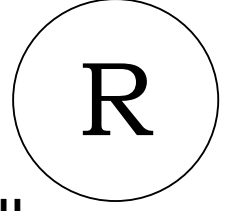




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IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 25TH DAY OF AUGUST, 2026
BEFORE
THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL
WRIT PETITION NO.23294/2022 (GM-CPC)

BETWEEN:

1. SRI. SATHISH N. VAIDYA
S/O NARAYANA VAIDYA
AGED ABOUT 52 YEARS
EDITOR OF KARAVALI ALE
HAVING OFFICE AT 400-C
BAIKAMPADY INDUSTRIAL AREA
MANGALURU-575011.
2. SMT. ROHINI SEETHARAM
W/O B.V. SEETHARAM
AGED ABOUT 58 YEARS
MANAGING DIRECTOR OF
CHITRA PUBLICATION PRIVATE LTD
HAVING ITS OFFICE 400-C
BAIKAMPADY INDUSTRIAL AREA
MANGALURU-575011.
3. SRI. B.V. SEETHARAM
AGED ABOUT 66 YEARS
DIRECTOR OF KARAVALI ALE
CHITRA PUBLICATION PRIVATE LTD
HAVING ITS OFFICE 400-C
BAIKAMPADY INDUSTRIAL AREA
MANGALURU-575011.
4. ARADHANA PRINTERS
HAVING ITS OFFICE 400-C
BAIKAMPADY INDUSTRIAL AREA
MANGALURU-575011





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A UNREGISTERED PROPRIETARY FIRM
SMT. ROHINI SEETHARAM.

...PETITIONERS

(BY SRI. VENKATESH R. BHAGAT, ADV.,)

AND:

MR. M.P. NORONHA
ADVOCATE AND NOTARY
S/O LATE J.M. NORONHA
AGED ABOUT 54 YEARS
R/A II FLOOR, ROYAL CHAMBERS
KODIALBAIL,
MANGALURU.

...RESPONDENT

(BY SRI. I. THARANATH POOJARY, SR. COUNSEL FOR
SRI. CYRIL PRASAD PAIS, ADV., FOR C/R)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO CALL FOR THE RECORDS PERTAINING TO IMPUGNED ORDER DATED 03.11.2022 IN MISC.APPEAL NO.22/2021 PASSED BY THE VI ADDL. DISTRICT AND SESSIONS JUDGE, D.K. MANGALURU AT ANNEXURE-A. QUASHING THE IMPUGNED ORDER DATED 03.11.2022 IN MISC. APPEAL NO.22/2021 PASSED BY THE VI ADDL. DISTRICT AND SESSIONS JUDGE, D.K. MANGALURU PRODUCED AT ABOVE AS ANNEXURE-A & ETC.

THIS PETITION HAVING BEEN HEARD AND RESERVED ON 19.08.2026, COMING ON FOR PRONOUNCEMENT OF ORDER, THIS DAY, THE COURT MADE THE FOLLOWING:



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CORAM: HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

CAV ORDER

This writ petition is filed challenging the order dated 03.11.2022 passed in M.A.No.22/2021 by the VI Additional District and Sessions Judge, D.K.Mangaluru (for short 'the Appellate Court').

2. Sri.Venkatesh R.Bhagat, learned counsel appearing for the petitioners submits that the Appellate Court has passed the impugned order without considering the material on record in its proper perspective. It is submitted that the Appellate Court has recorded an incorrect finding that the Trial Court cannot exercise its discretion to punish the contemnor in a different manner than the one prescribed under the law. It is further submitted that the Trial Court has rightly exercised the discretion and ordered to tender an unconditional apology and the same was complied by the petitioners. Hence, the interference by the Appellate Court by directing the



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petitioners to undergo imprisonment in a civil prison for a period of 3 months is unwarranted. It is also submitted that when the order directing to tender the apology has already been complied, the order of the Appellate Court is not sustainable. It is contended that after tendering of the apology by the petitioners, they have not published any defamatory contents against the respondent and this Court, while granting an interim relief, ordered to deposit Rs.2,00,000/-, which is in the form of compensation and the said amount may be released in favour of the respondent by setting aside the impugned order. It is further contended that the petitioners are now also ready to tender another apology if the Court directs. Hence, he seeks to allow the petition.

3. *Per contra*, Sri.I.Tharanath Poojary, learned Senior counsel for Sri.Cyril Prasad Pais, learned counsel for the respondent supports the impugned order passed by the Appellate Court and submits that the Appellate Court



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has passed the impugned order after rightly appreciating the scope of law. It is submitted that the Appellate Court has rightly appreciated the scope of Order XXXIX Rule 2A of the Code of Civil Procedure, 1908 (for short, 'the CPC'), which clearly indicates that any disobedience shall be punished either by imprisonment or attachment of property and there is no scope for any other form of punishment. It is further submitted that the Trial Court, extending beyond the scope of the aforesaid Rule, has directed the petitioners to tender an apology which has rightly been interfered with by the Appellate Court. It is also submitted that the power under Order XXXIX Rule 2A of the CPC, to impose punishment is different from Section 12 of the Contempt of Courts Act, 1971, wherein tendering of apology is provided by the statute. It is contended that the petitioners had not challenged the finding of the Trial Court that they have violated the order of temporary injunction by publishing the defamatory material and the issue involved in the present petition is only with regard to



the scope of punishment to be imposed under Order XXXIX Rule 2A of the CPC and the Appellate Court has rightly corrected the said error committed by the Trial Court, which does not call for any interference. It is also contended that the so-called apology tendered by the petitioners is not unconditional and they have not expressed any remorse in the said apology. It is submitted that this submission is made only to show that the conduct of the petitioners and any publication of apology would not render the appeal filed by the respondent or the impugned order invalid as the appeal filed by the respondent is within time. It is further submitted that the scope of enquiry under Article 227 of the Constitution of India is very limited and the impugned order does not suffer from any error on law or on facts, hence, the same does not call for any interference. It is also submitted that the respondent is a Senior practicing advocate of the Mangalore Bar and if the writ petition is allowed and any indulgence is shown, it would amount to



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allowing the petitioners to take the law into their hands and approving their act of willful disobedience of the temporary injunction granted by the Trial Court. In support of his contentions, he placed reliance on the following decisions:

a) SAMEE KHAN Vs. BINDU KHAN¹

b) DEEPAK GUPTA Vs. SANTOSH KUMAR JAIN AND OTHERS²

c) BAL KISHAN GIRI Vs. STATE OF UTTAR PRADESH³

d) STATE OF MADHYA PRADESH Vs. CENTRE FOR ENVIRONMENT PROTECTION RESEARCH AND DEVELOPMENT AND OTHERS⁴

Hence, he seeks to dismiss the petition.

4. I have heard the arguments of the learned counsel for the petitioners, learned Senior Counsel for the respondent and meticulously perused the material

¹ (1998) 7 SCC 59

² 1977 SCC Online Raj 444

³ (2014) 7 SCC 280

⁴ (2020) 9 SCC 781



available on record. I have given my anxious consideration to the submissions advanced on both the sides.

5. The point that arises for consideration in this petition is:

"Whether the Trial Court can impose penalty other than the penalty provided under Order XXXIX Rule 2A of the CPC?"

6. The aforesaid question is answered in the negative for the following reasons:

a) The material on record indicates that the respondent filed a suit in O.S.No.171/2014 seeking the relief of permanent prohibitory injunction restraining the defendants, their men, servants, agents, or anybody claiming through or under them from making/publishing defamatory statements or any statements photos, pictures, articles relating to the plaintiff. In the said suit, the respondent-plaintiff filed an application under Order



XXXIX Rule 1 and 2 of the CPC seeking to pass an order of temporary prohibitory injunction against the defendants and their agents from publishing any defamatory material.

b) The Trial Court, after considering the various contentions, granted the said temporary prohibitory injunction vide order dated 10.04.2015 restraining the petitioners and other defendants from making/publishing defamatory statements or any statements photos, pictures, articles relating to the plaintiff. The said order was assailed by the defendants in M.A.No.5/2015, which was dismissed by confirming the order of the Trial Court.

c) The material further indicates that the petitioners, in violation of the aforesaid order of temporary prohibitory injunction, published a defamatory article tarnishing the reputation of the respondent-plaintiff in their Karavali Ale Newspaper dated 18.04.2015. The respondent-plaintiff filed Misc.Case.No.12/2015 under Order XXXIX Rule 2A of the CPC on 29.04.2015 seeking to



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punish the petitioners for violating the order of temporary prohibitory injunction. The Trial Court considered the said petition and proceeded to pass the order dated 24.09.2021 directing the petitioners to tender an unconditional apology within 30 days from the date of the order through their 'Karavali Ale' news daily publication and in default, to undergo civil imprisonment for 15 days. After the said order, the petitioners vide the 'Karavali Ale' newspaper dated 22.10.2021 tendered an apology. It is to be noted that the finding of the Trial Court on the disobedience of the order of temporary injunction by the petitioners, was not challenged by the petitioners and the same has attained finality. The respondent-plaintiff, on the other hand, assailed the order of the Trial Court by filing an appeal in M.A.No.22/2021 on the ground that the Trial Court has exceeded the scope of Order XXXIX Rule 2A of the CPC, by directing the petitioners to tender an apology instead of punishing them for disobedience. The Appellate Court considered the said application and also



the material on record and proceeded to allow the same vide the impugned order dated 03.11.2022 directing the petitioners to be detained in a civil prison for a period of three months.

d) In order to appreciate the contentions raised by the learned counsels for the parties, it would be useful to extract Order XXXIX Rule 2A of the CPC, for ready reference as follows:

"2-A. Consequence of disobedience or breach of injunction.— (1) *In the case of disobedience of any injunction granted or other order made under Rule 1 or Rule 2 or breach of any of the terms on which the injunction was granted or the order made, of the Court granting the injunction or making the order, or any Court to which the suit or proceeding is transferred, may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not exceeding three months, unless in the meantime the Court directs his release.*



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(2) No attachment made under this rule shall remain in force for more than one year, at the end of which time, if the disobedience or breach continues, the property attached may be sold and out of the proceeds, the Court may award such compensation as it thinks fit to the injured party and shall pay the balance, if any, to the party entitled thereto.

e) It would further be useful to refer to the decision of the Hon'ble Supreme Court in the case of **STATE OF MADHYA PRADESH** referred supra, wherein it was held as under:

"54. It is well settled that when a statute or statutory rules prescribed a penalty for any act or omission, no other penalty not contemplated in the statute or statutory rules can be imposed. It is well settled that when statute requires a thing to be done in a particular manner, it is to be done only in that manner."

f) It would also be useful to refer to the decision of the Rajasthan High Court in the case of **DEEPAK GUPTA** referred supra, wherein, it was held as follows:



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"14. *In the case on hand the learned appellate Court punished the contemnors to suffer such sentence which is not provided u/O. 39\ R. 2-A of the CPC. A person found guilty of contempt may be detained in civil prison and not in a Court room for a term not exceeding three months. Even if the Court wants to detain the contemner for a day only in that event also, he shall be detained in civil prison and shall not be detained in the Court room till rising of the Court. As already stated no penalty, other than the penalty provided in O. 39 R. 2-A, can be imposed. Provisions of O. 39 R. 2-A cannot be liberalised. A person found guilty of committing contempt of the Courts order cannot go unpunished without an adequate sentence. The contemnors, as is evident from the impugned order, tendered unconditional apology in writing and complied with the orders of the trial Court therefore it was the duty of the appellate Court to examine as to whether the contemnors were really showing contrition for their conduct? Whether the penitence was apparent and real and whether the unconditional apology tendered by the contemnors should be accepted in the facts and circumstances of the case?"*



g) The Hon'ble Supreme Court in the case of ***Samee Khan*** referred supra held that both steps can be resorted to or one of them alone needs to be chosen depending on the facts in each case.

h) The Allahabad High Court, in the case of ***Niranjan Shukla and another v. Shanker Shukla***⁵ held that where the breach of an order of temporary injunction is a continuing one and further disobedience is sought to be stopped, attachment of property may be an appropriate remedy, but where there is a single completed breach, punishment by detention in civil prison alone will not be an inappropriate order.

i) The Allahabad High Court, in the case of ***Smt.Savitri Devi v. Civil Judge (Sr. Div.), Gorakhpur & Others***,⁶ held that the proceedings under Order XXXIX Rule 2A of the CPC are quasi-criminal in nature and are meant

⁵ AIR 1972 All 556

⁶ AIR 2003 All 321



to maintain the dignity of the Court in the eyes of the people so that the supremacy of law may prevail and to deter the people from mustering the courage to disobey the interim injunction passed by the Court.

j) The legal maxim ***Nulla poena sine lege*** means no punishment without law, the Court is duty bound to award a punishment within the framework of law and cannot invent new penalties.

k) A holistic reading of the aforesaid provision and the law laid down in the aforesaid decisions clearly indicate that Order XXXIX Rule 2A of the CPC, only enumerates two forms of punishment in the event of disobedience of an order for temporary injunction i.e. i) attachment of property and ii) imprisonment in the civil prison. The Hon'ble Supreme Court has clearly held that when a statute or statutory rules prescribed for a penalty for any act or omission, no other penalty not contemplated in the statute or the statutory rules can be imposed. It is also



clear when a statute prescribes a specific manner for such penalty, the same cannot be deviated from. Therefore, when there are two options for the Court to impose punishment, deviation from the same by the Trial Court and independently directing the petitioners to tender an unconditional apology is not in consonance with law. Hence, the Appellate Court has rightly appreciated the scope of the law and held that the direction to tender an apology as a form of punishment could not be imposed by the Trial Court at its own discretion without any statutory rule to the said effect and has proceeded to impose a punishment by ordering the petitioners to be detained in the civil prison for a period of three months, which does not call for any interference.

I) Insofar as the contention that the deposit of the sum of Rs.2,00,000/- before this Court as per order dated 02.12.2022 is in the form of compensation and the same may be released in the favour of the respondent-plaintiff,



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also cannot be accepted in view of the fact that there is no scope in the Rule for granting such a compensation and such a compensation shall not redeem the petitioners from undergoing the punishment as contemplated under Order XXXIX Rule 2A of the CPC as ordered by the Appellate Court. Hence, I am of the considered view that it would be appropriate if the petitioners are permitted to withdraw the amount in deposit.

7. For the aforementioned reasons, I proceed to pass the following:

ORDER

- i) The writ petition is ***dismissed***.
- ii) The petitioners are permitted to withdraw the amount deposited before this Court.

**Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE**