sense, the court acts in such matters as judge of its own cause and as such, its

decision must rest purely on its own analysis and view of the matter and uninfluenced by the passions and prejudices of third-parties. In other

words the court must apply its dispassionate mind in judging whether a condemner has committed contempt or not and if the finding is a positive

one what the sentence should be. Such aloofness of approach and detachment of view will be put in jeopardy if interveners, however well

intentioned they might be, are allowed to enter the arena and allowed to identify themselves for or against the contemnor. Likewise to deprive a

condemner of a chance to escape from the rigorous punishment by repenting for his actions and tendering apology to the Court on account of

enthusiastic interveners lending temporary support for his cause and espousing his actions will be and act of the highest injustice to the condemner

himself. We are therefore of opinion that the presence of interveners may lead to the flaming up of passions as well as loading the armoury for or

against the condemner with unwanted weapons, which will not only vitiate the atmosphere, but make the court get involved more than what is

necessary in the exercise of its jurisdiction under the Contempt of Courts Act, and the contemnor, a hero or a villain even against his own

wishes.....

22. Reverting now to the main discussion, we may refer to the decision of the Supreme Court in Baradakanta Mishra Vs. Justice Gatikrushna

Misra, Chief Justice of the Orissa High Court, , where the peculiar nature of contempt proceedings have been succinctly set out. The relevant

portion occurs in para 5 at page 2258, and it runs as follows:--

It has always been regarded as well settled law so far as criminal contempt is concerned, it is a matter entirely between the Court and the alleged

contemnor. No one has a statutory or common law right to say that he is entitled as a matter of course to an order for committal because the

alleged condemner is guilty of contempt. All that he can do is to move the court and draw its attention to the contempt alleged to have been

committed and it will then be for the Court, if it so thinks fit, to take action to vindicate its authority and commit the alleged condemner for

contempt. It is for the Court in the exercise of its discretion to decide whether or not to initiate a proceeding for contempt. Even if the Court is

prima facie satisfied that a contempt has been committed, the Court may yet choose to ignore it and decline to take action. There is no right in any

one to compel the Court to initiate a proceeding for contempt even where a prima facie case appears to have been made out. The same position

obtains even after a proceeding for contempt is initiated by the Court on a motion made to it for the purpose. The Court may in the exercise of its

discretion accept an unconditional apology from the alleged condemner and drop the proceedings for contempt, or, even after the alleged

condemner is found guilty, the Court may, having regard to title circumstances, decline to punish him. So far as the contempt jurisdiction is

concerned, the only actors in the drama are the Court and the alleged contemnor. An outside party comes in only by way of drawing the attention

of the Court to the contempt which has been committed; he does not become a part of the proceeding for contempt which may be initiated by the

court.

In the light of this clear pronouncement and the reasons given by us supra, we cannot entertain the intervention petitioner filed by the Bar

Association and the Advocates Association.

In the light of the said decision, this Court is of the view that this Sub-Application No. 659/2013 filed by the Secretary of DRT and DRAT Bar

Association cannot be entertained and therefore rejected.

Issue No. 1 - Propriety or Interference by an Advocate in the discharge of administrative functions/exercise of disciplinary powers by a judicial

officer.

18. It is the submission of the learned Amicus Curiae that two allegations were made against the contemnor. The first one being that he was

involved in a boycott against the administrative decision or the Presiding officer, DRT-2, Chennai for installation of CCTVs, namely, surveillance

and installation of Mobile phone jammers and consequently interfering with the exercise of judicial power taken against the Recovery Officer,

namely, Mr. T. Rajukumar. The learned Amicus Curiae has drawn the attention of this Court to the judgment rendered by the Hon"ble Supreme

Court of India in Shri Baradakanta Mishra Vs. The Registrar of Orissa High Court and Another, , wherein the Hon"ble Supreme Court has

considered the interference in the exercise or disciplinary powers of the High Court over a subordinate judicial officer and the scope of Civil and

Criminal Contempt u/s 2 of the Contempt of Courts Act, 1971. Section 2(c) defines criminal contempt and sub-clause (iii) defines criminal

contempt as ""interference or tends to interfere with or obstructs or tends to obstruct the administration of justice in any other manner"". The Hon"ble

Supreme Court of India has elaborately considered the said sub-clause and held that the courts of justice in a State from the highest to the lowest

are by their Constitution entrusted with functions directly connected with the administration of justice, and it is the expectation and confidence of all

those who have or likely to have business therein that the Courts perform all their functions on a high level of rectitude without fear or favour and

ultimately held that the acts of the contemnor had tendency to affect substantially the administration of justice and therefore, upheld the punishment

imposed on the contemnor.

19. It is the submission of the learned Amicus Curiae that now the Bar members have agreed for installation of CCTVs and Mr. S. Prabhakaran,

who appeared for the contemnor also admitted that the installation of CCTV is no longer an issue.

20. In the light of the said subsequent development, this Court need not go into the issue whether passing of resolution, opposing the installation of

CCTVs and Mobile phone Jammers would, amount to interference in the administration of justice.

Issue No. 2 - Propriety of language allegedly used by contemnor.

21. It is the submission of the learned Amicus Curiae that even as per the letter dated 26.06.2013 written by the Presiding Officer, DRT-2,

Chennai to the office bearers of the Association and to some other members coupled with his response to the affidavit of the contemnor, the

contemnor, namely, G.S. Desingu was not present at the time of clandestine recording of the conversation. It is the further submission of the

learned Advocate General that admittedly, the complaint sent to the Finance Ministry was an anonymous complaint and the author of the complaint

could not be ascertained or verified and in the absence of sufficient and relevant evidence, it cannot said that the contemnor was responsible for the

said Act.

Issue No. 3 - Desirability of private visits to the chambers of judicial Officers by advocates.

22. The learned Amicus Curiae submitted that in order to maintain proper relationship between Bar and Bench, the Advocates used to visit the

chambers of the judicial officers and such a visit cannot be faulted, but at the same time, some Advocates had abused the courtesy extended by the

Judges/Presiding Officers by discussing inappropriate matters and in the case on hand, clandestinely recorded the conversation. The learned

Amicus Curiae drawn the attention of this court to the decision of the Calcutta High court in Gourilal Matilal and Others Vs. Jitmal Mohata, and it is

relevant to extract para 3 of the said judgment:

3. I have to make my mind whether the Full Bench was influenced to send the case back" for retrial by what was told them in their private room at

this ex parte interview. With regard to this question the whole matter seems to me to turn on the manner it was presented to the Full Bench. Is it

proper, is it professional, that Counsel should go alone before a Judge or Judges in their private room and impart to the Judges in question a matter

very inimical to the other side. And is it proper also that on having received that information the Judges in question should give advice as to what

course should be taken when they had only heard one side of the question? It seems to me that there can be no doubt; that this is an undesirable

and improper course to adopt both, on the part of the Advocate and on the part of the learned Judges it was the Advocate's duty either not to visit

the learned Judges at all and bring the matter out in open Court, or, if he was going to communicate with them privately, to insist on taking the legal

advisers of the other side with him. On the other hand, it seems to me that it was no less the duty of the Judges in their private Chamber to

disregard the information altogether or to insist on hearing it communicated in the presence of the legal advisers of the other side, and to hear their

arguments and contentions on this very controversial point as soon as possible. As I pointed out, these were not the courses which were adopted,

and from my view I am convinced that the real reason why the case was sent back for re-trial was because of this very striking, very harmful, piece

of evidence which was presented to the Judges of the Full Bench in private.

23. The learned Amicus Curiae has also invited the attention of this Court to the decision rendered by this Court in Elephant G. Rajendran Vs. Mr.

R.K. Chandramohan, Advocate also holding the Office of the Chairman, Bar Council of Tamil Nadu and Pondicherry and The Registrar General

and submitted that the Advocates, under the guise of making visit to the chambers or the Presiding Officers, should not indulge or develop any

private conversation especially pertaining to cases and it is for the Presiding Officers to formulate their own guidelines. It is the further submission of

the learned Amicus Curiae that the office bearers of the Bar Association used to meet the judges and invite them to seminar and other important

functions and such a kind of invitation is usually accepted and it is also one of the methods adopted to maintain a good and healthy relationship

between the Bench and the Bar and therefore, Such a kind of meetings cannot be faulted.

24. The sum and Substance of the submission made by the learned Amicus Curiae is that to establish criminal contempt, proving beyond

reasonable doubt is absolutely necessary and from the materials available on record, there are many allegations and counter allegations and

therefore, it cannot be said that the contemnor has Committed the acts Of contempt and hence, prays for appropriate orders.

25. Per contra, Mr. S. Ramasamy, learned Senior Counsel and Mr. S. Prabhakaran, learned counsel appearing for the contemnor had vehemently

Contended that without any iota of proof of truth, the Presiding Officer, DRT-2, Chennai made a false and untenable allegation against the

contemnor, who also happen to be the President of DRT and DRAT Bar Association and even as per his own admission, when the office bearers

of the Association met the said official, the contemnor was not at all present and therefore, it cannot be said that he was instrumental in

Clandestinely recording the conversation and for the anonymous complaint sent to the concerned Ministry which might have led to the non-granting

of permission to the Holy lands.

26. Insofar as the allegation that the, contemnor has met the Presiding Officer for getting favourable orders in two proceedings, it is the Submission

of the learned senior counsel and learned counsel appearing for the contemnor that the proceedings in SA. No. 67/2012 was over long back and

the parry apprehending about conducting auction in the Court, has prayed for transfer and in pursuance to the judicial order, it was transferred and

it cannot be faulted with and with regard to the other allegation that the contemnor is trying to influence the Presiding Officer, DRT-2, Chennai to

pass favourable orders in O.A. No. 160/2010, it is the submission of the learned counsel for the contemnor that the contemnor was not the

counsel on record and it is not fair in meeting the Presiding Officer in private for the purpose of getting favourable order an the legal proceedings

pending in the allegations in that regard is wholly false and concocted.

27. As regards the allegation that the contemnor is interfering with the administration of justice, it is submitted that one of the members of the

Association had made a complaint against the Recovery Officer, namely, Mr. Rajukumar and the Association has convened a meeting and the

issue was amicably resolved and therefore, it cannot be said that the judicial power exercised by the Presiding Officer, DRT-2, Chennai, shall be

interfered with. Lastly, it is submitted by the respective learned counsel that the Suo Motu contempt is in the nature of criminal contempt and unless

the materials placed before it would lead, to the only conclusion that the contemnor is guilty of the allegations/charges beyond reasonable doubt, he

cannot be convicted and since the main allegation of clandestinely recording the conversation has not at all been substantiated, the Suo Motu

contempt proceedings are liable to be dropped and hence prays for appropriate orders.

28. This Court paid, its anxious consideration and best attention to the submission made by the learned Amicus Curiae, Mr. S. Ramasamy, learned

Senior Counsel, Mr. S. Prabhakaran, learned counsel appearing for the contemnor and also perused the materials placed before it.

29. Section 2(c) defines criminal contempt, and it is relevant to extract the same:

2 (c). "Criminal contempt;" means the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of

any matter or the doing of any other act whatsoever which-

(i) scandalizes or tends to scandalise, or lowers or tends to lower the authority of, any Court; or

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

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

30. In Muthu Karuppan Vs. Parithi Ilamvazhuthi and Another, , the appellant therein challenged the legality and vires of the order passed against

him, punishing him for criminal contempt on the allegation of filing false affidavit. The Hon"ble Supreme court of India in the above cited decision

has considered the nature of criminal contempt jurisdiction and taking into consideration its earlier decision in R.S. Sujatha Vs. State of Karnataka

and Others, and held as follows:

Contempt proceedings being quasi-criminal in nature, burden and standard of proof is the same as required in criminal cases. The charges have to

be framed as per the statutory rules framed for the purpose and proved beyond reasonable doubt keeping in mind that the alleged contemnor is

entitled to the benefit of doubt. Law does not permit imposing any punishment in contempt proceedings on mere probabilities, equally, the court

cannot punish the alleged contemnor without any foundation merely on conjectures and surmises. As per the ratio laid down in the above cited

decision, there must be distinct evidence of the commission of an offence by such a person, as mere suspicion cannot being home the charge of

making false statement, more so, the court has to determine as on facts whether it is expedient in the interest of justice to enquire into offence which

appears to have been committed.

31. It is trite law that contempt cases never be decided on probabilities and even when two views are Possible, the acts of contempt as quasi-

Criminal and the benefit of doubt should be given to the contemnor.

32. This Court keeping in mind the ratio laid down by the Hon"ble Supreme Court of India in the above cited decision has carefully scanned and

analyzed the materials placed before it, especially the letter dated 26.06.2013 written by the Presiding Officer, DRT-2, Chennai to the members of

the DRT and DRAT Bar Association.

33. The first allegation in the said letter is With regard to the proceedings in S.A. 67/2012 and O.A. No. 160/2010, wherein the contemnor said to

have made an attempt to influence the said official to pass favourable orders. It is the stand of the contemnor that SARFAESI Appeal was

originally pending before the Presiding Officer, DRT-2, Chennai, and later on it was transferred and orders came to be passed long back prior to

the said letter and he appeared for the appellant in that case and so far as O.A. 160/2010 is concerned, it is the stand of the contemnor that he

was not the counsel on record.

34. A perusal of the materials placed before this Court would indicate that the SARFAESI Appeal which was transferred from DRT-1 to DRT-3

has been, disposed of prior to the said letter and in O.A. No. 160/2010, the name of the contemnor does not find place in the adjudication that

took place as per the order sheet. In the said letter it is alleged that on account of transfer of the SARFAESI Appeal from the file of DRT-I, the

contemnor got humiliation and started criticizing the Presiding Officer and also compared the present presiding Officer with the former Presiding

officer and with regard to that allegation, no substantial material has been placed before this Court, except in the form of affidavits, counter

affidavits and reply affidavits and the statement of some of the office bearers and staff of DRT and the truth or otherwise of the affidavits cannot be

tested for the reason that they have not offered themselves to be cross examined as witness and subjecting themselves to cross examination.

35. The primordial allegation is the clandestine recording of conversation and five office bearers met the Presiding Officer in his chamber on

31.12.2012. Even as per the contents of the letter dated 26.06.2013, coupled with the counter affidavit of the Presiding Officer, the contemnor

was not present while the office bearers met the Presiding Officer for the purpose of inviting him to attend new year day celebration. It is the stand

of the contemnor that since he was not present, the question of clandestinely recording of conversation does not arise at all. The Presiding Officer,

DRT-2, Chennai in his counter affidavit stated that one of the office bearer had clandestinely recorded the conversation and subsequently, an

anonymous letter along with a compact disk containing the said conversation were forwarded to the Finance Ministry and on coming to the

knowledge of the same, he informed the DRT for getting opinion on the compact disk. It is pertinent to point out at this juncture that admittedly, the

letter forwarded to the Minister was unsigned and the authentication of voice in the compact disk is also not subjected to scientific analysis. As held

by the Hon"ble Supreme Court of India in catena of decisions, the contempt proceedings u/s 2(c) of the Contempt of Courts Act, 1971, being

criminal in nature, the proof required is beyond doubt and the benefit of doubt shall always enure in favour of the accused/contemnor.

36. Here again, the materials placed before it cannot lead to the only presumption that the contemnor was behind the said act of clandestinely

recording the conversation and forwarding of anonymous complaint along with the CD to the concerned Ministry. The present case is criminal

contempt and hence, proof beyond reasonable doubt is required and the materials made available before this Court would not lead to the

conclusion that the language allegedly used is derogatory. Therefore, it cannot be said that the contemnor has used derogatory language. Therefore,

the said prime allegation, in the considered opinion of the Court, has not been proved beyond reasonable doubt.

37. The Presiding Officer, DRT-2, Chennai had installed closed surveillance TVs and though it was resisted by the Bar by passing a resolution,

later on the issue was amicably resolved wherein the Bar members agreed for the installation of CCTVs. So far as the allegation that the contemnor

under the guise of meeting the Presiding Officer, in his capacity as office bearer, tried to influence him, this Court is of the view that it is an usual

practice by the office bearers of the Association to Officer/Judges to invite them to attend functions of the respective Associations or to participate

in seminars and the Presiding Officers/Judges used to attend those functions and if such a kind of action is misused, it is for the concerned Bar

Association to take note of the same and take appropriate steps in that regard to avoid such a kind of unpleasantness and this Court hope and trust

that right and earnest direction would be taken by DRT and DRAT Bar Association in that regard and the Presiding Officer should also be careful

while entertaining such meetings.

38. It is to be stated at this juncture that on receipt of the letter dated 11.07.2013 from the members of the legal fraternity, Chennai, the Hon"ble

The Chief Justice of this Court passed an order dated 11.01.2013 to place it before the first Bench on 12.07.2013 and it was listed on that date

and Mrs. R. Anitha has accepted notice on behalf of the contemnor and the matter was directed to be listed on 03.09.2013 and in the meantime,

the contemnor was directed to file his response and the personal appearance of the contemnor was also dispensed with. Therefore, between

12.07.2013 and 03.09.2013, the DRT and DRAT Bar Association has called for convening an Extraordinary General Body Meeting and it was

convened by the Secretary of the said Association and presided over by one of the senior members of the Association and as per the affidavit and

rejoinder filed by the contemnor during the course of the said meeting, he was called upon to explain the circumstances and the situation, which led

to the sending of dated 26.06.2013 by the Presiding Officer, DRT2-Chennai and the General Body after ascertaining his view, has accepted the

explanation and also unanimously resolved to approach this Court and make an appeal to drop close the contempt proceedings. The resolution

passed the Extraordinary General Meeting of DRT and DRAT Bar Association held on 19.07.2013 is available at page No. 102 of the typed set

of documents dated 12.08.2013 filed by the contemnor and it is relevant to extract the same. The Extraordinary General Body meeting of

DRT/DRAT Bar Association was held on 19.7.2013 in which the following resolutions have been passed. It is unanimously resolved that to show

our protest for sending the letter dated 26.6.2013 by Hon"ble Presiding Officer, DRT-2, Chennai to some of the selected members. Based on the

letter dated 26.6.2013, explanation was sought from the President G.S. Desingu and the General Body satisfied with his explanation. It is further

unanimously resolved to meet the Hon"ble Chief Justice of Madras High Court to appraise the deliberations had in the General Body Meeting held

on 19.7.2013 and make an appeal to His Lordship to drop and close the Suo-moto contempt proceedings initiated against the president G.S.

Desingu.

39. When the Extraordinary General Meeting was held on 19.07.2013, the office bearers were very well aware of the initiation Suo Motu

contempt proceedings against the contemnor. The contents of the resolution dated 19.7.2013 would disclose that the Association resolved to

show their protest with regard to the letter dated 26.6.2013 sent by the Presiding Officer, DRT-2, Chennai to some of the selected members and it

was also satisfied with the explanation offered by the contemnor with regard to the contents of the above said letter. Once this court has seized up

the matter in the form of suo motu contempt proceedings with regard to the letter dated 26.6.2013, it would not be proper and fair on the part of

DRT and DRAT Bar Association to convene a meeting with regard to the same subject and they went one step further and sought for explanation

from the contemnor himself, who appeared before the Association and offered his explanation and it was also accepted.

40. In the considered opinion of the Court, the said practice/procedure adopted by DRT and DRAT Bar Association is not in good taste and is

hopeful that such a kind of course/practice may not be adopted in future.

41. It is very pertinent to point out at this juncture that the contemnor, either in his affidavit dated 05.98.2013 or in his written affidavit dated

22.10.2013, tendered apology, leave alone unconditional apology and it is usual practice to tender unconditional apology; however the contemnor

has not chosen to adopt the age old practice and this Court is not inclined to express any opinion in that regard. The Suo Motu contempt

proceedings is in the nature of criminal contempt and this Court is of the opinion that the allegations levelled against the contemnor have not been

proved beyond reasonable doubt and therefore, the benefit of doubt shall enure in his favour.

42. In the result, this Suo Motu contempt proceedings in suo-motu contempt petition No. 1477/2013 is closed. Consequently, the connected Sub

Application is closed. This Court place it on record the valuable assistance rendered by Mr. P.H. Arvind Pandian, Amicus Curiae and senior

advocate for having placed, all the materials before this Court in a fair and proper manner and appreciate for his efforts.