

Appeal dismissed.

AIR 2011 SUPREME COURT 1645

(From : Madras)

P. SATHASIVAM AND H. L. GOKHALE, JJ.

Criminal Appeal No. 1376 of 2004, D/- 15-4-2011.

Muthu Karuppan v. Parithi Ilamvazhuthi & Anr.

(A) Contempt of Courts Act (70 of 1971), S. 2(c) — Criminal contempt — Giving evidence by filing false affidavit — Evil that should be curbed with strong hands — But there must be a prima facie case of “deliberate falsehood” on a matter of substance — Court should be satisfied that there is a reasonable foundation for the charge. (Para 7)

(B) Contempt of Courts Act (70 of 1971), S. 12 — Contempt proceedings — Burden and standard of proof — Is same as required in criminal case — Punishment cannot be imposed on mere probabilities — Court cannot punish alleged contemnor without any foundation merely on conjectures and surmises. (Para 9)

(C) Contempt of Courts Act (70 of 1971), S. 15 — Cognizance of criminal contempt — Consent of Advocate General not taken — Contempt proceedings, still maintainable, if issue involved in proceedings had greater impact on administration of justice and on justice delivery system. (Para 14)

(D) Contempt of Courts Act (70 of 1971), Ss. 2(c), 12 — Criminal contempt — Filing of false affidavit alleged against appellant-Commissioner of Police based on which Judge of High Court stayed order of bail passed in favour of elected MLA which prevented him from taking oath in Assembly — Appellant assumed charge as Commissioner of Police after

one week of incident relating to arrest of elected MLA — Author of affidavit i.e. Inspector of Police has not stated that it was filed under instructions of appellant — City like Chennai is managed by several Police Officers — Absence of specific reference about consultation with Commissioner of Police — Merely because appellant attended office of Public Prosecutor for preparation of an application for cancellation of bail based on affidavit of Inspector of Police — It cannot be presumed and concluded that appellant was responsible for giving incorrect information before High Court — Appellant had also tendered unconditional apology — Consent of Advocate General also not obtained for initiating proceedings — Conviction of appellant and sentencing him to S. I. for seven days — Liable to be quashed. (Paras 21, 22, 23, 25)

Cases Referred : Chronological Paras

2011 AIR SCW 518	10
2010 AIR SCW 5356	13, 14
AIR 2005 SC 396	12
AIR 2001 SC 3315	11
AIR 2000 SC 1136	23

M. A. Chinnasamy, for Petitioner; V. G. Pragasan, for Respondents.

P. SATHASIVAM, J. :— This appeal is filed against the final judgment and order dated 29.10.2004 passed by the Division Bench of the High Court of Judicature at Madras in Contempt Petition No. 397 of 2001 whereby the High Court held the respondents therein guilty of the offence punishable under Section 2(c) of the Contempt of Courts Act, 1971 (in short ‘the Act’) and sentenced to undergo simple imprisonment for 7 days under Section 12 of the Act.

2. Brief Facts :

(a) Parithi Ilamvazhuthi-Respondent No. 1 herein was elected as Member of Legislative Assembly (in short ‘MLA’) of the Egmore Constituency, Chennai in the Elections held on 10.05.2001 to the Tamil Nadu

State Legislative Assembly. Large scale violence and several attempts of booth capturing were reported on the day of election. In respect of the same, Crime No. 958 of 2001 was registered against his opposite party candidate John Pandian and others for various offences. Similarly, Crime No. 960 of 2001 was registered against Respondent No. 1 by one David for various offences. John Pandian was arrested on 10.05.2001 and remanded to judicial custody. Respondent No. 1 filed an application for anticipatory bail being Cri. M.P. No. 6244 of 2001 before the Sessions Court, Chennai and the same was dismissed on 16.05.2001 stating that the investigation is at an early stage and enlargement would hamper the investigation.

(b) On 17.05.2001, Respondent No. 1 was arrested and remanded to judicial custody. On the same day, Muthu Karuppan the appellant herein was appointed as Commissioner of Police, Greater Chennai City and assumed charge. On 21.05.2001, Respondent No. 1 moved an application for bail being Cri. M.P. No. 1379 of 2001 before the XIV Metropolitan Magistrate which was dismissed on the same day. On 22.05.2001, Respondent No. 1 moved an application for bail being Cri. M.P. No. 6277 of 2001 before the Principal Sessions Court, Chennai mainly on the ground that he has to attend the Assembly which has commenced on 22.05.2001 to take oath as MLA. On 23.05.2001, Respondent No. 1 was granted conditional bail by the Sessions Judge.

(c) On 24.05.2001, Rajendra Kumar, Inspector of Police, (L & O), Tamil Nadu Respondent No. 2 herein, filed an application for cancellation of bail being Cri. O.P. No. 9352 of 2001 before the High Court of Madras and sought for stay of bail granted to Respondent No. 1 herein. On the same day, learned single Judge of the High Court stayed the order of grant of bail and ordered notice to Respondent No. 1 on the ground that the victim, namely, David is in a serious condition and the accused is in

police custody. On 28.05.2001, on receipt of the said notice, Respondent No. 1 filed a counter-affidavit submitting that the statement of Respondent No. 2 regarding police custody is false. On 29.05.2001, Respondent No. 2 filed his reply affidavit admitting that it was a mistake by oversight and the same is neither willful nor wanton.

(d) On 30.05.2001, the petition for cancellation of bail was dismissed by the High Court holding that no ground was made out for cancellation of the bail. After the order dated 30.05.2001, Respondent No. 1 filed Contempt Application No. 397 of 2001 before the High Court stating that on the direction, supervision and knowledge of the appellant herein, Respondent No. 2 moved an application to cancel the bail granted to him on the basis of false statement thereby prevented him from attending the Assembly.

(e) On 29.10.2004, the Division Bench of the High Court held the respondents therein guilty of the offence punishable under Section 2(c) of the Act and sentenced them to undergo simple imprisonment for 7 days under Section 12 of the Act.

(f) Aggrieved by the judgment and order of the High Court, appellant herein filed Criminal Appeal No. 1376 of 2004 before this Court and on 13.12.2004, this Court admitted the appeal and stayed the operation of the impugned order insofar as it relates to the appellant. Respondent No. 2 also filed Criminal Appeal No. 1500 of 2004 before this Court and by order dated 05.01.2005, this Court dismissed the appeal on merits holding that the case of the Commissioner of Police stands entirely on a different footing.

3. Heard Mr. A.K. Ganguli, learned senior counsel for the appellant and Mr. Altaf Ahmed, learned senior counsel for respondent No. 1 and Mr. S. Ravi Shankar, learned counsel for respondent No. 2.

4. Before going into the correctness or otherwise of the impugned order of the Division Bench punishing the appellant for

05.2001, on receipt of Respondent No. 1 filed an application for bail. On 29.05.2001, Respondent No. 1 filed a reply affidavit admitting that the state mistake by oversight or willful nor wanton, the petition for cancellation of bail was made out on ground was made out. Respondent No. 1 filed an application for bail on No. 397 of 2001 stating that on the order dated 20.06.2001, issued notice to Respondent No. 2 herein to show cause as to why contempt proceeding against him should not be initiated for having made false statement with intent to mislead the Court. In the same proceeding, the Division Bench directed issuance of notice to the Commissioner of Police-appellant herein as to the averments of an elected MLA being in police custody could not reasonably have been made *prima facie* without the knowledge of the Commissioner, more so, when the election had just taken place and the elected member was required to take oath; but by reason of his detention was being prevented from taking oath. In the same paragraph, it was further stated that the extent to which the Commissioner had knowledge about the filing of the petition for cancellation of bail, the instructions, if any, he had given in that regard, the persons to whom such instructions had been given and the nature of instructions shall also be disclosed by the Commissioner in his affidavit.

5. Based on the notice issued by the Division Bench in its order dated 20.06.2001, the appellant-Commissioner of Police, Chennai City, at the relevant time and the second respondent-Inspector of Police (L & O), Chennai filed separate affidavits explaining their stand.

6. In order to understand the above issue, it is relevant to refer Section 2(c) of the Act which defines criminal contempt as:

“(c) ‘criminal contempt’ means the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which—

- (i) scandalizes or tends to scandalize, 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.”

7. Giving false evidence by filing false affidavit is an evil which must be effectively curbed with a strong hand. Prosecution should be ordered when it is considered expedient in the interest of justice to punish the delinquent, but there must be a *prima facie* case of “deliberate falsehood” on a matter of substance and the court should be satisfied that there is a reasonable foundation for the charge.

8. In a series of decisions, this Court held that the enquiry/contempt proceedings should be initiated by the court in exceptional circumstances where the court is of the opinion that perjury has been committed by a party deliberately to have some beneficial order from the court. There must be grounds of a nature higher than mere surmise or suspicion for initiating such proceedings. There must be distinct evidence of the commission of an offence by such a person as mere suspicion cannot bring 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.

9. The 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 observed above, the contempt proceeding being quasi criminal in nature require strict adherence to the procedure prescribed under the Rules applicable in such proceedings.

10. In exercise of the powers conferred on the High Court under Articles 215 and 225 of the Constitution of India and in terms of Section 23 of the Act, the Madras High Court Contempt of Court Rules, 1975 (in short 'the Rules') have been framed. The said Rules prescribe procedure for initiating contempt and various steps to be adhered to. By drawing our attention to the Rules, Mr. Ganguli, learned senior counsel for the appellant submitted that Rules 4 and 8 have not been complied with. By emphasizing the principles in paras 12 and 16 of the decision of this Court in *R.S. Sujatha v. State of Karnataka & Ors.*, 2010 (12) Scale 556 : (2011 AIR SCW 518), learned senior counsel submitted that the contempt proceedings being quasi criminal in nature require strict adherence to the procedure prescribed under the Rules applicable to such proceedings. He also pointed out that while sending notice, relevant documents have not been enclosed and the consent of Advocate General was not obtained for initiating contempt proceedings against the appellant. Insofar as the documents referred to being certain orders of the court, no serious objection was taken note of for not sending the same.

Consent of the Advocate General

11. The relevant provision which deals with cognizance of criminal contempt in other cases is Section 15 of the Act which reads as under:

"15. Cognizance of 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 to the Advocate-General, or
- (c) in relation to the High Court for the Union territory of Delhi, such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf, or any other person, with the consent in writing of such Law Officer."

The whole object of prescribing procedural mode of taking cognizance is to safeguard the valuable time of the Court from being wasted by frivolous contempt petitions. In *State of Kerala v. M.S. Mani & Ors.*, (2001) 8 SCC 82 : (AIR 2001 SC 3315), this Court held that the requirement of obtaining prior consent of the Advocate General in writing for initiating proceedings of criminal contempt is mandatory and failure to obtain prior consent would render the motion non-maintainable. In case, a party obtains consent subsequent to filing of the petition, it would not cure the initial defect and thus, the petition would not become maintainable.

12. In *Bal Thackrey v. Harish Pimpalkhute & Anr.*, AIR 2005 SC 396, this Court held that in absence of the consent of the Advocate General in respect of a criminal contempt filed by a party under Section 15 of the Act, taking *suo motu* action for contempt without a prayer, was not maintainable.

13. However, in *Amicus Curiae v. Prashant Bhushan and Anr.*, (2010) 7 SCC 592 : (2010 AIR SCW 5356), this Court has considered the earlier judgments and held that in a rare case, even if the cognizance is deemed to have been taken in terms of Rule 3(c) of the Rules to Regulate Proceedings for Contempt of the Supreme Court, 1975, without the consent of the Attorney

ance of criminal contempt—(1) In the case of a criminal other than a contempt petitioner 14, the Supreme Court may take action on a motion made by—

Advocate-General, or any other person, with the consent of the Advocate-General, or on to the High Court for the City of Delhi, such Law Officer of Government may, by notification in the Official Gazette, specify in writing any other person, with the consent of such Law Officer, for the purpose of prescribing procedural cognizance is to safeguard the time of the Court from being involved in contempt petitions. In *a v. M.S. Mani & Ors.*, (2001) AIR 2001 SC 3315, this Court held that the requirement of obtaining prior consent of the Advocate General in writing in contempt proceedings of criminal nature is mandatory and failure to obtain the same would render the motion liable to be dismissed. In case, a party obtains the same subsequent to filing of the petition, the defect would not become maintain-

Bal Thackrey v. Harish Chandra & Anr., AIR 2005 SC 396, held that in absence of the consent of the Advocate General in respect of contempt filed by a party under the Act, taking *suo moto* action for contempt without a prayer, was not maintainable.

However, in *Amicus Curiae v. Prashant Bhushan & Anr.*, (2010) 7 SCC 396, AIR SCW 5356, this Court has held that in the earlier judgments and in the present case, even if the cognizance of the Rules to Regulate Proceedings of the Supreme Court in contempt of the Attorney General or the Solicitor General, the proceedings must be held to be maintainable in view of the fact that the issues involved in the proceedings had far-reaching greater ramifications and impact on the administration of justice and on the justice delivery system and the credibility of the court in the eyes of general public.

14. It is clear from the recent decision of this Court in *Prashant Bhushan's case* (2010 AIR SCW 5356) (supra) that if the issue involved in the proceedings had greater impact on the administration of justice and on the justice delivery system, the court is competent to go into the contempt proceedings even without the consent of the Advocate General as the case may be.

15. Now, coming to the merits of the impugned order of the High Court, contempt proceeding was initiated mainly on the basis of a false statement made on oath by Respondent No. 2 which resulted in stay of the bail order passed by the Sessions Judge, Chennai in favour of the Respondent No. 1, and prevented him from taking oath in the Assembly. Inasmuch as the High Court has dealt with the issue elaborately on factual aspects and we also adverted to the same in the earlier part of our judgment, there is no need to traverse the same once again. In respect of violence on the day of election, Respondent No. 1 was arrested and remanded to judicial custody on 17.05.2001. On the same day, that is, on 17.05.2001, the appellant was appointed as Commissioner of Police, Greater Chennai City and assumed charge. On 21.05.2001, Respondent No. 1 moved an application for bail in Cri. M.P. No. 1379 of 2001 before the XIV Metropolitan Magistrate which was dismissed on the same day. On 22.05.2001, Respondent No. 1 moved an application for bail before the Sessions Judge in Cri. M.P. No. 6277 of 2001 mainly on the ground that as the new Assembly Session commences on 22.05.2001, he has to take oath and further the victim, namely, David has also been discharged from the hospital. On 23.05.2001, Respondent No.

1 was granted conditional bail by the Sessions Judge mainly on the ground that he has to take oath as MLA. It is further seen that against grant of bail to Respondent No. 1, Inspector of Police-Respondent No. 2 filed an application being Cri. O.P. No. 9352 of 2001 on 24.05.2001 for cancellation of bail with application for stay before the High Court. On the same day, vacation Judge of the High Court stayed the order of grant of bail to Respondent No. 1 till 29.05.2001 on the ground that victim, namely, David is in serious condition and the accused Respondent No. 1 is in police custody. By pointing out that the information furnished by Respondent No. 2 in his affidavit filed in support of the application for stay of the order of grant of bail regarding his police custody is false, Respondent No. 1 filed a counter-affidavit praying for vacation of the stay granted by the High Court. On 29.05.2001, Respondent No. 2 filed his reply-affidavit submitting that on 23.05.2001 application seeking police custody of other 8 accused were made and in the affidavit filed in support of the petition to cancel the bail, by oversight, it was mentioned that police custody was also obtained in respect of the Respondent No. 1. He also conveyed to the court that it is a mistake by oversight and the same is neither willful nor wanton. On going through the material placed, the learned Single Judge, by order dated 30.05.2001, dismissed Cri. O.P. No. 9352 of 2001 filed by Respondent No. 2 to cancel the bail granted to the first respondent by the Sessions Judge.

16. The Division Bench, based on the materials placed by Respondent Nos. 1 and 2 concluded that Respondent No. 2 has filed a false affidavit knowing well the contents of the same are false in order to mislead the court for preventing the petitioner therein, an MLA, from coming out of the jail thereby restrained him from attending the Assembly. Though Respondent No. 2 filed Cri. Appeal No. 1500 of 2004, the same was dismissed by this Court on

05.01.2005. While dismissing the appeal of Respondent No. 2, this Court made the following observation which is relevant and is reproduced hereunder:

"Heard learned counsel for the appellant.

It has been pointed out that the appeal filed by the Commissioner of Police has been admitted by this Court. In our view, the case of the Commissioner of Police stands entirely on a different footing. So far as the appellant is concerned, we do not find any merit in his appeal.

Accordingly, the appeal is dismissed."

17. The Division Bench, by the impugned order, proceeded on the fact that the Commissioner of Police-appellant herein was aware of the arrest of Respondent No. 1 and also of the fact that as an elected MLA because of the wrong information by Respondent No. 2, the High Court stayed the order of bail and he was prevented from assuming office as MLA and dealt with the matter and finally convicted him under Section 2(c) of the Act. It is the definite stand of the appellant that he was never consulted by the subordinate police officers before filing of the application for cancellation of bail and he was not aware of the contents of the said affidavit and as such he was not responsible. It is also his claim that when the incorrect statement made in the affidavit filed in support of the petition was brought to his notice by Mr. Christopher Nelson, Deputy Commissioner of Police on 28.05.2001, he directed him to give instruction to Respondent No. 2 to file a proper affidavit and as such, he was never a party to the said false affidavit and, therefore, he is not liable for contempt,

18. It is seen from the written statement made by the appellant before the High Court that he was informed about the arrest of MLA-Respondent No. 1 and the same has been conveyed to the Speaker as well as the Chief Secretary. It is the stand of the Division Bench that the Commissioner of Police must have been informed by the subordinate Police Officers not only

about the arrest of Respondent No. 1 but also his release by the Sessions Judge to enable him to inform the Speaker and the Government. However, according to the Division Bench, the Commissioner did not clearly indicate either in the counter-affidavit or in the written statement that he was informed about the bail order passed by the Sessions Judge on 23.05.2001. The High Court has also referred to the general powers of the Commissioner of Police with reference to certain standing orders issued by the Government. There is no dispute that the Commissioner of Police being Head of the Police Force of the City, if he comes across the arrest/release of an elected MLA, he is duty-bound to inform the Speaker as well as the Government. However, it is his definite case and asserted that he was not aware of the information furnished by Respondent No. 2 for cancellation of bail granted by the Sessions Judge and the ultimate stay order passed by the High Court.

19. In order to refute the claim of the Commissioner of Police, the Division Bench heavily relied on the presence of K. Anthonisamy, Assistant Commissioner of Police and C. Chandrasekar, Deputy Commissioner of Police in the office of the Public Prosecutor along with Respondent No. 2 who filed an affidavit praying for cancellation of the bail. It is true that both Assistant Commissioner of Police and Deputy Commissioner of Police in their respective affidavits admitted their presence in the office of the Public Prosecutor and their interaction with one Mr. Raja, the then Government Counsel. It is relevant to refer the information furnished in the form of an affidavit dated 04.04.2003 by Christopher Nelson. According to him, he joined as Deputy Commissioner of Police, Law and Order, Triplicane, District Chennai City on 26.05.2001. He asserted that he was not aware of the details of the case in question prior to 26.05.2001. The last two paragraphs, namely, paras 6 and 7 of his affidavit filed before the Division Bench are relevant which read thus:

respectfully...
Samy, who...
Commissioner of Police...
Range, Chennai...
2001, that the...
had filed...
Hon'ble High...
application o...
ground that so...
was filed by th...
further informed...
by the first respo...
of bail on 24...
that for granting...
Metropolitan Ma...
23.05.2001 had...
to be produce...
I respectfully sub...
day, I informed t...
the second respo...
of mistake i...
Investigation C...
herein, I was...
Respondent herein...
Commissioner...
affidavit, if neces...
explaining the a...
filed by the...
In compliance t...
Antony Samy, the...
of Police, Law...
to see that a pro...
Inspector cor...
High Court...
under wh...
in the affid...
Accordingly, su...
before the Hon...
2001."

“6. I respectfully state that Thiru K. Antony Samy, who was then Assistant Commissioner of Police, (Law & Order), Kilpauk Range, Chennai-7 informed me on 28.05.2001, that the aforesaid Parithi Ilamvazhuthi had filed a counter-affidavit before the Hon'ble High Court, seeking to reject the application of cancellation of bail on the ground that some incorrect information was filed by the first respondent, I was further informed that in the affidavit filed by the first respondent seeking cancellation of bail on 24.05.2001. It has been stated that for granting police custody the XIV Metropolitan Magistrate by his order dated 23.05.2001 had directed that some accused to be produced on 28.05.2001.

7. I, respectfully submit that on the very same day, I informed the commissioner of Police, the second respondent about the allegations of mistake in the affidavit filed by the Investigation Officer, the first respondent herein, I was directed by the second respondent herein to instruct the Assistant Commissioner of Police to file a fresh affidavit, if necessary before the High Court, explaining the alleged mistake in the affidavit filed by the first respondent earlier. In compliance thereof, I instructed Thiru Antony Samy, the Assistant Commissioner of Police, Law & Order, Kilpauk Range, to see that a proper affidavit is filed by the Inspector concerned before the Hon'ble High Court, explaining the circumstances under which alleged mistake appeared in the affidavit filed earlier by him. Accordingly, such an affidavit was filed before the Hon'ble High Court on 29.05.2001.”

It is clear at least from para 7 that when the information relating to making wrong statement at the instance of Respondent No. 2 was brought to the notice of the Commissioner of Police, he directed the Deputy Commissioner of Police to instruct the Assistant Commissioner of Police and Inspector of Police to file fresh affidavit explaining the alleged mistake in the affidavit filed by Respondent No. 2 earlier. It is

also seen that pursuant to the said direction of the Commissioner of Police, the Deputy Commissioner of Police instructed one K. Anthonisamy, Assistant Commissioner of Police to see that proper affidavit is filed by the Inspector concerned before the High Court explaining the circumstances under which the mistake appeared in the affidavit filed on earlier occasion. Pursuant to the notice by the Division Bench of the High Court, C. Chandrasekar, Deputy Commissioner of Police at Triplicane also filed an affidavit to the effect that after knowing the grant of bail by the Principal Sessions Judge, Chennai releasing Respondent No. 1 after considering seriousness of the case and after discussion with “superior officers” it has been decided to move an application for cancellation of the bail in the High Court. The Division Bench relying on the statement of the above officer concluded that the Commissioner of Police was consulted and it was he who instructed the subordinate Police Officers to move an application for stay of grant of bail. Though in para 4, the deponent of the affidavit, namely, C. Chandrasekar has mentioned that “after discussion with superior officers” it is not clear whether he consulted the Commissioner of Police i.e. appellant herein on the relevant issue.

20. K. Anthonisamy, Deputy Commissioner of Police, CBCID, Chennai Range who was working as an Assistant Commissioner of Police at Kilpauk, Chennai during the relevant period also swore an affidavit on 24.09.2004. In para 4, he also mentioned that after discussion with “superior officers” and on instructions, it was decided to file an application for cancellation of bail in the High Court. Here again, the Division Bench has concluded that the Commissioner of Police ought to have been consulted by the Assistant Commissioner of Police and only with his knowledge petition was filed for cancellation of bail. The above averment in para 4 merely mentions discussion with “superior officers” and

there is no specific reference to the Commissioner of Police who is the Head of the Police Force in the Chennai City. In the same way, in para 5 also, the deponent of the affidavit has mentioned that after the grant of stay by the High Court, he intimated the development to his superior officers. Here again, he has not specifically informed the court that he had intimated to the Commissioner of Police. Like Mr. Nelson, Deputy Commissioner of Police, he also informed the court that on coming to know the discrepancy in the affidavit dated 24.05.2001 filed by the Inspector of Police for cancellation of the bail, he was directed by the Commissioner of Police to rectify the discrepancy immediately. Accordingly, Respondent No. 2 filed the reply-affidavit narrating all the facts on 29.05.2001.

21. The analysis of affidavits of the Inspector of Police, Assistant Commissioner and Deputy Commissioner of Police show that there is no acceptable material that the affidavit containing wrong information filed by Respondent No. 2 for cancellation of bail and stay of bail order was made at the instance of the Commissioner of Police. We have already pointed out that the appellant has assumed charge as the Commissioner of Police only on 17.05.2001 i.e. after formation of the new Government. The violence in respect of election that took place on 10.05.2001, particularly, the incident relating to Respondent No. 1 was one week before his taking over charge as Commissioner of Police. It is brought to our notice that at the relevant time i.e. in 2001, the office of the Commissioner of Police was headed by him and there were 4 Joint Commissioners of Police, 15 Deputy Commissioners of Police, 64 Assistant Commissioners of Police besides 235 Inspectors of Police including SHOs of 83 Police Stations, 6 outposts and under whom there were 803 Sub-Inspectors of police and Spl. Sub-Inspectors and 9665 Head Constables and Police Constables. It is further brought to our notice that the City of Chennai is

divided into six districts and each one of them is headed by Deputy Commissioner of Police of the rank of Superintendent of Police. It is also clear that when the information about mentioning wrong statement in the affidavit filed by Respondent No. 2 against the grant of bail order was brought to the notice of the appellant on 28.05.2001 by Deputy Commissioner of Police, namely, Christopher Nelson, the appellant herein immediately asked him to direct Respondent No. 2 to file proper affidavit before the High Court and clarify the matter by placing proper facts. It is also clear from the affidavit of the Government Counsel E. Raja that he himself drafted the affidavit purely on the instructions of Respondent No. 2 and that the appellant herein had no personal knowledge nor did he instruct the counsel to prepare affidavit or petition to move for cancellation of the bail. As rightly pointed out by Mr. Ganguli, learned senior counsel for the appellant, in the later part of the order dated 20.06.2001, the then Division Bench ordered notice to the Commissioner of Police (the appellant herein) seeking an explanation about the serious allegations made by Respondent No. 1 in para 12 of the contempt petition. Pursuant to the same, the appellant filed counter-affidavit setting out hierarchy of officials functioning under the Commissioner of Police, Greater Chennai City, the circumstances under which he was informed about the incorrect affidavit filed by Respondent No. 2 in the case and the directions issued by him to correct the mistake in the proceedings relating to the cancellation of bail of Respondent No. 1. We have already pointed out that the author of the affidavit, namely, Respondent No. 2 has not stated that it was filed under the instructions of the appellant herein, in fact, this fact was accepted by the Division Bench. As a matter of fact, Respondent No. 2 has specifically denied the allegation that the application for cancellation of bail was moved under the direction, supervision and knowledge of the appellant. The two officers,

namely, Assistant Commissioner of Police and Deputy Commissioner of Police without specifying the name of Commissioner of Police have merely mentioned that they had consulted their "superior officers" before filing the application for cancellation of bail.

22. Apart from specific information in the form of an affidavit highlighting his stand before the Division Bench which dealt with the contempt petition, the appellant had also rendered unconditional apology which was not even referred to before passing orders sentencing the appellant herein to imprisonment. When a city like Chennai is managed by several Police Officers from the level of police constable to the Commissioner of Police, in the absence of specific reference about consultation with the Commissioner of Police or direction to the two officers, namely, Assistant Commissioner of Police and Deputy Commissioner of Police merely because both of them attended the office of the Public Prosecutor for preparation of an application for cancellation of bail based on the affidavit of the Inspector of Police, it cannot be presumed and concluded that the appellant was responsible for giving incorrect information by Respondent No. 2 before the High Court.

23. We have already pointed out that while dealing with criminal contempt in terms of Section 2(c) of the Act, strict procedures are to be adhered. In a series of decisions, this Court has held that jurisdiction to initiate proceedings for contempt as also the jurisdiction to punish for contempt are discretionary with the court. Contempt generally and criminal contempt certainly is a matter between the court and the alleged contemnor. No one can compel or demand as of right initiation of proceedings for contempt. The person filing an application or petition before the court does not become a complainant or petitioner in the proceedings. He is just an informer or relator. His duty ends with the facts being brought to the notice of the court. It is there-

after for the court to act on such information or not. [Vide *Om Prakash Jaiswal v. D.K. Mittal*, (2000) 3 SCC 171] : (*AIR 2000 SC 1136*). Further Section 15 of the Act as well as the Madras High Court Contempt of Court Rules insist that, particularly, for initiation of criminal contempt, consent of the Advocate General is required. Any deviation from the prescribed Rules should not be accepted or condoned lightly and must be deemed to be fatal to the proceedings taken to initiate action for contempt. In the present case, the above provisions have not been strictly adhered to and even the notice issued by the then Division Bench merely sought for explanation from the appellant about the allegations made by Respondent No. 1.

24. We have already noted that Rajendra Kumar, Inspector of Police (L & O), G-1, Vepery Police Station, Chennai-7 who made an incorrect/false statement for cancellation of bail has been rightly punished by the Division Bench of the High Court and this Court affirmed the same by dismissing his Special Leave Petition.

25. In view of the above discussion and conclusion, the order of the High Court convicting the appellant under Section 2(c) of the Act and sentencing him under Section 12 to undergo simple imprisonment for seven days is set aside. The appeal is allowed.

Appeal allowed.

AIR 2011 SUPREME COURT 1653

(From : Patna)*

**MARKANDEY KATJU AND Mrs.
GYAN SUDHA MISRA, JJ.**

Civil Appeal No. 2758 of 2006, D/- 15-4-2011.

Deb Ratan Biswas & Ors. v. Most. Anand Moyi Devi & Ors.

Civil P. C. (5 of 1908), O. 23, R. 3; O.

* Civil Revision No. 945 of 2002, D/- 21-5-2004 (Pat) (reported in 2004 (3) Pat LJR 612)