IN THE COURT OF APPEAL

Reportable
[2019] SCSC
SCA 05/2018
(Arising in CP 09/2017)

Duraikannu Karunakaran — **Appellant**
Of Belle Vue, La Misere
Mahe, Seychelles
(rep. by P Boulle)

versus

The Tribunal — **1st Respondent**
Represented by
Judge Mohan Burhan
President of the Tribunal
Supreme Court, Ile du Port
(rep. by D. Esparon)

And

The Honourable Attorney General — **2nd Respondent**
Of Attorney General Chambers
National House, Victoria, Mahe
Seychelles
(rep. by D. Esparon)

Neutral Citation: *D. Karunakaran v The Tribunal & another*
Before: MacGregor PCA, Robinson JA, Dodin JA

Summary: Any Court has jurisdiction to deal with contempt in the face of the Court. The Court can deal with the offence of contempt summarily or by trial with due process. Although the Constitutional Court adopted a mixture of both procedures it was not fatal to the case. Undue or unwarranted interference with the smooth administration of justice may amount to contempt. Whether words or behaviour amount to contempt is a question of fact to be decided in the circumstances of each case. Since the behaviour of the Appellant resulted in a disruption of court proceedings there were sufficient grounds for finding of contempt by the Constitutional Court. The appeal is dismiss in its entirety.

Heard: 13 August 2019
Delivered: 10 September 2019

ORDER

The appeal from decision of the Constitutional Court is dismissed in its entirety.

JUDGMENT

DODIN J.

[1] This is an appeal from a decision of the Constitutional Court CP 09/2017 in respect of a charge and conviction of the appellant for contempt. The brief facts of the case are that on 27th March 2018, whilst the Constitutional Court was hearing a matter on two preliminary points of law in case CP No. 09/2027, the appellant who was seated on the left side of the courtroom, got up from his place and walked up to the right side of the Court where Mr Thachett and Mr Subramaniam, both Assistant Principal State Counsel were seated behind Mr Chinnasamy and the appellant said certain words which were overhead by Mr Thachett and Mr Subramaniam. Then the appellant patted with Mr Chinnasamy on the back and said certain words in the ear of Mr Chinnasamy.

[2] Mr Chinnasamy appeared very upset by the words that had been said and he informed the Court that the appellant had used abusive and nasty words in respect of his address. The impugned words, according to Mr Chinnasamy, were as follows: *'I lost all respect for you, I never knew you would go to this extent. You are an ass-licker. I am sorry to say'*. Mr Chinnasamy added, in order to explain what he was feeling at that time that the words belittled his dignity and cast negative aspersions on his career. He was, therefore, unable to continue discharging his duty as Counsel at that point in time.

[3] The Court asked the appellant to give his version of what had just happened. He admitted having spoken to Mr Chinnasamy but he denied having uttered the impugned words. Instead, his contention was that he simply asked Mr Chinnasamy *'to make submissions sensibly'*. The Court however appeared convinced that the appellant had actually said the impugned words as stated by Mr Chinnasamy and invited the appellant to tender this apologies to the Court and to Mr Chinnasamy. The appellant refused to do so and maintained that he had not uttered these words. The Court also told the appellant that he did not have the right to go to the other side of the Court and to tell opposing counsel how he should do his work. The issue of whether a contempt of Court has been committed came up and the hearing of the petition which was being dealt with by the Court was postponed to the next term.

[4] On the 4th September 2018, the Constitutional Court comprising of same bench of three Judges who had witnessed the incident in Court issued an Order holding (1) that on 27th March 2018, an incident amounting to a misdemeanour by the appellant and amount to a contempt of Court had occurred (2) that the Court invited the appellant to apologise to Mr Chinnasamy on the understanding that the Court would not have pursued the matter further had the appellant done so (3) that the appellant did not tender his apologies (4) that a summons was issued on the appellant to show cause as to why contempt proceedings should not be continued against him (5) that the bench, being unanimously satisfied that the appellant had committed a contempt of Court, found him guilty of contempt and convicted him for contempt (6) that the appellant was being sentenced to pay a fine of Rs5,000, failing which, he would be imprisoned for seven days.

[5] On the next day, 5th September 2018, the appellant paid the fine of Rs5,000 which had been imposed on him.

[6] On 27th September 2018, the appellant lodged this appeal against the decision of the Constitutional Court raising the following grounds of appeal:

"(1) The finding of guilt by the Constitutional Court is without juridical foundation as it fails to rest on the Oder of the Court delivered on 15th May 2018 and the summons to show cause and consequently address the objections raised by the appellant dated 24th May 2018.

(2) The Constitutional Court erred in its finding of guilt as it ignores and fails to draw its reasoning from material facts on record

(3) The finding of contempt is erroneous as it fails to adjudicate on the issues and material facts found to be the substance of contempt in respect of which the appellant was required to show cause

(4) The Order is erroneous as the facts relied on for the finding of guilt does not disclose a contempt of Court by the appellant."

[7] Ground 1 is in respect of the capacity of the Constitutional Court to deal with contempt as an offence and the procedures the Court followed. Grounds 2, 3 and 4 can be dealt with together since they raise issues of facts with particular emphasis on the perceived failure of the bench to appreciate, rely on and make material findings on the facts.

[8] The 1st ground raises the issue of the procedures which have to be followed in cases of alleged contempt. There is no contention that a Court before which an act of contempt has been committed has the power to deal with the matter summarily. This is particularly so where the contempt is in the nature of a criminal contempt which has been committed fully or partially in the face of the Court where the bench has itself witnessed the act which amounts to the contempt. Generally, this case is where the act of contempt is such that it requires an immediate sanction in the sense that to delay the reprisal may lead to the reduction of the efficiency of the measure. Dealing with a matter

summarily entails that only a brief statement of the main points is made which dispenses the Court from having to go unduly into matters of detail or into lengthy formalities. It is a judicial process which is conducted without the customary legal formalities. The outcome of the case is usually stated by using the simple formula *'we find the case proved'* and is often based on the Latin maxim *res ipsa loquitor* meaning that the facts are so obvious that they speak for themselves.

[9] This having been said, the fact remains that the Court may decide not to deal with an alleged contempt summarily and may choose to adopt another route to deal with the matter, which may lead to a full hearing or as in this case give the appellant time to either admit and apologise or show cause why the Court should not proceed with determining whether the offence of contempt has been committed. It is obvious that the Court adopted a combination of both procedures. Having indicated on the 27th March 2018 that the Court is of the view that the appellant committed the act of contempt complained of, the Court did not proceed the find the appellant guilty and sentence him summarily on the same day but adjourned the matter to the 15th May 2018, 12th June 2018 then 4th September, 2018.

[10] In the meantime, Mr Chinnasamy stated that he would be making a complaint, in writing, to the Honourable Attorney General. The Court allowed Mr Chinnasamy time to do so. There is evidence on record to the effect that, on 28th March 2018, Mr Chinnasamy, Mr Thachett and Mr Subramaniam gave their respective written statements to the Attorney General describing the incident that allegedly took place in Court on 27th March 2018. Those statements were forwarded to the Judges of the Constitutional Court.

[11] On the 15th May 2018, an Order was issued by the Constitutional Court putting the appellant on notice that, having considered what had happened in Court and the complaint lodged by Mr. Chinnasamy, there were sufficient grounds for the appellant to show cause as to why he should not be dealt with for contempt of Court. The Court further affirmed that it had the inherent jurisdiction to deal with the matter. A summons dated 17th May 2018 was issued on the appellant by the Registrar of the Supreme Court on behalf of the Constitutional Court informing him that he stands charged of having insulted Mr Chinnasamy in open Court and that his behaviour disrupted the work of the

Court sitting as a Constitutional Court; and to file his answer to the above charge of contempt of Court within 7 days after service of the summons.

[12] The appellant filed his written answer to the summons on 24th May 2018 which contained seven points raised in law. These were essentially, to the effect (a) that the summons issued on the appellant was beyond the powers of the Registrar of the Supreme Court, (b) that the Constitutional Court had no jurisdiction to hear and determine a complaint made by a third party to a proceeding before the Constitutional Court, (c) that the complaint of Mr Chinnasamy was not before the Court as same had been made to the Attorney General, (d) that the appellant had no obligation to answer a complaint forwarded to the Court by the Attorney General, (e) that the appellant had no obligation to show cause since the Constitutional Court had no inherent jurisdiction to hold him in contempt, the more so that the evidence against him emanated from a third party and was in the nature of unsworn allegations (f) that the Constitutional Court had already determined the matter by holding on 27th March itself that the appellant had indeed used the words as alleged by Mr Chinnasamy and that (g) the Constitutional Court had admitted that it had no jurisdiction in the matter by stating on 27th March that *'that was the end of the matter'*. The summons which was issued on 17th May 2018 also required the appellant to appear, on 12th June 2018.

[13] The Order dated 4th September 2018 is in the nature of a summary determination. It contains a brief statement of facts and a decision. That same Order could have been delivered there and then on the 27th March 2018. There was no determination on the points of law that the appellant had raised in his defence.

[14] It is my considered opinion that any Court has jurisdiction to deal with contempt in the face of the Court otherwise a Court will be deprived of control over whatever act a person may want to do whilst the Court is in session. was open to the Constitutional Court to adopt a summary approach in determining the matter and to deal with it summarily and it was also open to the Constitutional Court to deal with the matter after affording the appellant a full hearing. Summary trials may be conducted before a finding of guilt is handed down and this entails that the accused party does not even have to be present, even though he may choose to attend the trial. Secondly, objections

are not usually made to the information preferring the charge or to the summons which is issued on the party unless those objections are of a fundamental nature. The Court obviously did not consider the appellant's written answer to be such. Hence the Court cannot be tasked to address the objections in law raised by the appellant.

[15] On ground 1, I find that despite the fact that the Constitutional Court did not adopt a clear procedure in respect of whether the appellant was to be dealt with summarily or by a full trial, procedures followed by the Court in fact more favourable to the appellant than the usual summary trial. It is clear from the above that what the Constitutional Court did was to conduct a summary trial in the case of the appellant. It cannot be taxed for having ensured that all the elements which were relevant in allowing it to make a finding were placed before it.

[16] Learned counsel for the appellant laid much emphasis on the phrase *"that was the end of the matter"* maintaining that the Constitutional Court had admitted that it had no jurisdiction in the matter by stating on 27th March that *'that was the end of the matter'*. I cannot see how learned counsel could come to such conclusion. From the record of proceedings it is clear that the Court was addressing the appellant who was answering back and who was not adhering to the Court's direction for him to go back to his side of the Court and to sit down. That phrase was actually stated twice to the appellant and having read the complete record for the day's proceedings, the phrase was not stated in respect of the charge of contempt but rather in managing the Court and dealing with the appellant's behaviour at the respective times.

[17] Since the Court did not make a final finding as alleged in the 1st ground of appeal I find that the Court's decision to adjourn the matter to a later date was not fatal to the procedures and definitely did not deprive the Court of its juridical base to reach the decision it did on the 4th September 2018. Secondly, the action taken by the Court against the appellant was not based on the complaint that Mr Chinnasamy made to the Attorney General. This was a procedure which Mr Chinnasamy chose to follow and the Attorney General forwarded the written complaint to the Court. The appellant for his part, was duty bound to answer the charge of contempt that was based on the

incident which occurred in Court. This is clearly borne out in the Order of 15th May 2018 where the Judges held:

"We witnessed the behaviour of Mr Karunakaran, which conduct constitutes an interference with the work of this Court and therefore amounts to contempt".

The finding of guilt did, therefore, have a juridical foundation contrary to what is contended in the first ground of appeal. The 1st ground of appeal therefore fails.

[18] In respect of the 2nd, 3rd and 4th grounds of appeal it is not disputed that the words which the appellant is supposed to have said to Mr Chinnasamy in his ear was the event that triggered the whole incident. The contention of the appellant is that there were two versions concerning the words that were said. Whereas Mr Chinnasamy contended that the appellant called him 'an ass-licker', the appellant maintains that he only told Counsel to do his work properly. Grounds 3 and 4 essentially purport to challenge the fact that the Court did not pronounce itself on which of these two versions it accepted and did not give any reasons for having reached that decision.

[19] The following can be read the following in the Order dated 15th May 2018:

> *"He* (the appellant) *spoke to Mr Subramaniam, and we also saw him speaking to Mr Chinnasamy. We witnessed a very spontaneous reaction from Mr Chinnasamy, who looked very disturbed and reported to the bench that Mr Karunakaran had verbally abused him".*

Additionally, there is, in the Court record of 27th March 2018, the following observation made by the Court:

> *"Okay in the light of the statement made by Chinnasamy alleging that certain abusive words were used against him, we do not dis believe him. We are convinced that these words were used".*

[20] Thus, it appears that the Judges, who witnessed the incident personally and who saw how distraught Mr Chinnasamy was, chose to believe his version. This was based on personal observations by the Judges and their experience in assessing the demeanour

and reactions of persons who appear before them. Once again, there is nothing wrong in a summary finding of guilt having been made based on the above facts.

[21] With specific reference to ground 4 the Court found that the appellant did actually say the impugned words as contended by Mr Chinnasamy. Hence there is little doubt that the acts of the appellant amounted to a contempt of Court. Indeed, there is ample case-law in other jurisdictions which establish that an insult addressed to Counsel or to a solicitor in Court may amount to a contempt. *Halsbury's Laws of England, 2012, 5th edition, Vol 22, at page 7, para 8:* states:

"It is a contempt to any court of justice to disturb or obstruct the court by insulting behaviour in its presence and at a time when it is sitting. Although the most common example of such a contempt is insulting behaviour directed to a judge or judicial office, insults directed to the jury or to counsel or a solicitor may also constitute a contempt in the face of the court. Contempt may be shown either by language or manner. Whether the words or behaviour in issue amount to a contempt is a question of fact to be decided in the circumstances of the particular case".

[22] It is further stated at pages 34 – 44, paras 46 and 47:

"The court will protect its officers while discharging their duties. Thus, a solicitor who assaulted and intimidated an opposing solicitor while passing from the judge's chambers to the outer door of the courts was punished by committal for contempt ..... The protection afforded to officers of the court while discharging their duties extends also to counsel".

Similarly, in the case of *French v French (1824), 1 Hog. 138,* it was held that *"an insult to counsel may be punished as a contempt".*

[23] Calling someone an *'ass-licker'* is an obvious show of disrespect and scorn stated in an insolent manner intended to offend the integrity of a person. It carries the imputation that the person who is willing to stoop below accepted standards in order to please other men or his superiors. The reaction of Mr Chinnasamy, as is borne out in the Court record, speaks for itself.

[24] Even if I were to accept, that the appellant did not say those words, but simply asked Mr Chinnasamy to *'do his work sensibly'*, that would still amount to contempt when seen in its context. The appellant left the place where he was sitting in Court and came behind Mr Chinnasamy. He first made some comments about the latter before speaking into his ear. Mr Chinnasamy reacted spontaneously which caused Court proceeding to be disrupted and the case which was being heard had to be postponed. The word *'sensibly'* here means *'reasonably'*. The comment of the appellant entailed that Mr Chinnasamy was not doing his work reasonably which was a direct imputation on the standard of latter's submissions addressed to the Court. As a result of the words said to Mr Chinnasamy, the work of the Court, which was well on the way of hearing arguments, was disrupted.

[25] In *Blackstone's Criminal Practice, 2014, at para B 14.80* it is stated thus:

> *"At common law, it* (contempt) *has been defined as behaviour involving an interference with the due administration of justice, either in a particular case or more generally as a continuing process ..... As Donaldson, MR said in AG v Newspaper Publishing plc [1988] Ch 333 at page 368:*
>
> *The law of contempt is based on the broadest or principles, namely that the courts cannot and will not permit interference with the due administration of justice. Its application is universal. The fact that it is applied in novel circumstance ..... is merely a new example of its application".*
>
> Hence an undue or unwarranted interference with the smooth administration of justice is objectionable and may amount to contempt.

[26] The Constitutional Court did take all those aspects into consideration although it did not set out its reasoning as it considered the matter summary in nature. In its Order dated 4th September 2018, the Court explained, at paragraph 2, how the behaviour of the appellant generally resulted in a disruption of Court proceedings. Thus, I find that there were ample grounds on the basis of which a finding of contempt could have been made by the Constitutional Court. Grounds 2, 3 and 4 therefore fail.

[27] As a consequence of the above analysis and findings, I find that this appeal is without merits. It is dismissed accordingly in its entirety.

Dodin JA

I agree

F. MacGregor

President of the Court of Appeal

Signed, dated and delivered at Ile du Port on 10th day of September, 2019.