

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

W.P.No.512/2021 (PIL)

BETWEEN:

Mr. Krishna Prasad and others

Petitioners

AND:

Union of India

Respondents

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Place: Bengaluru

Date: ~~26-5-2021~~
26-5-2021

Advocate for Respondent

W.P. No.512/2021(PIL)

Between:

Mr. Krishna Prasad and others

Petitioners

And:

Union of India

Respondent

STATEMENT OF OBJECTIONS FILED BY THE RESPONDENT

The Respondent above named submits as under :

1. The Petitioners above named have filed the above writ petition seeking for issuance of an appropriate writ or direction declaring Section 2(c)(i) of the Contempt of Courts Act, 1971 as being violative of Articles 19 & 14 of the Constitution of India; for a direction to frame rules and guidelines that define the process that superior courts must employ while taking criminal contempt action, keeping in mind principles of natural justice and fairness and other consequential reliefs.
2. The above writ petition filed by the Petitioners is not maintainable either under law or on facts and the same is liable to be dismissed. The above writ petition is bereft of merit and the same has to be dismissed in limine.

3. It is submitted that the Articles 129 and 215 of the Constitution of India declare the Supreme Court and every High Court to be a court of record having all the powers of such a court including the power to punish for contempt for itself. The jurisdiction contemplated by Article 129 and 215 is inalienable and cannot be taken away or whittled down by any legislative enactment subordinate to the Constitution. As per Section 22 of the Contempt of Courts Act, 1971, the provisions of the Contempt of Courts Act, 1971 are in addition to and not in derogation of the provisions of any other law relating to contempt of courts. It necessarily follows that the constitutional jurisdiction of the Supreme Court and High Court under Articles 129 and 215 of the Constitution of India cannot be curtailed by the Contempt of Courts Act, 1971. The provisions of the Contempt of Courts Act, 1971 cannot limit or regulate the exercise of jurisdiction contemplated under the Articles 129 and 215 of the Constitution of India. The contempt jurisdiction of the Supreme Court and High Court is given a constitutional foundation by declaring to be 'Courts of Record' under Articles 129 and 215 of the Constitution of

India. The inherent power of the Supreme Court and High Court cannot be taken away by any legislation short of constitutional amendment.

4. The Article 19(1)(a) of the Constitution of India guarantees to every citizen freedom of speech and expression. The said rights conferred on the citizens is not absolute and the same is subject to the provisions of Article 19(2) of the Constitution of India. The Article 19(2) imposes reasonable restrictions on the enjoyment of right conferred under Article 19(1)(a) and State can by law restrict the exercise of rights conferred under Article 19(1)(a) in the interests sovereignty and integrity of India, the security of the State, public order, decency or morality or in relation to contempt of Courts, etc. The imposition of the reasonable restriction under Article 19(2) in exercise of rights conferred under Article 19(1)(a) is held to be just, proper and constitutionally valid.
5. It is submitted that Section 2(c)(i) of the Act does not restrict free speech. Further, it is settled principle of constitutional law that the free speech guaranteed under Article 19(1) (a) of the Constitution is not absolute and

subject to reasonable restrictions under Article 19(2) of the Constitution of India.

6. It is submitted that the reasonable restrictions imposed under Article 19(2) on free speech cannot be cast in stone or fitted into rigid moulds. They are flexible and turn on the facts and circumstances of the each case. The words scandalises or tends to scandalise, or lowers or tends to lower the authority of any court cannot be examined in isolation. The said words has to be examined in the light of the facts and circumstances of each case.
7. The independence of the judiciary is an important constituent of a democracy. When the criticism has the tendency of lowering down the authority of the judge and even obstruct the administration of justice, the Court has the power to punish any such act which tends to demean the value of judiciary under the Contempt of Courts Act, 1971. While it is to be noted that all citizens of India are guaranteed the right to freedom of speech and expression, contempt of court is indeed one of the reasonable restrictions that can act as a rider on this right. None of the fundamental rights guaranteed to Indian citizens are

absolute. The right to freedom of speech and expression is also subject to certain other reasonable restrictions such as defamation, decency and morality, public order and incitement of offences. However, the reasonable restrictions were included with the objective of maintaining balance as the framers of the constitution knew that if they were to enshrine absolute rights on Indian citizens, dire circumstances would ensue leading to a failure of constitutional machinery.

8. 'Contempt of Court' means civil contempt or criminal contempt as per Section 2(a) of the Act. Section 2(b) and 2(c) define 'civil contempt' and 'criminal contempt' respectively. It is submitted that in the light of the facts of the each case the rules of the reasonableness of the restrictions, proportionality, etc., has to be understood. It is not possible for the legislature to foresee in advance all possible acts/omissions that would constitute criminal contempt and the acts/omissions constituting the criminal contempt has to be understood in the light of the facts of each case.

9. It is submitted that the fundamental rights and reasonable restrictions on exercising the fundamental rights are absolutely necessary to prevent the failure of constitutional machinery. The independence of the judiciary is the basic structure of our constitution and is protected by placing the reasonable restriction on citizens from "Scandalising the court" and the same does not in any way take away the fundamental right. As such the contention that 'Scandalising the court' is rooted in colonial assumptions and objects which have no regard to respecting fundamental rights in a democracy, including freedom of speech, equality and equal treatment is nothing but a figment of imagination of the Petitioners.

10. It is submitted that contention of the Petitioners regarding vagueness is false and baseless. The scheme of the Contempt of Courts Act, 1971 defines both 'Civil Contempt' and 'Criminal Contempt'. At the same time, Sections 3 to 9 protect innocent publication, Fair & Accurate report of judicial proceedings, fair criticism of judicial act, etc. It cannot be said that the provision suffers incurably from vagueness and arbitrariness. Legislature

cannot foresee all possible situations amounting to contempt of court and as such the same has to be decided in the light of the facts and circumstances of each case.

11. It is submitted that power to punish for contempt is an inherent power of court of record and the same is recognised by the Constitution. Parliament has legislative competence to legislate in respect of contempt court. Act regulates the procedure to be followed in respect of contempt action and does not stultify contempt power under Articles 129 & 215. It is submitted that deliberate attempt to scandalise not only damage reputation of judge but also the fair name of the judiciary. When the criticism is based on obvious distortion or gross misstatement and made in a manner which seems designed to lower respect for judiciary, it cannot be ignored.
12. As per Section 3 of the Act, innocent publication is an exception to the contempt of court. Section 5 of the Act recognises right of a person to make a fair comment on the merits of any case provided the same has been heard and finally decided. Judgments are public documents and

the same can be commented, analysed and criticized. But the same has to be done in a dignified manner without attributing motives. Contempt jurisdiction is a jurisdiction of necessity. Contempt of Courts (Amendment) Act, 2006 which amended Section 13 of the Act, permits truth as a defense to a charge of criminal contempt provided that the alleged contumacious act is found to be both bonafide and in public interest. The amendment was introduced so as to ensure fairness in procedure and to meet requirements of Article 21 of the Constitution of India. Amended Section 13 of the Act reads as under:

13. Contempts not punishable in certain cases: Notwithstanding anything contained in any law for the time being in force,—

(a) no court shall impose a sentence under this Act for a contempt of court unless it is satisfied that the contempt is of such a nature that it substantially interferes, or tends substantially to interfere with the due course of justice;

(b) the court may permit, in any proceeding for contempt of court, justification by truth as a valid defence if it is satisfied that it is in public interest and the request for invoking the said defence is bona fide.

13. It is submitted that the provisions of the Contempt Courts Act, 1971 does not violate any of the fundamental rights of

the citizens. It is submitted that the criticism ceases to be fair and reasonable, when such criticism undermines public confidence reposed in court, interferes with administration of justice and scandalises court. It is submitted that the freedom of speech and expression will always prevail except where contempt is manifest, mischievous or substantial. It is submitted that the reasonable argument or fair criticism in respectful language against any judicial act will not be treated as contempt of court. It will not be right to say that committals for contempt scandalizing the court have become obsolete. The Courts would hesitate to punish a contemnor if the act or omission complained of was not wilful.

14. It is submitted that there are four Petitioners. It is submitted that at Para No. 10 to 21 of the writ petition, the Petitioners have explained contempt proceedings initiated against them. By placing reliance on order dated 13.08.2020 passed in W.P. (S) (Civil) No (s). 791/2020, the Petitioners have tried to cloth this Hon'ble

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Court with jurisdiction to decide the above writ petition. The order dated 13.08.2020 reads as under :

"Dr. Rajeev Dhavan, learned senior counsel appearing on behalf of the petitioners seeks leave of this Court to withdraw the writ petition with liberty to approach the High Court.

The writ petition is dismissed as withdrawn. We have not permitted this petition to be filed before this Court again. Liberty is granted to approach the High Court, if the petitioner so desires."

A perusal of the proceedings in W.P. (S) (Civil) No (s). 791/2020, it becomes clear that only the Petitioners No. 2 to 4 were only parties to the said proceedings and Supreme Court vide order dated 13.08.2020 reserved liberty only in favour of them and not in favour of the Petitioner No.1.

15. The Petitioner No.1 alone is residing in the territorial jurisdiction of this Hon'ble Court and the Petitioner Nos. 2 to 4 are not residing within the territorial jurisdiction of this Hon'ble Court.

16. None of the contempt proceedings mentioned at Para No. 10 to 21 have arisen within territorial jurisdiction of this Hon'ble Court. The details of the contempt proceedings against the Petitioners are as under :

1.	1 st Petitioner;	Contempt Application (Criminal) No. 17 of 2010 at the High Court of Judicature of Allahabad;
2.	2 nd Petitioner;	Contempt proceedings initiated before the Kerala High Court has been closed;
3.	3 rd Petitioner	Supreme Court initiated suomoto contempt regarding editorial about functioning of a Commission of Enquiry;
4.	4 th Petitioner	Contempt case i.e., C.P. (Crl.) No. 10 of 2009 is still pending before the Hon'ble Supreme Court of India;

17. It is submitted that no contempt proceedings have been initiated against the Petitioners within territorial jurisdiction of this Hon'ble Court. The facts and the grounds urged by the Petitioner Nos. 2 to 4 before the Hon'ble Supreme Court of India were verbatim identical. The Hon'ble

Supreme Court of India disposed of W.P. (S) (Civil) No. (s). 791/2020 vide order dated 13.08.2020 reserving liberty to approach the High Court, if the Petitioner so desires. The Petitioner Nos. 2 to 4 instead of approaching the respective courts where the contempt proceedings against them are initiated or pending, have filed the present petition along with the Petitioner No.1. Even against the 1st Petitioner there is no contempt petition pending before this Hon'ble Court. The Petitioner Nos.2 to 4 have joined with the 1st Petitioner's in filing the above writ petition as the residential address of 1st Petitioner is within the jurisdiction of this Hon'ble Court so as to bring the above petition within the jurisdiction of this Hon'ble Court. It is clear from the foregoing that the above petition is an abuse of process of court.

- 18. The Petitioner No.1 claims to be resident of Mysore and on the basis of his residence in Karnataka, appears to have filed above petition along with other Petitioners. However, against the Petitioner No.1, a contempt proceeding was initiated before the High Court of Judicature at Allahabad. No cause of action has arisen within the territorial

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jurisdiction of this Hon'ble Court, enabling the Petitioner No.1 to present above writ petition. Liberty has been reserved in favour of the Petitioner No.2 to 4, vide order dated 13.08.2020, passed in W.P. No. 791/2020 by the Supreme Court and in so far as Petitioner No. 2 to 4 are concerned to approach the High Court, however, no cause of action has arisen within the territorial jurisdiction of this Hon'ble Court enabling them to present above writ petition.

19. All other allegations and contentions which are contrary to the above and not expressly traversed herein are hereby denied as false and baseless.

Wherefore it is prayed that this Hon'ble Court may be pleased to dismiss the above petition with exemplary costs in the interest of justice and equity.

Place : Bangalore
Date :

Advocate for Respondent