

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR
&
THE HONOURABLE MRS. JUSTICE C.S. SUDHA

Tuesday, the 1st day of August 2023 / 10th Sravana, 1945
CONTEMPT CASE(C) NO. 789 OF 2023(S) IN WA 656/2022

PETITIONER/1ST RESPONDENT IN W.A/PETITIONER IN W.P.(C):

AMOD MATHEW, S/O. MATHEW, AGED 45 YEARS,
TEACHER, [HSS TEACHER], ST. PAUL'S HIGHER SECONDARY SCHOOL,
VALIYAKUMARAMANGALAM, MOONILAVU P.O.,
KOTTAYAM DISTRICT - 686 586.

BY ADVOCATES M/S. SHAJI THOMAS, MOHAN PULIKKAL & JEN JAISON

RESPONDENTS/APPELLANTS 1 & 2 IN W.A/RESPONDENTS 1 & 2 IN WP(C):

1. A.P.M MOHAMMED HANISH IAS, THE SECRETARY TO GOVERNMENT, GENERAL EDUCATION (T) DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM - 695 001.
2. K. JEEVAN BABU IAS, DIRECTOR OF GENERAL EDUCATION (HIGHER SECONDARY), HOUSING BOARD BUILDING, THIRUVANANTHAPURAM - 695 011.

BY SMT.B.VINEETHA, GOVERNMENT PLEADER

This Contempt of court case (civil) having come up for orders on 01.08.2023, the court on the same day passed the following:

P.T.O.

C.R.

P.B.SURESH KUMAR & C.S.SUDHA, JJ.-----
Contempt Case (C) No.789 of 2023
-----**Dated this the 1st day of August, 2023****ORDER****P.B.Suresh Kumar, J.**

This proceedings is instituted alleging wilful disobedience of the direction issued by the learned Single Judge of this Court in terms of the judgment in W.P.(C) No.21689 of 2021, which has been affirmed by this Court in W.A.No.656 of 2022.

2. When this matter came up for admission, this Court entertained a doubt as to whether the doctrine of merger can be applied absolutely to contempt proceedings, and required the learned counsel for the petitioner to address arguments on that point.

3. After taking time for preparation, the learned counsel for the petitioner submitted today, placing reliance on the decision of this court in **Abin Suraj v. Joseph**, 2011(3) KLT 488, that in a case where the appellate court entertains and

decides an appeal preferred against the judgment of the Single Judge after hearing the parties on either side, the judgment of the Single Judge merges with the decision of the appellate court and therefore, judgment, the enforcement of which can be sought or non-compliance of which can be complained of, is the judgment in the appeal. According to the learned counsel, the proceedings therefore, is perfectly in order.

4. It is seen that the question considered in **Abin Suraj** was whether a Single Judge can entertain a Contempt Case for non-compliance of the order, when the matter was taken up in appeal and affirmed after hearing all parties. The question was answered in the negative in the said case, taking the view that the principle of merger applies absolutely to contempt proceedings. Consequently, the contempt proceedings initiated before the Single Judge alleging wilful disobedience of the judgment in the writ petition was dismissed giving liberty to the petitioners to file a fresh petition, if they have a case that the judgment in the writ appeal has been wilfully disobeyed.

5. A reading of the judgment in **Abin Suraj** indicates that the view taken therein is that the principle of

merger applies to contempt proceedings as well, and as such, even if the appellate court only affirms the decision of the Single Judge, the enforceable decision is the decision of the appellate court. **Abin Suraj** being a case where the appeal was dismissed at the admission stage, as noted, it was also clarified therein that the fact that the appeal was not admitted or that notice was not issued in the appeal, is inconsequential in a case where all the contesting parties entered appearance and were heard by the appellate court.

6. It was held by the Apex Court in **State of Madras v. Madurai Mills Co. Ltd.**, AIR 1967 SC 681 that the doctrine of merger is not a doctrine of rigid and universal application and its application depends on the nature of the appellate or revisional order in each case and the scope of the statutory provisions conferring the appellate or revisional jurisdiction. The question whether the principle of merger applies to contempt proceedings has been considered by a learned Single Judge of the Andhra Pradesh High Court in **K.K.R. Nair v. Mohan Das and Another**, 1989 SCC OnLine AP 241. It is a case where a Single Judge of the Andhra Pradesh High Court set aside an order terminating an employee from

service. The said decision was affirmed in appeal and the Special Leave Petition preferred against the decision of the appellate court was dismissed by the Apex Court. Even thereafter, the petitioner in the writ petition was not reinstated. He, therefore, filed the contempt petition before the learned Single Judge, the maintainability of which was objected to, on the ground that the principle of merger applies and that the contempt proceedings could therefore be filed only before the Apex Court. The learned Single Judge of the Andhra Pradesh High Court, however, held that the doctrine of merger is not a doctrine of rigid and universal application and that proceedings for contempt could be initiated before the learned Single Judge.

7. It is seen that in **Mariamamma Thomas v. Vijayanand I.A.S.**, 2019 (1) KLT 249, after referring to **K.K.R. Nair** as also **Abin Suraj**, another learned Single Judge of this court held that the principle of merger applies to contempt proceedings only if its application meets the ends of justice. Paragraph 26 of the said judgment reads thus:

“26. Summarizing the precedential position—despite the decisional cleavage— I may hold thus:

(a) The principle of merger does apply to contempt proceedings, too; but its attenuation is permissible, nay

desirable, if it meets the ends of justice;

(b) before the Constitutional Courts, if an order gets simply affirmed (or the appeal summarily dismissed) in the adjudicatory echelons, the order to be complied with is the primary one; on its violation, the beneficiary can maintain contempt proceedings before the Bench of first instance;

(c) prudent is the approach to put on hold the contempt proceedings until the appeal concludes, but the affirmation in appeal does not necessitate initiation of fresh contempt proceedings, more particularly, before the appellate bench;

(d) despite affirming the order, if the appellate bench materially modifies or varies the impugned order, the merger takes place; therefore, it needs fresh contempt proceedings before the appellate bench; but

(e) If the appellate court only relaxes the rigour of the order, say, by enlarging the time for compliance—which is no effacement of the order—there is no merger; therefore, the violation, if any, must be in relation to the original order.”

As evident from the extracted paragraph, the view taken by the learned Single Judge is that if an order gets simply affirmed, or if the appeal is dismissed summarily, the order to be complied with is the primary one and on its violation, the beneficiary can

maintain contempt proceedings before the Bench of the first instance. It was also the view of the learned Judge that if the appellate bench modifies or varies the impugned order, the merger takes place and in that event, a fresh proceedings needs to be initiated before the appellate court. It was also clarified that if the appellate court only relaxes the rigour of the order, say, by enlarging the time for compliance, which is no effacement of the order; there is no merger and therefore, the violation if any, must be in relation to the original order.

8. The difference in the view taken by this court in **Abin Suraj** and **Mariamamma Thomas** is that in **Abin Suraj**, the principle of merger has been applied absolutely, whereas, in **Mariamamma Thomas**, it was held that the principle of merger applies to contempt proceedings only if it meets the ends of justice. Having considered the judgments aforesaid, we prefer to endorse the view taken in **Mariamamma Thomas** and we shall give hereunder the reasons for taking such a view.

9. As noted, the principle of merger is not a principle of rigid and universal application and its application depends on the nature of the appellate or revisional order in each case and the scope of the statutory provisions conferring

the appellate or revisional jurisdiction. If this principle is applied absolutely, it will lead to anomalous situations. For instance, in a given case where an appeal is preferred against the decision of a Single Judge allowing a writ petition after the institution of the contempt proceedings, even if the appeal is dismissed on merits or *in limine*, the proceedings needs to be dropped and the beneficiary of the order in the case would be compelled to initiate a fresh proceedings before the appellate court, if the order is not complied with. Similarly, in a given case where a writ petition is allowed by the appellate court reversing the decision of the Single Judge and if the decision of the appellate court is affirmed by the Apex Court after granting Special Leave to Appeal as provided for under Article 136 of the Constitution, then the contempt proceedings for enforcement of the same can be initiated only before the Apex Court. Needless to say, to the extent it was held in **Abin Suraj** that the doctrine of merger applies absolutely to contempt proceedings, we are constrained to hold that the principle of law has not been correctly laid down in **Abin Suraj**.

10. Reverting to the facts, as noted, the case on hand being a case where this court only affirmed the decision

of the learned Single Judge without varying/modifying the same in any manner, whatsoever, the matter needs to be pursued before the learned Single Judge.

The contempt case, in the circumstances, is made over to be listed before the learned Single Judge whose decision was appealed against in the writ appeal.

Sd/-

P.B.SURESH KUMAR, JUDGE.



YKB

Sd/-

C.S.SUDHA, JUDGE.