

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 5TH DAY OF FEBRUARY, 2021



PRESENT

THE HON'BLE MR.ABHAY S. OKA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SACHIN SHANKAR MAGADUM

C.C.C NO.695 OF 2020 (CIVIL)

BETWEEN:

SRI. LALSAB S/O NABISAB NADAF
AGE: 37 YEARS
R/O HANUMASAGAR ROAD
IICAL, TALUK: HUNGUND
DISTRICT: BAGALKOT - 587 125

... COMPLAINANT

(BY SHRI. CHANDRASHEKAR .P. PATIL, ADVOCATE)

AND:

SRI. C. M. KAMA
THE CHIEF MANAGER
SRI. VIJAYA MAHANTESH
CO-OPERATIVE BANK LTD.
HEAD OFFICE HUNGUND
DISTRICT: BAGALKOT - 587 125

... ACCUSED

THIS CCC IS FILED UNDER SECTIONS 10 AND 12 OF THE CONTEMPT OF COURTS ACT, READ WITH ARTICLE 215 OF THE CONSTITUTION OF INDIA, BY THE COMPLAINANT, WHEREIN HE PRAYS THAT THE HON'BLE COURT BE PLEASED TO ISSUE NOTICE TO THE ACCUSED AND PUNISH THE ACCUSED WITH MAXIMUM PUNISHMENT FOR DISOBEDIENCE OF THE ORDER DATED 27.06.2019, PASSED BY KARNATAKA APPELLATE TRIBUNAL, BENGALURU IN APPEAL NO.65/2019.

THIS CCC COMING ON FOR ORDERS THIS DAY, **CHIEF JUSTICE** MADE THE FOLLOWING:

ORDER

Heard the learned counsel appearing for the complainant.

2. The breach alleged in this contempt petition is of an order passed by the Karnataka Appellate Tribunal (KAT) at Bengaluru in an appeal.

3. The submission of the learned counsel appearing for the complainant is that as the KAT established under the Karnataka Appellate Tribunal Act, 1976 (for short 'the said Act of 1976') is subordinate to this Court, in view of Section 10 of the Contempt of Courts Act, 1971 (for short 'the said Act of 1971'), this Court has a power to punish a person for committing contempt of the order passed by the KAT. The learned counsel relied on a decision of the Apex Court in the case of ***Brajnandan Sinha vs. Jyoti Narain***¹. He relied upon the observations made in paragraph 8 of the said decision. He submitted that considering the powers which can be exercised by the KAT established under the said Act of 1976, it has all the trappings of the Court. He invited our attention to the provisions of Sections 10 and 11 of the said Act of 1971. He submitted that the members of the KAT have the power to give a decision by a definitive judgment which is in the nature of a

¹ AIR 1956 SC 66

judicial pronouncement and therefore, the KAT will have to be held to be a 'Court' within the meaning of the said Act of 1971.

4. We have considered the submissions. It must be borne in mind that the Constitution of India itself makes a distinction between the Courts and the Tribunals. Section 10 of the said Act of 1971 reads thus:

"10. Power of High Court to punish contempts of subordinate courts.- Every High Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempts of courts subordinate to it as it has and exercises in respect of contempts of itself:

Provided that no High Court shall take cognizance of a contempt alleged to have been committed in respect of a court subordinate to it where such contempt is an offence punishable under the Indian Penal Code (45 of 1860)."

(underline supplied)

5. The words used are "courts subordinate to it". This power conferred on High Court under the said Act of 1971 to punish a person for contempt of the orders passed by a Court can be exercised provided the concerned Court is subordinate to it.

6. When the Section uses the words "courts subordinate to it", it implies that the High Court has an administrative control over the said Courts. Chapter VI under the Constitution of India has a heading 'Subordinate Courts'.

Article 235 refers to control of the High Court over the subordinate Courts.

7. In paragraph 8 of the decision in the case of **Brajnandan Sinha** (*supra*), the Apex Court has observed thus:

"8. The word "Court" was not defined in the Act and the expression "Courts subordinate to the High Courts" would 'prima facie' mean the Courts of law subordinate to the High Courts in the hierarchy of Courts established for the purpose of administration of justice throughout the Union."

Even in paragraph 8, the Apex Court has laid emphasis on the Courts being subordinate to the High Courts in the hierarchy of Courts.

8. We have carefully perused the provisions of the said Act of 1976. The power to constitute the KAT is vesting in the State Government under sub-section (1) of Section 3. The power to appoint the members including the Chairman vests in the State Government as per sub-section (2) of Section 3. Sub-section (3) of Section 3 provides that at least two Members shall be the District Judges. Section 10 confers powers on the KAT to call for return and issue directions about regulating the practice. Section 11(A) provides that the KAT shall have powers of a Civil Court in certain matters.

9. Thus, the power of establishing the Tribunal and appointing its members including the Chairman vests in the State Government. Considering the provisions of Article 235 of the Constitution of India, while appointing District Judges as the Members of the KAT, a consultation with the High Court is mandatory. The consultation in this case will have to be construed as concurrence as the deputation of a District Judge as a member of the KAT can be made only by the High Court. The provisions of the said Act of 1976 do not provide for any administrative control by the High Court over the KAT.

10. We have also perused the provisions of the Karnataka Appellate Tribunal Regulations, 1979. Even the Regulations do not suggest that the High Court retains any administrative control over the KAT. The KAT established under the said Act of 1976 being a Tribunal, in view of Article 227 of the Constitution of India, the High Court shall have the power of superintendence. However, the said Tribunal cannot be said to be a Court which is subordinate to the High Court the administrative control of which vests in the High Court.

11. Therefore, it is not possible to accept the submission that the KAT constituted under the said Act of 1976 is a Court subordinate to the High Court within the meaning of

Section 10 of the said Act of 1971. Therefore, an action under the Contempt of Courts Act, 1971 cannot be initiated on the ground of alleged breach of the interim order of the Appellate Tribunal.

12. Hence, no case is made out to initiate action under the Contempt of Courts Act, 1971. The contempt petition is accordingly disposed of. However, the other remedies of the complainant, if any, are expressly kept open.

13. The pending interlocutory application does not survive for consideration and is accordingly disposed of.

**Sd/-
CHIEF JUSTICE**

**Sd/-
JUDGE**