

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE
&
THE HONOURABLE MRS. JUSTICE SOPHY THOMAS

Friday, the 30th day of June 2023 / 9th Ashadha, 1945
IA.NO.2/2023 IN CONT.CAS.(CRL.) NO. 2 OF 2023(S)

PETITIONER/RESPONDENT:

YESHWANTH SHENOY, S/O V.L.SHENOY, AGED 44 YEARS,
RESIDING AT "PRIYADARSHINI", VEEKSHNAM ROAD,
ERNAKULAM - 682 018.

RESPONDENT/PETITIONER:

(Contempt of Court suo motu initiated by the High Court of
Kerala)

Application praying that in the circumstances stated in the affidavit filed therewith the High Court be pleased to place this Contempt petition before the Hon'ble Chief Justice so as to enable the Hon'ble Chief Justice to assign any Bench / Judge of which Justice Sophy Thomas is not a part of.

This Application coming on for orders upon perusing the application and the affidavit filed in support thereof, and upon hearing the arguments of SRI. YESHWANTH SHENOY (PARTY-IN-PERSON) for the petitioner in IA/respondent in CONT.CASE(CRL.) and of SRI.S.SREEKUMAR, Advocates for the respondent in IA/petitioner in CONT.CASE(CRL.), the court passed the following:

P.T.O.

A.MUHAMED MUSTAQUE & SOPHY THOMAS, JJ.

I.A.No.2/2023
in
Contempt Case (Cr1).No.2 of 2023
and
Unnumbered Contempt Case (C).
(Filing No.948/2023)

Dated this the 30th day of June, 2023

O R D E R

A.Muhamed Mustaque & Sophy Thomas, JJ.

We heard Sri. Yeshwanth Shenoy, Advocate, who appeared in person in a plea for recusal as he apprehends bias on part of Justice Sophy Thomas, one of the members of the Division Bench. Sri. Yeshwanth Shenoy is a respondent in Cont.Case (Cr1.) No.2/2023, a suo motu contempt registered by the High Court and the petitioner in an unnumbered contempt filed by him. He seeks recusal of Justice Sophy Thomas mainly on two grounds which are enumerated by him in an affidavit filed in support of I.A.2/2023 in Cont.Case (Cr1).No.2/2023. We reproduce herewith the said grounds, especially, paras.4(A) and 4(B):

4. I say that I have sought the recusal on two grounds:

(A) I have filed Con Case (Filing) No. 948 of 2023 in which I intend to add Justice Sophy Thomas as an additional Respondent. Even assuming that Justice Sophy Thomas is not a party as of now, Justice Sophy Thomas would be directly affected by the outcome of

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that Petition as the same alleges a direct violation of the direction of the Hon'ble Supreme Court.

(B) I represented the Petitioner in Con. Case (C) 118 of 2022 in which Justice Sophy Thomas was the Respondent No. 1 in her capacity as the Registrar General. This Hon'ble Court had rejected the explanation given by the Respondent No.2, the then Registrar (Judicial) for the violation of the directions of this Hon'ble Court and the then Registrar (Judicial) had to admit non-compliance with the directions of this Hon'ble Court and had to apologise before this Hon'ble Court. At the time of this incident, it is Justice Sophy Thomas who was the Registrar General under whose instructions the Registrar (Judicial) had acted and in her capacity as the Registrar General was directly responsible for the act of the Registrar (Judicial).

2. We often see the expression "recusal"/"avoidance" used by a particular Judge or Judges. A Judge takes an oath or affirmation that he or she will discharge duties of the office without fear or favour, affection or ill-will, not as a ritualistic formality but with a conscientious mind to uphold the values attached to the office. Judges discharge their duties, faithfully and conscientiously on elevation to the Constitutional Court as a Judge, reflecting the personal integrity, values and virtues they follow in their personal life. The capacity of the judge is tested not only based on his competence but also based on the personal values on which his or her character is built. The judicial decision of a Judge is following law that may even override his personal views. Personal views are external and excluded in consideration of a dispute

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before him. The subtle distinction between a judge functioning in the official capacity of a judge of the court of law and the personal values and ethos of the judge have no manifest distinction in the understanding of a common man. However, a judge is conscious of that blurred line which allows them to distinguish the value that is to be followed in their official capacity and their personal life. The stoic outlook or posture, uninfluenced by any other external factors, makes the judge what he/she is. The robust mind in which conscience is built makes the judge, a judge. Irrespective of his beliefs, or faith, the ability of a judge to discharge his duties uninfluenced by his emotional values symbolise blindfolded justice, reflecting the idea that they are detached from all types of influence that may permeate their decision. This facet of the Judge's personality or character cannot be viewed in isolation when a plea of recusal is raised.

3. The plea for recusal will have to be accepted when a judge on a personal level may have an interest in the outcome of the case. If the judge tends to accept such a plea for recusal without any reason and on a mere plea raised by a party or a lawyer, that could be akin to accepting that the judge has lost his conscience and is vulnerable to a cause raised before him.

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4. In the past, one of us, Justice Sophy Thomas was merely impleaded in her official capacity as Registrar General of High Court of Kerala as an additional respondent in a contempt case at the instance of Advocate Yeshwanth Shenoy with no reason. No contempt action was taken against Justice Sophy Thomas. The Registrar (Judicial) appears to have been reprimanded for non-compliance of the direction of the Hon'ble High Court. The Registrar (Judicial) is an independent functionary, though in the larger administrative set-up, he is working under the Registrar General. The act complained of against the Registrar (Judicial) cannot even remotely be imputed to pass on that responsibility to the Registrar General.

5. The contempt case (Filing No. 948 of 2023) is yet to be numbered. We do not understand how he can propose to implead Justice Sophy Thomas without the same being entertained and numbered. Obviously, the attempt of Adv. Yeshwanth Shenoy is to compel Justice Sophy Thomas to avoid hearing the matter by raising unnecessary allegations. Justice Sophy Thomas has no interest in that cause or in its outcome, as alleged by Adv. Yeshwanth Shenoy.

6. A Judge, who has taken the oath of office to discharge his/her duties without fear or favour, affection

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or ill-will, if succumbs to the threat posed by a party litigant or his Counsel, who makes wild allegations of bias, or false implications in a case, it will have a negative impact on the independence of judiciary, and may set a bad precedent in the justice delivery system. In order to avoid such a bad precedent, Justice Sophy Thomas is not intending to recuse herself on the grounds urged by Adv. Yeshwanth Shenoy. The petitioner cannot agitate beyond the choice made by the judge concerned. As no valid reasons exist at present, his plea for recusal is accordingly rejected.

Post Contempt Case (Cr1).No.2 of 2023 and Unnumbered Contempt Case (C).(Filing No.948/2023) on 14/7/2023.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

Sd/-

SOPHY THOMAS, JUDGE

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