

CIVIL ORIGINAL JURISDICTION

CONTEMPT PETITION (CIVIL) NO.280 OF 1999

I N

CIVIL APPEAL NO.1466 OF 2000

State of Kerala ... Petitioner

Versus

M.S.Mani & Ors. ... Respondents

O R D E R

This Contempt Petition is filed by the State of Kerala complaining that the dignity and authority of the Apex Court are undermined by the respondents by publishing a three column news on the front page of the newspaper The Kerala Kaumudi on May 5, 1999. In the said column the alleged contemnor imputed scandalous, malicious, vilificatory, defamatory and libellous criticism against Shri K.N.Bhat, a senior advocate of the Supreme Court, Shri M.K.Damodaran, Advocate General of Kerala State and Shri G.Prakash, standing counsel for the State of Kerala, in the manner of conduct of C.A.No.1466 of 2000 in this Court.

This Court issued notice on the Contempt Petition on August 9, 1999. The respondents having entered appearance raised a preliminary objection that the Contempt Petition is not maintainable, inasmuch as consent of the learned Attorney General/Solicitor General under Section 15 of the Contempt of Courts Act, was not obtained before filing the contempt petition. The learned counsel for the petitioner has brought to our notice that the consent contemplated by sub-section (1) of Section 15 of the Act has been obtained on May 11, 2000 and submitted that the petition would, therefore, be maintainable.

In view of the above contention, it may be useful to read the relevant provisions of Section 15 of the Contempt of Courts Act, 1971 :

15. Cognizance or criminal contempt in other cases : - (1) In the case of a criminal contempt, other than a contempt referred to in Section 14, the Supreme Court or the High Court may take action on its own motion or on a motion made by -

- (a) the Advocate-General, or
- (b) any other person, with the consent in writing of the Advocate-General, or

(3) Every motion or reference made under this Section shall specify the contempt of which the person charged is alleged to be guilty.

Explanation :- In this section, the expression Advocate-General means -

(a) in relation to the Supreme Court, the Attorney-General or the Solicitor-General;

(b) in relation to the High Court, the Advocate-

General of the State or any of the States for which the High Court has been established;

(c) in relation to the court of a Judicial Commissioner such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf.

A perusal of clauses (a) and (b) of sub-section (1) of Section 15 makes it clear that in the case of Criminal Contempt the Supreme Court or the High Court may take action on its own motion or on a motion made by the Advocate General or a motion of any other person with the consent in writing of the Advocate General. There is no controversy that the contempt alleged is within the meaning of criminal contempt under clause (c) of Section 2 of the Act. From clause (b) of sub-section (1) of Section 15 it is manifest that a motion made by any person other than the Advocate General must be with the prior consent in writing of the Advocate General. An analogous provision is to be found in Section 7 of the English Contempt of Courts Act, 1981.

The expression Advocate General is defined in the Explanation to Section 15 of the Act. Clause (a) of the Explanation says that for the purposes of Section 15 in relation to the Supreme Court the expression Advocate General would mean the Attorney General or the Solicitor General. Explanations (b) and (c) are not relevant for our purpose. Thus, it is clear that if any person other than the Attorney General/Solicitor General makes motion before the Supreme Court for taking action in regard to a criminal contempt, the motion must be accompanied with the consent in writing of the Attorney General/Solicitor General. In this case, admittedly, the motion was not accompanied by the consent in writing of the Attorney General/Solicitor General.

The requirement of consent of the Advocate General/Attorney General/Solicitor General where any person other than the said law officers makes motion in the case of a criminal contempt in a High Court or Supreme Court, as the case may be, is not a mere formality; it has a salutary purpose. The said law officers being the highest law officers at the level of the State/Centre as also the officers of the Courts are vitally interested in the purity of the administration of justice and in preserving the dignity of the Courts. They are expected to examine whether the averments in the proposed motion of a criminal contempt are made vindicating public interest or personal vendetta and accord or decline consent postulated in the said provision. Further cases found to be vexatious, malicious or motivated by personal vendetta and not in public interest will get filtered at that level. If a motion of criminal contempt in the High Court/Supreme Court is not accompanied by the written consent of the aforementioned law officers, the very purpose of the requirement of prior consent will be frustrated. For a valid motion compliance with the requirements of Section 15 of the Act is mandatory. A motion under Section 15 not in conformity with the provisions of Section 15, is not maintainable. [See : Conscientious Group vs. Mohammed Yunus & Ors. [1987 (3) SCC 89 and P.N.Duda vs. P.Shiv Shanker & Ors. [1988 (3) SCC 167]. In this view of the matter, law has been correctly laid down by the Orissa High Court in B.K.Misra vs. Chief Justice, Orissa High Court [AIR 1974 Orissa 1], the Patna High Court in Shri Harish Chandra Mishra & Ors. vs. The Hon ble Mr.Justice S.Ali Ahmed [AIR 1986 Patna 65] and the Bombay High Court in Vishwanath vs. E.S.Venkataramiah & Ors. [1990 Crl.L.J. 2179 (Bombay)]. We may also note here that non-compliance of Section 7 of the English Contempt of Court Act, 1981, referred to above, was held to be fatal to the action. [Borrie & Lowe - The Law of Contempt, 3rd Edn. P.481 (Note 14)]

Here, the Contempt Petition was filed on May 17, 1999 and the consent of the learned Attorney General was obtained on May 11, 2000. It is, however, submitted by the learned counsel for the petitioner that now Section 15 has been complied with. We are unable to accede to this contention. The fact remains that the motion to take action against the respondents under Section 15 was not made

with the consent of the learned Attorney General or Solicitor General and therefore is incompetent. Subsequent obtaining of the consent, in our view, does not cure the initial defect so as to convert the incompetent motion into a maintainable petition. For the above reasons we discharge the contempt notice and dismiss this Contempt Petition.

.....J.
[Syed Shah Mohammed Quadri]

.....J.
New Delhi,
September 06, 2001.

[S.N.Phukan]