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Case Comment: Justice Karnan v Hon'ble Supreme Court of India

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CASE NAME: Justice Karnan v Honourable Supreme Court of India

COURT: In The Supreme Court of India

JURISDICTION: Writ Jurisdiction

CASE NO. W.P.(C) 6278/2017

BENCH: Hon'ble The Acting CJI, Hon'ble Shri Justice C. Hari Shankar

APPELLANT: JUSTICE C.S. KARNAN

RESPONDENT: The Honourable Supreme Court of India

THE FACTUAL MATRIX OF THE CASE

There was a notorious judge in Madras High Court called Justice C.S. Karnan. He belongs to the *Harijan* community. He wasn't known well to society until he got elevated as a judge of the Madras High Court. He holds the 'first' title for many things. He was the first judge to face contempt proceedings while holding office, the first judge to get imprisoned, the first judge not

to deliver a farewell speech and it goes on. He came from a very humble background as his father was a teacher and his mother was a homemaker. After two years after his appointment, Shri Karnan made headlines by sending a report to the National Commission for Scheduled castes alleging that he was being discriminated against since he belonged to the harijan caste. In a dramatic turn of events, he called a press conference in his chamber and allegedly mentioned that his life as a judge is in dire straits as he belongs to the subaltern caste and also said that a fellow judge placed his foot on his head. This vexed the judiciary. In 2013, He become the author of an infamous judgment that gave the status of husband and wife to a couple who had premarital sex in a live-in relationship. This has become a topic for discussion in the global arena and the religious and cultural values of our country have gone to dogs. The sordid saga of Justice Karnan hasn't stopped here.

In 2014 he barged into the courtroom where a division bench consisting of the then chief justice of Madras high court Hon'ble Shri Justice R.K. Agarwal was hearing a PIL. He made allegations against him in the open court that there is hanky panky in the elevation of advocates to the high court and demanded to file an affidavit in his name which is the first of its kind in the Indian judiciary. Justice R.K Agarwal wrote a letter highlighting the brawl that took place in his courtroom to then CJI Hon'ble Shri Justice P. Sathasivam and he also suggested the CJI transfer Justice Karnan to some other high court as his fellow judges are afraid of Justice Karnan's scathing attack. However, Justice Karnan clarified to the CJ of Madras HC and CJI that he wishes to stay in Madras HC itself so that he can prove the allegations that he made against the judges. In the same year, Justice Kaul took charge as CJ of Madras HC. Justice Karnan as usual started to lambast his fellow judges for discriminating against him. The other judges of the High Court weren't able to do anything other than remain silent. At one point in time, 20 judges sent a memorandum to the CJI mentioning their beleaguered working atmosphere.

In 2015 he made allegations against his fellow judge of sexually assaulting an intern in his chamber without any evidence. Finally, SC collegium transferred him to Calcutta High Court. But in an unprecedented turn of events he stayed the transfer by his order. Legislators and jurists were shocked by his actions. However, the division bench of SC lifted his bench quickly. He

then brooked his transfer and also tendered an apology to both the judges in the division bench that the stay order was the result of his mental stress.

Justice Karnan wrote a letter to the PM of India demanding action against 20 sitting and former judges of SC whom he alleged as corrupt. In a most rasping judgment, he ordered rigorous imprisonment of 5 years under SC, the ST atrocities act of the then CJI, and seven other judges of the SC for discriminating against him. This made the top court realize that Justice Karnan has crossed the *Lakshman Rekha* and they somehow have to gag him from further destroying the image of the judiciary in the public domain. On 8th Feb 2017, SC issued a show cause notice returnable on 13th Feb to the petitioner asking him why contempt proceedings cannot be issued against him and directing him to appear in person for the next hearing. On 10th Feb petitioner addressed a letter to Secy. general of SC contending that suo motu contempt against an HC judge is not maintainable. On 13th Feb, a letter dated 10th Feb was presented before the bench hearing the case. The bench deferred the case to 10th Mar giving him another chance to appear in person. Instead of heeding the order of SC, Karnan sent a fax message on 8th Mar seeking a personal meeting with CJI and other senior judges. On 10th Mar SC held that the fax message cannot be treated as a reply to the notice dated 8th Feb and issued a bailable warrant in the sum of Rs. 10,000 returnable on 31st Mar. On 25th Mar petitioner handed over a letter to the court. On 31st Mar, the court gave one more chance to Karnan to respond to the notice. In the meantime, Karnan's request for resuming his administrative and judicial functions was declined. On 1st May, the court observed that ever since the initiation of the proceedings Karnan has only exacerbated the situation. His interviews with the press are vexatious. After the last order dated 31st Mar, he retaliated by booking the judges of the apex court in the SC/ST atrocities act. The judges also wanted Karnan to undergo mental health checkups as his acts are puerile. They gave him a final opportunity to respond to the notice dated 8th Feb and the case was adjourned to 9th May. On 9th May, Karnan didn't appear. His tardy response incited rancor. The court convicted him of contempt and sentenced him to six months imprisonment. DGP of WB was directed to execute the order of imprisonment and the media (both print and electronic) was ordered not to publish any statements made by Karnan. Thereafter he initiated a writ

petition under Art. 32 of the constitution seeking that whatever happened in court on 9th May be declared void *ab initio*.

ISSUES

- Whether judicial proceedings are amenable to the writ jurisdiction of SC under Article 32¹ of the constitution of India.
- Whether a writ of *certiorari* is issued to correct the earlier order of the court.
- Whether the powers under Article 129² be invoked without having recourse to contempt of court action when the court had initiated *suo motu* contempt proceedings against the petitioner.
- Whether the petitioner's contention that principles of natural justice have not been followed be taken as a valid defense.

ARGUMENTS BY THE PARTIES

Petitioner contends that the notice issued to him on Feb 8 2017 to show cause why criminal contempt cannot be initiated against him is unconstitutional as it is bereft of the principles of natural justice. He further contends that sections 2(c)³, 12⁴, 14(3)⁵, 15⁶, and 17(5)⁷ of the Contempt of courts act, 1971 are unconstitutional as they are violative of articles 14⁸, 19⁹, 20¹⁰, and 21¹¹ of the constitution of India and violates the principles encapsulated by the legal maxims such as *Nemo tenebatur prodere seipsum* (evidence against a subject ought not to be wrung out of him but the offense has to be proved against him by other men and means), *accusare nemo se debet nisi*

¹ Constitution of India 1950, art 32

² Constitution of India 1950, art 129

³ Contempt of Courts Act 1971, s 2(c)

⁴ Contempt of Courts Act 1971, s 12

⁵ Contempt of Courts Act 1971, s 14(3)

⁶ Contempt of Courts Act 1971, s 15

⁷ Contempt of Courts Act 1971, s 17(5)

⁸ Constitution of India 1950, art 14

⁹ Constitution of India 1950, art 19

¹⁰ Constitution of India 1950, art 20

¹¹ Constitution of India 1950, art 21

coram deo (nobody is bound to incriminate himself) and *Nemo tenetur seipsum accusare* (no one shall be compelled to bear witness against himself).

Petitioner argues that 13(b)¹² of the Contempt of Courts Act, 1971 should be declared unconstitutional as it provides that the court can permit justification by truth as a valid defense which according to the petitioner will only aggravate the offense. He further argues that the doctrine of *stare decisis* should be applied only if the apex court judgments go in line with part III of our constitution as it is the final arbiter of the law. At last, the petitioner pulls in article 21 of our constitution and contends that the 'right to life' also includes the 'right to appeal' so that the convict can get a primordial right to seek reimagination of the case both on facts and on the law by a larger bench of the SC.¹³

THE JUDICIAL INTERPRETATION THAT DEDUCED THE VERDICT

On the first issue of whether judicial proceedings are amenable to the writ jurisdiction of SC under Article 32¹⁴ of the constitution of India, SC relies upon the judicial pronouncement in *Naresh Shridhar & Ors. v State of Maharashtra*¹⁵, *Ajith Kumar Bharat v Secy. Indian Tea Association & Ors.*¹⁶ and *A.R. Antulay v R.S. Nayak*¹⁷ observed that judicial proceedings of the court were not subject to the fiefdom of Article 32¹⁸. And hence the writ petition is not maintainable. On the second issue of whether a writ of *certiorari* be issued to correct the earlier order of the court, judges took note of the observation made in *Rupa Ashok Hurra v Ashok Hurra*¹⁹

On the third issue of Whether the powers under Article 129²⁰ be invoked without having recourse to contempt of court action when the court had initiated *suo moto* contempt proceedings

¹² Contempt of Courts Act 1971, s 13(b)

¹³ *Maneka Gandhi v Union of India* (1978) SC 597

¹⁴ Constitution of India 1950, art 32

¹⁵ *Naresh Shridhar & Ors v State of Maharashtra* (1966) SCR (3) 744

¹⁶ *Ajith Kumar Bharat v Secy. Indian Tea Association & Ors* WP (C) 13754/2000

¹⁷ *AR Antulay v RS Nayak* (1988) SCR Supl (1) 1

¹⁸ Constitution of India 1950, art 32

¹⁹ *Rupa Ashok Hurra v Ashok Hurra and Anr* (2002) 4 SCC 388

²⁰ Constitution of India 1950, art 129

against the petitioner, the court referred the judgment in *T. Sudhakar Prasad v Govt. of A.P. & Ors.*²¹ and *Sukhdev Singh Sodhi v Chief Justice and Judges of the PEPHU High Court*²² to answer in refutation. For the last issue, they took note of the observation made in *A.K. Kraipak & Ors v UOI & Ors*²³, *Suresh Koshy George v The University of Kerala & Others*²⁴ and *The Chairman, Board of Mining Examination and Chief Inspector of Mines & another v Ramjee*²⁵ where it was held that principles of natural justice are not embodied.

WHAT KIND OF INTERPRETATION WAS PUT FORTH BY THE COURT?

The term 'state' in Article 12²⁶ has not engulfed the judiciary for the want of requisite government control. As per our constitution, the judiciary is an autonomous institution whose independence can be maintained only if there is an explicit differentiation between government and judiciary and hence the HC and SC are nudged out of the scope of writ jurisdiction. The larger bench of SC cannot issue a writ of *certiorari* to the smaller bench as the latter is not subordinate to the former. Powers of review can always be exercised under Article 136²⁷ and Article 32²⁸ if there is an infringement of fundamental rights.

Answering the most crucial question of whether the petition mentioned sections in the Contempt of Courts Act is anathema to our constitution the apex court observed that the court has not exercised its power by invoking the Contempt of Courts Act, rather it has invoked its sacrosanct jurisdiction under Article 129²⁹ of our constitution when it has initiated contempt proceeding suo motu against the petitioner. So the petitioner's contention that the SC cannot invoke Article 129 without recourse to the Contempt of Courts Act is threadbare. Article 129 and 215³⁰ of our constitution places the HCs and SC on a lofty pedestal by declaring them as a court

²¹ *T. Sudhakar Prasad v Govt. of A P & Ors* (2001) 1 SCC 516

²² *Sukhdev Singh Sodhi v Chief Justice and Judges of the PEPHU High Court* (1954) SCR 454

²³ *A.K. Kraipak & Ors v UOI & Ors* AIR (1970) SC 150

²⁴ *Suresh Koshy George v The University of Kerala & Ors* (1969) SCR (1) 317

²⁵ *The Chairman, Board of Mining Examination and Chief Inspector of Mines & Anr v Ramjee* (1977) SCR (2) 904

²⁶ Constitution of India 1950, art 12

²⁷ Constitution of India 1950, art 136

²⁸ Constitution of India 1950, art 32

²⁹ Constitution of India 1950, art 129

³⁰ Constitution of India 1950, art 215

of record and thereby giving them the right to punish for contempt. It is not subject to any limitation save for the principles of natural justice. Contempt of Courts Act only plays a supplementary role, it's not intended to debilitate the powers under the above said articles.

The whole gamut of natural justice revolves around the two maxims (1) *Nemo debet esse judex propria causa* meaning 'no one should be the judge in his case and (2) *Audi alteram partem* meaning no decision shall be taken helter-skelter without giving a reasonable opportunity to the party. The mushrooming of quasi-judicial institutions in recent times gave birth to the third rule which says that 'quasi-judicial inquiries must be held in good faith'. What particular rule of natural justice should be applied is a question of fact in each case. To argue that a tad deviation from the principle of natural justice will give rise to illegality is quixotic.

VERDICT

The seven-judge bench of the SC unanimously and with animosity sentenced Justice Karnan to undergo imprisonment for a period of 6 months and lamented that the contemnor has never allowed the inquiry to proceed in the right direction. He eschewed all the chances the court gave him and continued to travel on the wrong path and reached the fringe where no guardrail could help him. Instead of tendering an apology to the court he with audacity chose to question the jurisdiction of SC to initiate contempt proceedings against an HC judge. His stand that the HC judge can only be removed by the process of impeachment is defunct. His belief that the initiation of contempt proceedings by the apex court against him would constitute an offense under SC and ST (Prevention of Atrocities) Act, 1989 as he is an *harijan* takes the cake. He goes on to accuse the members of the bench as guilty of prejudice against him and initiation of contempt proceedings is a malafide judicial action. After serving the show cause notice, Justice Karnan was served with ample opportunities to appear in person but he chose to avoid it. In the instant case, the petitioner is not an unlettered man but rather a constitutional dignitary who has full knowledge of the orders of the court as well as the proceedings.

ANALYSIS

In a democratic country like India judges are the sentinels of democracy. Unless and until they are given the respect they deserve, democracy will begin to falter and government institutions will become Tammany halls. In Karnan's case, it is a pity that a person who himself a judge attempted to bring dishonor to the court. I see his actions as a travesty of justice. He vilified his fellow judges and accused them of being venal only to project himself as a hero in public. But it was a fiasco. How the apex court handled the case was impressive. It's right in punishing him with imprisonment because if he is left unpunished, it will paint a picture that people from white-collar solidarity are immune from punishments even if their actions are vindictive and thereby cause disorderliness in society. One is not expected to eulogize the judiciary but one can at least restrain from castigating it. As an endnote, this case should not be used as a precedent for resorting to peremptory action against high-profile figures without preparing the ground in the form of evidence.