

# In Re Cader

293/1963

Present: Basnayake, C. J., Herat, J., and Abeyesundere, J.

IN RE S. M. A. CADER and another

S. C. 559/62-Application for a Rule Nisi for Contempt of Court on S. M. A. Cader and Assanar Lebbe Hameed Umma

*Contempt of Court-Scope of sections 47 and 51 of the Courts Ordinance-Injunction granted by District Court-Disobedience of such injunction-Power of Supreme Court to punish offender-Civil Procedure Code, ss. 137, 294, 295, 358, 650, 663, 713, 717, 71S, 792.*

Where an injunction granted by a District Court was disobeyed-

Held, that the Supreme Court had power to punish the offender for contempt of court.

APPLICATION for a Rule Nisi for Contempt of Court under section 47 of the Courts Ordinance.

M. Tiruchelvam, Q. G., with N. E. Weerasooria (Junior), for Petitioner.

S. Sharvananda, with M. T. M. Sivardeen, for Respondents.

Cur. adv. vult.

May 23, 1963. BASNAYAKE, C. J.-

The respondents S. M. A. Cader and Assanar Lebbe Hameed Umma (hereinafter referred to as the 1st respondent and the 2nd respondent respectively) appeared before this Court on a Rule Nisi issued under section 47 of the Courts Ordinance on the application of the Public Trustee the administrator de bonis non of the estate of

Mohamed Ismail Abdul Rasool. They were required to show cause, if any, why-

" (1) the 1st and 2nd respondents should not be punished for the offence of contempt of Court committed against or in disrespect of the authority of the Supreme Court in that they did knowingly act in collusion in contravening and disobeying an order of this Court issued in Application No. 437 of 1962 and dated November 2, 1962,

(2) the 1st respondent should not be punished for the offence of contempt of Court committed against or in disrespect of the authority of the Supreme Court in that he, being served with an order of this Court dated November 2, 1962, in Application No. 437 of 1962, did act in disobedience and contravention thereof, and

(3) the 2nd respondent should not be punished for the offence of contempt of Court committed against or in disrespect of the authority of the District Court of Trincomalee in that she acted in disobedience and contravention of an order dated June 5, 1962, issued in case No. 6935 of the said Court. "

In answer to the Rule Nisi the respondents stated that they had cause to show, but they neither gave evidence themselves nor called any witnesses on their behalf. The Public Trustee gave evidence in support of the rule and the following other witnesses were called by him:- Manikkam Rajasingha, Interpreter of the District Court of Trincomalee ; Easiah Subramaniam, Clerk of the Public Trustee's Department; Eliyathamby Nagarajah, engine driver of Rasool Ice Factory ; Kandiah Krishnapillai, Clerk, Trincomalee Multi-purpose Co-operative Society Union Ltd. ; Mohamed Sherif Abdul Jabbar, the House Agent of the Public Trustee, and Paulus Jayawardene, Accountant of D. V. Allis Silva & Sons, Trincomalee.

Before the charges are discussed it will be convenient to state briefly the material facts. The 1st respondent is the husband of the 2nd respondent. The Public Trustee was on 17th November 1959 appointed administrator de bonis non in D. C. Trincomalee Testamentary Case No. 304/T. One of the assets of the deceased's estate was an Ice Factory known as the Rasool Ice Factory in

Trincomalee (hereinafter referred to as either the Ice Factory or the Factory). The 1st respondent who was in charge of it was appointed its Manager by the Public Trustee. The terms of his appointment were-

- (a) that he would be paid an initial salary of Rs. 250 per mensem,
- (b) that he was bound to render to the Public Trustee a weekly account of all sums of money received and all expenses incurred,
- (c) that he should remit all weekly balances to the Public Trustee.

Till November 1961 the 1st respondent complied with the terms of his appointment, but as he did not do so thereafter his appointment was terminated on 8th May 1962 and he was called upon to hand over the Ice Factory to the Public Trustee. As he failed to carry out the direction to hand over the Ice Factory, the Public Trustee instituted D. C. Trincomalee Case No. 6934 praying an interim as well as permanent injunction. On 5th June 1962 an interim injunction was granted. On 19th June the 1st respondent successfully moved that the interim injunction be dissolved. The Public Trustee thereupon applied to this Court for a review of the

order of the District Judge dissolving the interim injunction. Upon a review of that order this Court set aside the order of the District Court and granted an interim injunction in the following terms :-

" That pending the determination of this application you do restrain yourself, your servants and agents from obstructing, hindering or in any manner interfering with the plaintiff-respondent-applicant, his servants, and agents from working the said Ice Factory in the land and premises described in the schedule hereto and from using the said land and premises for the purpose of working the said Ice Factory and that you do also restrain yourself, your servants and agents from obstructing, hindering or in any manner interfering with those who are duly authorised by the plaintiff-respondent-applicant to work the said Ice Factory and to use the said land and premises for the purpose of working the said Ice Factory. "

This injunction was served on the 1st respondent when he was at the Trincomalee Post Office. Though requested to do so, he refused to accompany the Public Trustee's representative to the Ice Factory and hand it over. When he went there with the representatives of the Trincomalee Multi-purpose Co-operative Stores Union to whom the Public Trustee meant to hand over the Ice Factory, he was obstructed by the 2nd respondent and the employees of the Factory. Even after the assistance of the Police was obtained, she persisted in her obstruction and refusal to hand over the Factory.

While the proceedings against the 1st respondent were in progress, on 25th May 1962 in D. C. Trincomalee Case No. 6935 an interim injunction was issued against the 2nd respondent in the following terms :-

" Now Know Ye that I do hereby restrain you, your servants and agents from obstructing, hindering or in any manner interfering with the plaintiff, his servants and agents from working the said Ice Factory in the land and premises described in the Schedule hereto and from using the said land and premises for the purpose of working the said Ice Factory and further do hereby restrain you from obstructing, hindering or in any manner interfering with those (who are duly authorised by the petitioner to work the said Ice Factory and to use the said land and premises for that purpose) from working the said Ice Factory and from using the said land and premises for the purpose of working the said Ice Factory pending the determination of this action. "

Substituted service of this injunction was effected on 13th June 1962 ; but the 2nd respondent did not obey it and obstructed the Public Trustee's representative when he sought to take charge of the Factory. In view of the neglect of the 1st respondent to carry out the directions in the injunction served on him and the disobedience of the 2nd respondent to the injunctions served on her by the process of substituted service the Public Trustee applied to this Court, on 27th December 1962, for a rule nisi for contempt of Court on the respondents.

This is a convenient stage at which we may turn to the specific charges in the Rule Nisi. The evidence on the first charge is that an interim injunction was issued by this Court directing the 1st respondent to restrain himself, his servants and agents from obstructing, hindering or in any manner interfering with the Public Trustee, his servants and agents from working the Ice Factory, and also to restrain himself, his servants and agents from obstructing, hindering or in any manner interfering with those who are duly authorised by the Public Trustee to work the said Ice Factory and to use the said land and premises for the purpose and from working the said Ice Factory and from using the said land and premises for the purpose of working the said Ice Factory.

As stated above when this injunction was served on the 1st respondent at the Trincomalee Post Office premises, he refused to accompany Rasiah Subramaniam, the representative of the Public Trustee, to help him to hand over the Ice Factory to the Multi-purpose Co-operative Society which was going to run it for the Public Trustee. When the Public Trustee's representative and the Fiscal's Process Server proceeded to the premises of the Ice Factory they found themselves locked out of the premises and although the Public Trustee's representative informed the 2nd respondent who was present of the purpose of the visit, and of the fact that an injunction issued by the Supreme Court had been served on the 1st respondent at the Trincomalee Post Office, she paid no heed to it and refused to allow any one to enter the factory, and suffered the employees of the factory to threaten those who had come on behalf of the Public Trustee. Thereupon the Public Trustee's representative went to the police station and obtained the assistance of two police constables. But even their presence did not induce her to yield. Not only did the 2nd respondent and the employees of the Ice Factory not yield but they actively obstructed them. But as the 1st respondent was not present at any stage of the obstruction and abuse and as there is no evidence from which it can be inferred that the attitude of the 2nd respondent and the employees of the factory was influenced by anything done by the 1st respondent after the injunction was served on him, the charge that the respondents did knowingly act in collusion in contravening

and disobeying an order of this Court cannot be sustained. We therefore hold that the first charge is not proved against either of the respondents.

In regard to the second charge there is no evidence that the 1st respondent acted in disrespect of the authority of this Court or committed any offence of contempt. After the injunction was served, he continued to remain at the Post Office premises and declined to accompany the representative of the Public Trustee and hand over the Ice Factory. Although his conduct in not proceeding to the Ice Factory with them was unhelpful it does not constitute the offence of contempt or of acting in disrespect of the authority of this Court. We therefore hold that the second charge is not proved against the 1st respondent.

The third charge concerns the 2nd respondent alone. The charge is that she committed contempt of Court against or in disrespect of the authority of the District Court of Trincomalee by acting in disobedience of an order dated 5th June 1962 issued in case No. 6935 of the District Court of Trincomalee to the following effect:-

" Now, Know Ye that I do hereby restrain you, your servants and agents from obstructing, hindering or in any manner interfering with the plaintiff, his servants and agents from working the said Ice Factory in the land and premises described in the schedule hereto and from using the said land and premises for the purpose of working the said Ice Factory and further do hereby restrain you from obstructing, hindering, or in any manner interfering with those (who are duly authorised by the petitioner to work the said Ice Factory and to use the said land and premises for that purpose) from working the said Ice Factory and from using the said land and premises for the purpose of working the said Ice Factory pending the determination of this action. "

The evidence in regard to this charge is that as this interim injunction could not be served on the respondents personally, the petitioner applied for and obtained an order for substituted service. The Fiscal's Process Server in order to execute this order proceeded, along with witness Jabbar, the house agent of the



Public Trustee, the representative of the Public Trustee and two representatives of the Multi-purpose Co-operative Society of Trincomalee, to the house of the respondents, which is in the land adjoining the Ice Factory. The 2nd respondent and the 1st respondent were both in the verandah of their house. The Fiscal's Process Server having stated in Tamil the contents of the above order to the 2nd respondent affixed the injunction and the connected documents on the front door of the house. Immediately thereafter the 1st respondent tore off the papers he had affixed. The representative of the public Trustee and the representatives of the Multi-purpose Co-operative Society moved in the direction of the Ice Factory. The 1st respondent then closed the gate which provided access from the house to the factory with the help of two employees of the Ice Factory and said : " Don't enter. If you enter I will assault you. " The 2nd respondent followed the 1st respondent and was also at the gate. She also asked those who came along with the Fiscal's Process Server not to come inside and abused them. She pulled Abdul Jabbar by his coat sleeve. Thereupon the Fiscal's Process Server and the representative of the Public Trustee left the place and lodged a complaint at the police station. Subramaniam's evidence shows that even after he had explained the purpose of their visit, her attitude and conduct hindered him from doing what the Public Trustee wanted to do through him, his agent. We are of opinion that the evidence before us establishes that the 2nd respondent committed the offence of contempt of Court against and in disrespect of the authority of the District Court of Trincomalee, in that she acted in disobedience and contravention of the order dated 5th June 1962 issued in case No. 6935 of that Court.

Before dealing with the question of punishment, we think we should refer to the legal argument urged by learned counsel. He submitted that as a matter of law it was the District Court and not this Court that had the power to punish the respondent for the disobedience of its injunction. The power of this Court to punish for contempt is conferred by section 47 of the Courts Ordinance which reads-

" The Supreme Court or any Judge thereof, whether at Colombo or elsewhere, shall have full power and authority to take cognizance of

and to try in a summary manner any offence of contempt committed against or in disrespect of the authority of itself or any offence of contempt committed against or in disrespect of the authority of any other court, and which such court has not jurisdiction under section 57 to take cognizance of and punish, and on conviction to commit the offender to jail until he shall have purged his contempt or for such period as to the court or Judge shall seem meet; and such imprisonment shall be simple or rigorous as such court or Judge shall direct, and the offender may in addition thereto or in lieu, thereof, in the discretion of such court or Judge, be sentenced to pay a fine not exceeding five thousand rupees. "

The power of the subordinate courts to punish for contempt is conferred by section 57 of that Ordinance which reads-

" Every District Court, Court of Requests, and Magistrate's Court shall, for the purpose of maintaining its proper authority and efficiency, have a special jurisdiction to take cognizance of, and to punish by the procedure and with the penalties in that behalf by law provided, every offence of contempt of court committed in the presence of the court itself, and all offences which are committed in the course of any act or proceeding in the said courts respectively, and which are declared by any law for the time being in force to be punishable as contempts of court. "

The latter of the two sections quoted above gives the subordinate Courts power " to take cognizance of and to punish by the procedure and with the penalties in that behalf by law provided, every offence of contempt of court committed in the presence of the court itself, and all offences which are committed in the course of any act or proceeding in the said courts respectively, and which are declared by any law for the time being in force to be punishable as contempts of Court. "

Part IX, Chapter LXV of the Civil Procedure Code prescribes the procedure to be followed in the exercise of the special power to punish summarily offences of contempt of court committed *ex facie curiae*, and offences which are committed in the course of any act or proceeding in the District Court and which are declared by the



Civil Procedure Code to be punishable as contempts of court. The offence of contempt

committed in the instant case is not a contempt *ex facie curiae*. The offences declared by the Civil Procedure Code to be punishable as contempt of court are-

- (a) failure to satisfy the court that there was a lawful excuse for not complying with summons (s. 137),
- (b) disobedience to an order restraining a judgment-debtor from the committing of waste (s. 294, s. 295),
- (c) neglect or refusal to serve process or to comply with an order or direction of the court in connection therewith (s. 358),
- (d) omission to state what security is held by the plaintiff on application for arrest before judgment (s. 650),
- (e) disobeying an injunction (s. 663),
- (f) failure to attend on a citation issued under section 712 (s. 713),
- (g) disobeying a decree for delivery of money under section 716 (s. 717),
- (h) failure to file sufficient inventory, valuation or accounts when ordered to do so (s. 718).

The powers conferred by the provisions of the Civil Procedure Code above mentioned may be exercised by all Civil Courts under the Civil Procedure Code including this Court. They do not empower the Court to punish for contempt of Court but they vest in the Court the power to enforce its orders by punishing as for contempt of Court the offences briefly described above. The second limb of section 57 provides for the safeguarding of the Court's authority by punishing the offender in each of the above cases. The powers are given to the Court for enforcing its orders and do not affect the power of the

Supreme Court to punish for contempt under section 47 of the Courts Ordinance.

The question we have now to consider is what sentence should be imposed on the 2nd respondent for her offence. Having regard to the circumstances of this case, we think that we cannot take a lenient view of the offence that has been committed. We have given careful consideration to the question of sentence. The open defiance of the order of the Court is one that calls for a severe sentence. If the disapproval of this Court of the defiance of the order of the District Court is not indicated in a convincing manner, the administration of justice will be imperilled. The interests of justice require that a sentence in keeping with the gravity of the offence should be imposed. We therefore sentence the 2nd respondent to undergo a term of nine months' rigorous imprisonment, and also to pay a fine of Rs. 5,000. If the fine is not paid, the 2nd respondent will undergo a further term of one year's rigorous imprisonment.

HERAT, J. - I agree.

ABEYESUNDERE, J. - I agree.

Rule nisi on 1st respondent discharged.

Rule nisi on 2nd respondent made absolute.