

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE P.N.RAVINDRAN
&
THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU**

TUESDAY, THE 1ST DAY OF NOVEMBER 2016/10TH KARTHIKA, 1938

Cont.Cas.(Crl.).No. 1896 of 2016 (S) IN WP(Crl.).351/2016

PETITIONER:

SUO MOTU

BY SPL. GOVERNMENT PLEADER SRI.N.MANOJ MUMAR FOR ADVOCATE GENERAL

RESPONDENT:

**ADV.SRI. C.K.MOHANAN,
(FATHER'S NAME AND AGE NOT KNOWN TO THE PETITIONER),
CHAMBER NO.758, KHCAA CHAMBER BUILDING,
NEAR HIGH COURT, ERNAKULAM, COCHIN-682 031.**

**THIS CONTEMPT OF CASE (CRIMINAL) HAVING BEEN FINALLY HEARD ON
01-11-2016, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

vpv

"C.R."

**P.N. Ravindran &
Dama Seshadri Naidu, JJ.**

C.O.C.(Crl) No.1896 of 2016

Dated this the 1st November, 2016

JUDGMENT

P.N. Ravindran, J.

The Kerala High Court Bar is excellent and exemplary—both erudite and polite—almost to a point of perfection. Yet one lawyer has tried to hold the whole system to ransom. Our efforts to make the erring counsel see reason having failed, we have undertaken this unpleasant task of holding a member of the Bar guilty of contempt. We are animated by only a single objective: The canker of contemptuous conduct should not eat into the vitals of this august institution. And, in that process, the Bar's blemishless image should not be sullied. We will, now, see how this sordid saga has unfolded.

24.10.2016:

2. This contempt case was registered suo-motu in the wake of the events that transpired in this court on 24.10.2016, when W.P.(Crl) No.351 of 2016, a writ petition filed by Sri N.D.Balaram through Sri C.K.Mohanan, learned counsel of this court, came up for hearing at about 12.55 p.m. on 24.10.2016. The relief sought in

W.P.(CrI) No.351 of 2016 filed by Sri N.D. Balaram is a writ of habeas corpus commanding respondents 1 to 4 therein to produce the body of his daughter Ms. Parvathy, aged 20 years, in this court and to hand over her custody to him.

3. By order passed on 23.9.2016 in that writ petition a Division Bench of this court, to which, one of us (P.N.Ravindran, J.) was a member, after interacting with Sri N.D. Balaram, his wife Smt. Sreelatha, respondents 5 to 7 in the writ petition and Ms. Parvathy, daughter of Sri N.D.Balaram, passed an order to the effect that until the respondents in the writ petition file their counter affidavit and the writ petition is heard on the merits, the petitioner's daughter should reside at S.N.V. Sadanam, Ernakulam. The Bench also directed that the expenses in that regard shall be met by the petitioner. The detailed order passed in that regard is part of the records in W.P. (CrI) No.351 of 2016. By that order, this court also directed that the writ petition be again called on 29.9.2016. There was a further order to the effect that the second respondent in the writ petition, viz. Circle Inspector of Police, Alappuzha shall produce the petitioner's daughter in this court on 29.9.2016. As directed therein, W.P.(CrI)

No.351 of 2016 came up for consideration before a Division Bench of this court on 29.9.2016 and on that day it was adjourned to 4.10.2016 after interacting with the parties including the petitioner and his daughter. On 4.10.2016 it was adjourned to 7.10.2016 after interacting with the parties. W.P.(Cr)No.351 of 2016 thereafter came up for consideration on 7.10.2016. On that day it was adjourned to 13.10.2016, later to 17.10.2016 and thereafter to 24.10.2016. On that day, as on the earlier dates, Sri N.D. Balaram, the petitioner therein was present in person. When W.P.(Cr)No.351 of 2016 was taken up at about 12.55 p.m., Sri C.K.Mohanan, learned counsel sought an adjournment of the writ petition till 3 p.m. on the ground that he has a sore throat. At that stage we asked Sri N.D. Balaram, the petitioner in W.P.(Cr) No.351 of 2016 with whom this court was regularly interacting, about the present state of affairs. He then stated that he does not want Sri C.K.Mohanan, learned counsel, to appear for him any longer.

4. When we brought to the notice of Sri C.K.Mohanan that the petitioner in W.P.(Cr) No.351 of 2016 does not want him to continue to appear as his counsel, Sri C.K. Mohanan stated (alleged

sore throat notwithstanding) in a loud, derisive voice that it is not possible for this court to interfere in the matter and if at all the petitioner does not want him to appear, he should have expressed his desire to engage another counsel, to him first. He thereafter proclaimed in a loud voice that he will not permit it and went on challenging the court. My learned brother Naidu, J. intervened and cautioned Sri C.K.Mohanan that his conduct amounts to contempt of court. He thereupon stated in a loud voice that he is willing to face the consequences and he does not care. This court thereupon, as the lunch recess was due, passed the following orders and adjourned consideration of the matter to the post lunch session:

"Dama Seshadri Naidu, J.

The learned counsel for the petitioner has been utterly contumacious in his conduct. He has hurled abuse at the court, apart from displaying utmost disrespect to the court. Subject to my learned brother's consent, we may explore why Section 14 of Contempt of Courts Act cannot be invoked. Let the proceedings follow in the afternoon.

P.N. Ravindran, J

When this writ petition was taken up at 12.55 p.m. today,

the petitioner who was present in person stated that he does not want Sri. C.K. Mohanan, the counsel engaged by him to appear for him any longer. When we brought this to the notice of Sri.C.K.Mohanan, learned counsel, he said that it is not possible for this court to interfere in the matter and that the party should have expressed his desire to engage another counsel to him first. He thereafter started reacting in a loud voice. He also stated that he will not permit it. My learned brother Naidu, J. thereupon intervened and cautioned him, that his conduct amounts to contempt of court. My learned brother has also passed an order to the effect that this court should explore whether contempt of court proceedings can be initiated against Sri.C.K. Mohanan, learned counsel, for his intemperate behaviour in this court. Having regard to the statements made by Sri. C.K. Mohanan, I fully concur with the view taken by my learned brother. Call again after lunch.”

5. After this court resumed sitting in the post lunch session on 24.10.2016, we asked Shri C.K. Mohanan, learned counsel, who was present in court as to whether he has anything to say in the matter as we propose to initiate action against him under section 14 of the Contempt of Courts Act, 1971 and other enabling provisions. Learned counsel then submitted that the court may go ahead as proposed

and that he proposes to initiate contempt action against my learned brother, Naidu, J. that day itself. Sri C.K.Mohanan, learned counsel also handed over to us the print out of an article written by Prof. Upendra Baxi, which was published in the weekly named 'Outlook' and contains a reference to the request for transfer made by my learned brother Naidu, J. to his home State. He repeatedly threatened that he would initiate contempt action against my learned brother Naidu, J. that day itself.

6. To a query from one of us (P.N.Ravindran, J.) as to how the article written by Prof. Upendra Baxi is relevant, Sri C.K.Mohanan stated that if the statements therein are incorrect and false, my learned brother or this court should have initiated action against the author of the article and its publisher. He also submitted that the failure to do so shows the inability of the judge to initiate contempt proceedings, even though the character of the judge has been assailed in that article. While I began dictating the order, dt. 24.10.2016, Sri C.K.Mohanan left the court with a gesture that he wanted to have a glass of water and would come back afterwards. He came back a few minutes later, while the dictation was in

progress. Sri C.K.Mohanan also stated in the post lunch session that judges should not encourage such backdoor practices, meaning thereby, the practice of parties changing counsel midway, without approaching the counsel engaged in the first instance.

7. After taking into consideration the events that transpired in this court on 24.10.2016 and the conduct of Sri C.K.Mohanan, learned counsel appearing for the petitioner in W.P.(CrI) No.351 of 2016 on that day, after extracting the previous orders, as have been mentioned above, we passed the following order:

“ . . .

3. Sri Mohanan also stated in the post lunch session that Judges should not encourage such backdoor practices, meaning thereby, the practice of parties changing counsel midway without approaching the counsel engaged in the first instance. Even assuming that the petitioner should have first met his counsel and requested him for a no objection certificate to engage another counsel, that by itself is not, in our opinion, a reason which would justify the intemperate conduct on the part of Sri C.K.Mohanan when the statement made by the petitioner in person in that regard was brought to his notice. We did not, when we alerted the learned counsel for the petitioner about the statement made by the party, intend to interfere with his rights

as a counsel. We were only informing the petitioner's counsel that the petitioner does not want him to appear for him any longer. True to the traditions of the profession he ought to have in our opinion made a submission that he will look into the matter, talk to his client and revert back to the court later. He ought to have, in our opinion, in the light of the statement made by the petitioner, voluntarily and with grace, conceded to give a no objection certificate. Instead of upholding the traditions of the noble profession, he raised his voice (as he is even now doing while this order is being dictated) and disrupted the proceedings of the court. He even threatened in a derisive voice to initiate contempt proceedings against my learned brother, Naidu, J..

4. Having regard to the contumacious conduct of Sri C.K. Mohanan, learned counsel in court today which was being repeated even when this order was being dictated, as also his conduct in relying on the article written by Sri Upendra Baxi, which has nothing to do with this case or the events that transpired in this court, we deem it appropriate to initiate proceedings against him under section 14 of the Contempt of Courts Act, 1971 read with section 345 of the Code of Criminal Procedure, 1973 and other enabling provisions in that regard. We also deem it appropriate to place on record the fact that Sri C.K. Mohanan, learned counsel for the petitioner did not, at any point of time before this order was dictated or while it was being

dictated, express regret or tender apology. Sri C.K.Mohanan, learned counsel for the petitioner has in our opinion scandalised and lowered the authority of this court and has also interfered with the due course of a judicial proceeding. We accordingly find him guilty of having committed criminal contempt of this court and call upon him to file his defence, if any, in answer to the said charge on or before 27.10.2016.

5. Registry shall register a suo motu case and issue notice by special messenger to Sri C.K.Mohanan, Advocate, enclosing a copy of this order, calling upon him to file his defence, if any, in answer to the charge that he has today committed criminal contempt of this court, on or before 27.10.2016. Though Sri C.K.Mohanan prayed for two weeks time to file his answer to the charge and stated that heavens will not fall if two weeks time is granted, having regard to the fact that contempt was committed in the presence of this court and during the hearing of this writ petition, we find no reason or justification to grant two weeks time to Sri C.K.Mohanan to file his defence to the charge. However, having regard to the fact that Sri C.K.Mohanan, the person charged with contempt, is a lawyer practicing in this court and has undertaken to appear in person on the next posting date, we do not deem it necessary to detain him in custody or to pass any order or direction to ensure his presence in this court on the next posting date. Call on 27.10.2016.”

8. By that order, this court initiated proceedings against Sri C.K.Mohanan for criminal contempt of this court and called upon him to file his defence, if any, in answer to the charge that he has committed criminal contempt of this court, on or before 27.10.2016. Registry of this court was directed to register a suo-motu case, issue notice by special messenger to Sri C.K.Mohanan enclosing with it a copy of the order passed on 24.10.2016 and call upon him to file his defence, if any, in answer to the charge that he has committed criminal contempt of this court, on or before 27.10.2016. Though at that time, Sri C.K.Mohanan had prayed for two weeks' time to file his defence in answer to the charge and also stated that "heavens will not fall if two weeks' time is granted", having regard to the fact that contempt was committed in the presence of this court and during the hearing of W.P.(Crl) No.351 of 2016, we declined to grant that request. It was pursuant thereto, the instant contempt case was registered.

27.10.2016:

9. When the instant contempt case came up on 27.10.2016, Sri C.K. Mohanan was not present in this court. He was also not

present when W.P.(CrI) No.351 of 2016 was taken up, immediately before this case was taken up on that day. In that case, Sri C.K. Mohanan, learned counsel appearing for the petitioner therein, was represented by Sri T.M.Sunil, learned counsel of this court who represented that Sri C.K.Mohanan has started from Thrissur and is on the way to this court. He also submitted that the petitioner in W.P. (CrI) No.351 of 2016 has not approached Sri C.K.Mohanan for a no objection certificate or consent letter even though he had expressed his desire to engage another counsel, in this court on 24.10.2016.

10. When we took up this contempt case, as Sri T.M.Sunil, learned counsel who represented Sri C.K.Mohanan in W.P.(CrI) No.351 of 2016, was present, we asked him whether he had been instructed to appear for Sri C.K.Mohanan in this case. Sri T.M.Sunil then submitted that he had not been instructed to appear in this case but only to represent Sri C.K.Mohanan, when W.P.(CrI)No.351 of 2016 was taken up. In view of the fact that the notice had not been served on Sri C.K.Mohanan from this court, we adjourned the contempt case to 28.10.2016. The order passed by this court on 27.10.2016 is extracted below:

“This contempt case was registered pursuant to the orders passed by this court on 24.10.2016 in W.P.(Cr.)No.351 of 2016. After passing that order whereby we called upon Sri.C.K.Mohanan, a lawyer practicing in this court and was appearing for the petitioner in W.P.(Cr.)No.351 of 2016, to file his defence if any to the charge that he had committed criminal contempt of this court on 24.10.2016. We had also recorded the statement made by him that he will be present in this court today.

2. The process server deputed from this court pursuant to the order passed by this court on 24.10.2016 in W.P.(Cr.) No.351 of 2016 has reported that notice could not be served on Sri.C.K.Mohanan for the reason that his office was locked. Be that as it may, Sri.C.K.Mohanan was not present in this court when this petition was taken up today at 11.10 am. As the order passed by this court on 24.10.2016 was passed in his presence and he was aware of it, even without a formal notice being served on him from this court, as a counsel of this court, he had a duty to be present today. It is relevant in this context to note that W.P.(Cr.)No.351 of 2016 was listed as item No.4 in today's cause list, this case being item No.5. When that writ petition was taken up, Sri.C.K.Mohanan, learned counsel, was not present but on his behalf, Sri.T.M.Sunil, learned counsel of this court represented that the petitioner in that writ petition has not approached Sri.C.K.Mohanan for a no objection certificate or

consent letter after he expressed his desire to engage another counsel in this court on 24.10.2016. Sri.T.M.Sunil, learned counsel also submitted that Sri.C.K.Mohanan has started from Thrissur and he is on the way to this court. After this case was taken up, since Sri.T.M.Sunil, learned counsel who represented Sri.C.K.Mohanan in the previous case namely W.P.(CrI.)No.351 of 2016 was present, we asked him whether he has been instructed to appear for Sri.C.K.Mohanan in this contempt case. Sri.T.M.Sunil thereupon stated that he has not been instructed to appear in this case but only to represent Sri.C.K.Mohanan when W.P.(CrI.)No.351 of 2016 is taken up.

3. Sri.C.K.Mohanan, learned counsel practicing in this court, is aware that the proceedings of this court commence at 10.15 am. It is evident from the fact that he was not present when W.P.(CrI.)No.351 of 2016 was called and he is also not present in person or through counsel in this case notwithstanding the fact that he is aware of the posting of this case and he had also undertaken in W.P.(CrI.)No.351 of 2016 to be present today, we are satisfied that he has deliberately kept away from this court today. However, before we proceed further and pass orders to ensure his appearance, we deem it appropriate, having regard to the fact that the person charged with contempt is a lawyer practicing in this court, to give him another opportunity to appear in this court in person even without coercive steps being invoked. We accordingly adjourn

this case to tomorrow so as to enable the person charged with contempt namely Sri.C.K.Mohanan, learned counsel of this court, to be present in person tomorrow.

Call tomorrow.”

28.10.2016:

11. On 28.10.2016, when this case was taken up, Sri C.K.Mohanan, the respondent herein, was present in person in the robes of a lawyer and he prayed for two weeks' time to file his defence in answer to the charge. When we pointed out to Sri C.K.Mohanan that he cannot appear in the robes of a lawyer, he asked us to point out to him the provision of law which prohibits him from doing so. He submitted that in the absence of any prohibition on a lawyer, who is a party to the litigation, from appearing in the robes of a lawyer, it is embarrassing for him to remove the robes of a lawyer. He also stated that he will go, remove the lawyer's robes and come back half an hour later. He stated that though he has not seen the order passed by this court on 24.10.2016, "someone" told him that certain things which were dictated in open court do not find a place therein. He stated that he was told that in the order dictated

in open court, there was a statement that he had abused two Government Pleaders, but he has been told that it is not there in the final order. After considering his request for two weeks' time to file his defence in answer to the charge, we rejected it by order passed on 28.10.2016 and called upon him to file his answer to the charge by 31.10.2016. He was also directed to be present in person on that day. We had in the said order also referred to the fact that the conduct of Sri C.K.Mohanan continues to be contumacious and he appears to be bent on further ridiculing this court. The order passed by this court on 28.10.2016 is extracted below:

“When this case was taken up today, the respondent who was present in person in lawyer's robes, prayed for two weeks' time to file his answer to the charge. He stated that notice has not so far been served on him from this court, that he is not aware of the charges levelled against him and that he proposes to engage a lawyer from Madras. The records disclose that the process server deputed from this court could not serve notice on the respondent for the reason that his office was locked.

2. When we pointed out to the respondent that he cannot appear in the robes of a lawyer when he is appearing in person, he asked us to point out to him the provision of law which prohibits him from doing so. He submitted that in the absence

of any prohibition on a lawyer, who is a party to the litigation, from appearing in the robes of a lawyer, it is embarrassing for him to remove the robes of the lawyer. He also stated that he will go, remove his robes and come back half an hour later. He also stated that though he has not seen the order passed by this court on 24.10.2016, 'someone' told him that certain things which were dictated in open court do not find a place therein. He stated that he was told that in the order dictated in open court, there was a statement that he had abused two Government Pleaders, but he has been told that it is not there in the final order. It is relevant in this context to note that it was in the presence of the respondent that orders were passed on 24.10.2016. It is true that when the order was dictated in open court on 24.10.2016, we had referred to the fact that Sri. C.K. Mohanan had abused Sri. K.B. Ramanand and Sri. Johnson, learned Government Pleaders attached to this court, about a month back. As that conduct was not relevant and that was not the reason why we initiated action against the respondent for contempt of court, we deleted that portion of the order which was dictated in open court when the order was finalised.

3. In our opinion, the conduct of the respondent continues to be contumacious and he appears to be bent on further ridiculing this court. He has not shown any remorse. It is evident from the conduct of the respondent that he does not

propose to file his defence in answer to the charge. The time granted by this court for that purpose has already expired. His request for two weeks' time to file objections was rejected by us on 24.10.2016. Though this case was called yesterday, since the respondent was not present in person and there was no appearance on his behalf, the case was adjourned to today, so as to enable him to appear in person. Today, the response of the respondent is as stated above. However, notwithstanding the fact that the respondent appeared today in the robes of a lawyer though he is not entitled to do so and his response was as stated above, we deem it appropriate to grant the respondent time till 31.10.2016 to file his answer to the charge. To a query from us as to whether he will be present in this court in person on 31.10.2016, the respondent stated that he will be present in person on 31.10.2016. In the light of the aforesaid submission and undertaking, we do not deem it necessary to pass an order or direction to ensure the respondent's presence in this court on Monday 31.10.2016. Registry shall forthwith serve notice of the contempt case on the respondent.

Call on 31.10.2016."

31.10.2016:

12. Since this Bench did not sit on 31.10.2016, the case was adjourned to today.

01.11.2016:

13. Today, when the case was taken up, Sri C.K.Mohanan, the respondent in the instant case again appeared in the robes of a lawyer. He also handed over to us a petition dated 17.10.2016. As the instant contempt case was registered only by order passed on 24.10.2016, we are left wondering as to how a petition dated 17.10.2016 can be filed in this case. Be that as it may, the prayer therein is to grant him two weeks' time to consult his lawyer from Madras, prepare his defence, and file it before this court. He has in the said petition which is not supported by an affidavit, stated that nobody from the Kerala High Court Bar Association is willing to appear for him in this case and therefore, he has no other alternative but to engage a senior lawyer from the High Court Bar Association, Madras. A copy of the said petition handed over to us, but not filed in this court is attached to this order.

14. Today also when we pointed out to Sri C.K.Mohanan, the respondent in the instant contempt case, that he cannot appear in the robes of a lawyer, he being a respondent in the instant contempt case who is charged with contempt, he stated that there is no

provision of law which prohibits him from appearing in the robes of a lawyer. He also stated that a few days back, one of us (P.N.Ravindran, J.), had dismissed one of his cases. Mr. C.K. Mohanan posed the question "why you dismissed my earlier case." He further stated that his client had not asked for a no objection certificate and "it was 'you' who instigated him". He stated that we asked him and insisted that he should give a no objection certificate. He also stated that he has not committed any contempt and that he has already explained that there is no provision requiring him to remove the robes of a lawyer.

15. Today also the respondent did not show any remorse. He did not also express any regret. He went on to state that the exact words by which this court was abused have not been stated in the order passed by this court on 24.10.2016.

Robes:

16. The question is whether an Advocate can argue a case in his robes when he is a party to the proceedings.

17. In 'Barrister-at-law' by Merchant¹, it is said that 'Barristers

¹ As quoted in T. Venkanna v. The Hon'ble High Court of Mysore

cannot be heard in court as Advocates unless they are robed' and a 'Barrister' who is a litigant cannot appear both as counsel and as litigant and that he must elect either to conduct the case entirely as litigant in person or to abandon the case entirely to his counsel. In 'Conduct and Etiquette at the Bar' by W.W.Boulton², it was observed: "Whilst a member of the Bar is entitled, like any other member of the public, to appear in person, it is improper for him, whether instructed professionally or not, to appear also as a counsel in a case in which he himself is a party, i.e., to wear robes or to sit in counsel's seats. It was further observed that a Barrister appearing in person has no more rights than any other complainant and he only differs from any other member of the public, when he is instructed by a solicitor on behalf of a client.

18. Similar in effect is the decision of the House of Lords in *New Brunswick and Canada Rly. and Land Co. Ltd. v. Conybeare*³. The House of Lords did not accede to a Barrister's request to permit him to appear as a junior counsel and be heard in his own behalf. The court has held that the Barrister must argue his own case in

² Ibid

³ (1862) 31 LJ Ch 297

person or appear by counsel.

19. In *Vidya Verma v. Shiv Narain*⁴, a counsel wanted to appear as the next friend of the petitioner—without a power-of-attorney. The Apex Court refused to hear him while he was in robes.

20. In *T. Venkanna v. The Hon'ble High Court of Mysore*⁵, the petitioner, a practicing Advocate, wanted to argue his own cause. The Division Bench hearing the matter informed him to disrobe himself and then address the court. The petitioner, however, insisted that he should be heard without being required to remove his gown. The court had to consider two questions: (1) Can an advocate in robes present a case to which he is party? (2) Can he be allowed to argue from the advocates' table?

21. The court has acknowledged that there is no provision under the Advocates Act or the Rules that an Advocate appearing before the court, when he argues his own case, should remove his gown. Considering *Vidya Verma* and the scholarly commentaries referred to above, the Division Bench has held that the practice in India has been that where an Advocate is himself a litigant and

⁴ AIR 1956 SC 108

⁵ AIR 1973 Mysore 127

appeared as a litigant in person, he must not address the court from the Advocates' table or with robes on, but from the same place and in the same way as an ordinary member of the public. The Bench has further pointed out that the word 'practice' means 'the exercise of a profession' and when an Advocate is a litigant in person, he does not practise his profession; therefore, he cannot be permitted to argue with his robes on from the Advocates' table. But he can address the court from the same place and in the same way as an ordinary member of the public.

22. High Court on its own Motion vs. N.B.Deshmukh⁶ was a contempt case registered by the High Court of Bombay suo-motu against an Advocate. The contemner therein raised a similar contention as that of the petitioner herein stating that he shall appear in person in the robes of an Advocate. The respondent/contemner was informed that since he was appearing pursuant to a show-cause notice issued to him for having committed criminal contempt, he may appear as an ordinary litigant and not in robes. However, he declined to abide by the suggestions of the

⁶ 2011 (2) Mh.L.J., 273

Division Bench and contended that he was a practising Advocate of the court and he was well within his rights to appear in robes and if he failed to appear in robes, he may face disciplinary proceedings for having failed to abide by the dress code prescribed by the Bar Council.

23. The respondent/contemner therein contended that if he failed to appear in his robes, he would be violating the Dress Code Regulation, Then, the Division Bench pointed out that the Dress Code is for the persons who have been granted "Sanad" to practice as an Advocate appearing for the litigant and when the Advocate himself is either espousing his own cause in the proceedings before the court or facing contempt action, as per the long standing convention; which has taken the colour of rule of law, he cannot appear as an Advocate before the court, but may appear as an ordinary litigant in person. Such person cannot claim any privileges available to Advocates appearing for the litigants before the court and cannot be permitted to appear in robes before the court. The Division Bench of the Bombay High Court agreed with the view taken by the High Court of Mysore in the case of T.Venkanna (supra).

24. The High Court of Gujarat in the case of Vinayakrao S.Desai vs. Interlink Petroleum Ltd., & Ors.⁷, took a similar view: A person cannot appear or plead before a court of law in dual capacity, one as party and other as an Advocate and if an Advocate is appearing as party-in-person, he should in order to maintain the norms and decorum of the legal profession, appear before the court of law as party in person taking off the band and robes prescribed for legal practitioner.

25. In Major K. Mathews (Retd) v. Registrar General, High Court of Judicature at Madras⁸, P.Sathasivam, J. (as His Lordship then was) held, relying on the decision of the High Court of Mysore in T. Venkanna (supra) that litigants/parties appearing in person before courts for their own causes cannot claim the same privileges/rights given to members of Bar/Advocates and they cannot occupy/use the chairs, tables provided for the Advocates. It was held that they are however entitled to be provided with a convenient place to address the court and highlight their cause and that no one is entitled to prevent/obstruct the litigant/parties appearing in

⁷ 2001 (3) GLR 2649

⁸ AIR 2003 Madras 411

person.

26. The issue again arose for consideration before the High Court of Karnataka in *M.C.S. Barna v. C.B.Ramamurthy*,⁹ wherein a learned single judge of the Karnataka High Court took a similar view. In *R. Muthukrishnan v. Union of India*¹⁰, the latest in this series of judgments, the High Court of Madras, after examining almost all the above decisions, has refused to hear the counsel appearing in person so long as he remained in advocate-robos.

27. In such circumstances, we hold that the respondent herein, who has been charged with criminal contempt of this court, is not entitled to appear in the robes of a lawyer. His refusal to remove the robes of a lawyer and address this court as a party in person, in our opinion, aggravates the contempt committed by him.

Defence:

28. The respondent has not so far filed his defence. He is not even prepared to address the court as a party in person. Having regard to the facts stated above and the conduct of the respondent, we are of the opinion that his request for two weeks' time to file

⁹ 2002 Cr.L.J. 2859

¹⁰ 2014 (8) MLJ 1

his defence in answer to the charge cannot be entertained. Apart from the respondent's ipse dixit, there is nothing on record to show that no lawyer of this court is willing to appear for him. The statement in the petition handed over to us to day (as stated in para 13 above) is that "no lawyer from Kerala High Court Bar Association is willing to appear for him in the above case". He has no case that no lawyer from any other Bar Association in the State of Kerala is willing to appear for him. His case is that members of the Kerala High Court Bar Association are not willing to appear for him. In such circumstances, we are satisfied that the respondent's request for two weeks time from today to file his defence in answer to the charge is not bonafide. If, as stated by the respondent when the case was taken up today, there is no basis for proceeding against him under the Contempt of Courts Act, 1971, being a lawyer, the respondent could have in our opinion filed his defence in answer to the charge by now. We accordingly reject the respondent's request for further time to file his defence in answer to the charge.

Malicious Methods:

29. The order passed by this court on 24.10.2016, in the

respondent's presence, sets out the circumstances which led to the registration of the instant contempt case and also the charge against him. He has also been given reasonable opportunity to file his defence in answer to the charge. As stated earlier, the conduct of the respondent even after he was charged with contempt on 24.10.2016 is contumacious. Even today he did not express any feeling of regret. He was not even prepared to address the court as a party in person. It is also relevant in this context to note that action in contempt was initiated against the respondent by this court by order passed on 24.10.2016 not only because he had raised his voice and shouted at us, when we brought to his notice that his client desires to engage another counsel, but also for the reason that he had levelled allegations against one of us (Naidu, J.) relying on an article written by Prof. Upendra Baxi. This was after this court had passed an order before the court rose for the lunch recess, to the effect that this court should consider whether the power under section 14 of the Contempt of Courts Act cannot be invoked.

30. Relying on that article, the respondent stated that Naidu, J. or this court did not initiate contempt proceedings against the author

of the article or the printer or publisher even though the character of the judge had been assailed. He also left the court with a gesture that he wanted to have a glass of water and he came back a few minutes later, while the order passed on 24.10.2016 was being dictated. He even threatened to initiate contempt proceedings against Naidu, J. Even when this order was being dictated, there were frequent interruptions by the respondent and he even stated in a derisive manner "Mr.Naidu, you are a gentleman".

31. It is evident from the facts stated above that the respondent, who is a lawyer of this court and of whom responsible behaviour is expected, has with impunity, time and again, questioned the very authority of this court to conduct the proceedings. He did not also express any feeling of remorse or regret. He was not even willing to orally tender an apology. In such circumstances, we are left with no other alternative than to punish the respondent for criminal contempt of this court, committed by him on 24.10.2016.

Pain and Anguish:

32. In R.K. Anand v. Delhi High Court¹¹, the Hon'ble Supreme

¹¹ [(2009) 8 SCC 106

Court has, with considerable pain, expressed its concern (in para 333, SCC) at the falling professional norms among the lawyers. The court has strongly felt that unless the trend is immediately arrested and reversed, it will have very deleterious consequences for the administration of justice in the country. No judicial system in a democratic society can work satisfactorily unless it is supported by a Bar that enjoys the unqualified trust and confidence of the people, that shares the aspirations, hopes and the ideals of the people and whose members are monetarily accessible and affordable to the people.

33. In Ministry of Information & Broadcasting, In re¹² the Apex Court has eloquently observed:

“20. [N]o service will be too small in making the system efficient, effective and credible. The casualness and indifference with which some members practise the profession are certainly not calculated to achieve that purpose or to enhance the prestige either of the profession or of the institution they are serving. If people lose confidence in the profession on account of the deviant ways of some of its members, it is not only the profession which will suffer but also the administration of justice as a whole. The present trend unless checked is likely to lead to a stage when the system will be found wrecked from within before it is wrecked from outside. It is for the members of the profession to introspect and take the corrective steps in time and also spare the courts the unpleasant duty. We say no

¹² (1995) 3 SCC 619

more.”

34. In *Pritam Pal v. High Court of M.P.*¹³, the Supreme Court has quoted the concerns of other common law jurisdictions in containing the cankerous contempt of court:

“48. In *Morris v. Crown Office*¹⁴ Lord Denning, M.R. said: (All ER p. 1081b)

‘... The course of justice must not be deflected or interfered with. Those who strike at it strike at the very foundations of our society.’

49. In the same case, Lord Justice Salmon spoke: (All ER p. 1087b-c)

‘... The sole purpose of proceedings for contempt is to give our courts the power effectively to protect the rights of the public by ensuring that the administration of justice shall not be obstructed or prevented.’

50. Frankfurter, J. in *Offutt v. United States*¹⁵ expressed his view as follows: (US p. 14)

‘... It is a mode of vindicating the majesty of law, in its active manifestation, against obstruction and outrage.’

51. In *Jennison v. Baker*¹⁶ [(1972) 2 QB 52 : (1972) 2 WLR 429 : (1972) 1 All ER 997 (CA)] it is stated: (All ER p. 1006d)

‘... The law should not be seen to sit by limply, while those who defy it go free, and those who seek its protection lose hope.’¹⁷

¹³ 1993 Supp (1) SCC 529

¹⁴ (1970) 1 All ER 1079 (CA)

¹⁵ 348 US 11 (1954)

¹⁶ (1972) 1 All ER 997 (CA)

¹⁷ As quoted in *Amit Chanchal Jha v. High Court of Delhi*, (2015) 13 SCC 288

35. After making a comprehensive reference to all the above decisions, the Hon'ble Supreme Court in *Amit Chanchal Jha v. High Court of Delhi*¹⁸ has held that the power of contempt should not be lightly invoked by the court, particularly against a lawyer, but the fact remains that exercise of such power becomes necessary in the interest of public and also in the interest of due administration of justice.

36. In *Vinay Chandra Mishra, In re*¹⁹ the Supreme Court set out—illustratively if not exhaustively—the instances of contemptuous conduct in the face of the court: (a) to resent the questions asked by a Judge, (b) to be disrespectful to him, (c) to question his authority to ask the questions, (d) to shout at him, (e) to threaten him with transfer and impeachment, (f) to use insulting language and abuse him, (g) to dictate the order that he should pass, (h) to create scenes in the court, (i) to address him by losing temper.

Procedure to be Followed:

37. In *Leila David (6) v. State of Maharashtra*²⁰, on reference, a three-Judge Bench of the Hon'ble Supreme Court has resolved the

¹⁸ Ibid

¹⁹ (1995) 2 SCC 584

²⁰ (2009) 10 SCC 337

precedential tangle by observing that Section 14 of the Contempt of Courts Act no doubt contemplates issuance of notice and an opportunity to the contemnors to answer the charges in the notice to satisfy the principles of natural justice. However, where an incident of the instant nature takes place within the presence and sight of the learned Judges, the same amounts to contempt in the face of the court and is required to be dealt with at the time of the incident itself. This is necessary for the dignity and majesty of the courts to be maintained.

38. In *Daroga Singh v. B.K. Pandey*²¹, the Apex Court has highlighted the need and necessity of adopting summary procedure if the contempt is in the face of the court. Their Lordships have held (para 32, SCC) that the contempt proceedings have to be decided in a summary manner. The judge has to remain in full control of the hearing of the case and immediate action is required to be taken to make it effective and deterrent. Immediate steps are required to be taken to restore order as early and quickly as possible. Dragging the

²¹ (2004) 5 SCC 26

proceedings unnecessarily would impede the speed and efficiency with which justice has to be administered.

39. Daroga Singh quotes with approval the court's earlier decision in *Vinay Chandra Mishra, In re (supra)*, which elaborates on the procedure to be adopted:

"However, the fact that the process is summary does not mean that the procedural requirement viz. that an opportunity of meeting the charge, is denied to the contemner. The degree of precision with which the charge may be stated depends upon the circumstances. So long as the gist of the specific allegations is made clear or otherwise the contemner is aware of the specific allegation, it is not always necessary to formulate the charge in a specific allegation. The consensus of opinion among the judiciary and the jurists alike is that despite the objection that the judge deals with the contempt himself and the contemner has little opportunity to defend himself, there is a residue of cases where not only it is justifiable to punish on the spot but it is the only realistic way of dealing with certain offenders. . . The time factor is crucial. Dragging out the contempt proceedings means a lengthy interruption to the main proceedings which paralyses the court for a time and indirectly impedes the speed and efficiency with which justice is administered. Instant justice can never be completely satisfactory yet it does provide the simplest, most effective and least unsatisfactory method of dealing with disruptive conduct in court. So long as the contemner's interests are adequately safeguarded by giving him an opportunity of being heard in his defence, even summary procedure in the case of contempt in the face of the court is commended and not faulted."

40. Here Sri C.K. Mohanan has committed contempt in the face of the court—not only on the first day; in fact, on every subsequent day of hearing, too. He has, regrettably, transgressed the threshold of decency and decorum this noble profession demands. He has wilfully disregarded the court's directives, contumaciously conducted himself, and malevolently mocked at the court at every given opportunity. He has made us think that the enumerated instances of contempt in Vinay Chandra Mishra, In re can be committed all by one person.

41. Nevertheless, this court has provided Mr. C. K. Mohanan a handful opportunities either to place his defence on record or to purge himself of contempt, but to no avail.

Anguish:

42. Individuals—even judges—in a society permeated by the spirit of egalitarianism may not claim primacy. But institutions do. For an institution like judiciary, its integrity is inviolable. Judges, in theory, may possess the power of a giant; in practice, they always remind themselves that they need to lead a saintly life: stoical, tolerant, and forbearing. In the fathomless litigious quagmire, the

judges strain their every nerve to see that the innocent, the indigent, and the defenseless are extricated. The last thing judges want is their becoming the centre of any litigation. They are not rebels in robes. They, of course, react not for their sake but to uphold the rule of law, the majesty of justice, and the dignity of the institution—the last bastion of democracy.

43. Given the fact that we are handling habeas corpus jurisdiction, the court on every eventful day of this sordid saga remained packed with people, especially the consumers of the judicial services - the laypersons - who may have been watching till then in awe the proceedings and witnessing the majesty and dignity of the court. The image of the court, and the justice delivery system, has taken a severe dent on each passing day with the unabated aggression and hubris displayed by Sri C. K. Mohanan. Our efforts to dissuade him from precipitating the situation and holding the court to ridicule fell on deaf ears. Sadly, after thundering every sentence, Sri C.K.Mohanan would laugh uproariously and look around for approval. So much so for the conduct of a counsel and the image of an institution. We could have taken this conduct into our stride as an

isolated instance, but impertinence is infectious—and may inspire the younger generation, which always emulates the seniors at the Bar.

44. Some well-meaning members of the Bar intervened in the afternoon when the contemner moved an application to suspend the sentence; they wanted us to be lenient. If he is penitent, we are more than willing to be lenient, we said. They rushed out with hope, came back crest fallen, and reported that they had failed to make the contemner see reason. That sums up the contemner's conduct.

Conclusion:

Having concluded that Sri C. K. Mohanan is guilty of criminal contempt in the face of court and having regard to his still unrepentant conduct, we sentence him to undergo simple imprisonment for a term of three months and to pay a fine of Rs.1,000/- (Rupees One Thousand only). Registry shall take appropriate further steps as are required.

(P.N. Ravindran, Judge)

(Dama Seshadri Naidu, Judge)

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