SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : FIRST JUDICIAL DEPT.

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GEORGE SASSOWER, Esq., and all those similarly situated,

Petitioner,

-against-

THE APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, FIRST JUDICIAL DEPARTMENT, and THE JUSTICES OF THE SUPREME COURT OF THE STATE OF NEW YORK, COUNTIES OF NEW YORK and THE BRONX,

Respondents.

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S I R S:

PLEASE TAKE NOTICE that upon the annexed petition of GEORGE SASSOWER, Esq., acknowledged the 15th day of September, 1985, and all proceedings had herein, the undersigned will move this Court at a Stated Term of the Appellate Division of the Supreme Court, First Judicial Department, held at the Courthouse thereof, 25th Street and Madison Avenue, in the Borough of Manhattan, City and State of New York, on the 3, day of October 1985, at 9:30 o'clock in the forenoon of that day or as soon thereafter as the undersigned can be heard for an Order (1) to declare null, void, and unconstitutional the state practice of permitting private adverse counsel to initiate, prosecute, and

control non-summary criminal contempt proceedings, in underlying civil actions and proceedings, and nullifying all such presently viable proceedings; (2) declaring null and void the Orders of Mr. Justice David B. Saxe and Mr. Justice Alvin F. Klein, entered on July 1, 1985, presently sub judice, by reason of prosecutorial "fraud" and "perjury"; (3) expunging, and declaring null and void, the opinion of this Court in People ex rel., George Sassower, Esq. [Sam Polur, Esq.] v. Cunningham (July 29, 1985); (4) declaring null and void 22 NYCRR §603.12(b), insofar as it relates to "criminal contempt"; (5) declaring that petitioner, and those similarly situated, are entitled to a trial by jury, in any case that statute or court rule declares to be a "serious crime"; (6) declaring null and void any interpretation of CPLR §7703(a) which does not include as part thereof, an expeditious determination on the merits of the legality of the detention, and of the Civil Practice Law and Rules, which does not provide for an expeditious exhaustion of state remedies where freedom must follow a determination on the merits, in a short term incarceration; (7) together with such other relief as may be just and proper in the premises.

PLEASE TAKE FURTHER NOTICE, that answering papers, if any, are to be served upon the undersigned at least seven (7) days before the return date of this motion, with an additional five (5) days if service is by mail.

Dated: September 15, 1985

Yours, etc.

GEORGE SASSOWER, Esq.
Attorney for petitioner, pro se
2125 Mill Avenue,
Brooklyn, New York, 11234
718-444-3403

To: Hon. Robert Abrams
Kreindler & Relkin, P.C.
Feltman, Karesh & Major, Esqs.

SUPREME COURT OF THE STATE OF NEW YORK
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TO THE HONORABLE JUSTICES OF THE SUPREME COURT OF THE STATE OF NEW YORK. APPELLATE DIVISION, FIRST JUDICIAL DEPARTMENT:

1a. Petitioner, on his own behalf, and those similarly situated, brings this proceeding to declare null, void, and unconstitutional (1) the state practice of permitting private adverse counsel to initiate, prosecute, and control non-summary criminal contempt proceedings, in underlying civil actions and proceedings, and nullifying all presently viable proceedings; (2) declaring null and void the Orders of Mr. Justice David B. Saxe and Mr. Justice Alvin F. Klein, entered on July 1, 1985, presently sub judice, by reason of prosecutorial "fraud" and "perjury"; (3)

expunging, and declaring null and void, the opinion of this Court in People ex rel.. George Sassower, Esq. [Sam Polur, Esq.] v. Cunningham (July 29, 1985); (4) declaring null and void 22 NYCRR §603.12(b), insofar as it relates to "criminal contempt"; (5) declaring that petitioner, and those similarly situated, are entitled to a trial by jury, in any case that statute or court rule declares to be a "serious crime"; (6) declaring null and void any interpretation of CPLR §7703(a) which does not include as part thereof, an expeditious determination on the merits of the legality of the detention, and of the Civil Practice Law and Rules, which does not provide for an expeditious exhaustion of state remedies where freedom must follow a determination on the merits, in a short term incarceration (7) together with such other relief as may be just and proper in the premises.

b. The relief sought herein is without prejudice to similar and/or related relief that is, or may be, sought in the federal forum.

c. Although petitioner has and does claim this Court disqualified in appeals and proceedings related to Puccini Clothes, Ltd., on constitutional and statutory grounds, he has in the past, and does presently, waive, insofar as the law permits him to waive, any and all claims of disqualification by this Court, and each and every member thereof, insofar as interim or emergency relief is concerned (Laird v. Tatum, 409 U.S. 824).

d. As far as the legal matters involved in this proceeding, petitioner, an attorney for thirty-five years, believes himself well versed both in the law and practice to speak authoritatively on the within subjects and to properly represent a class proceeding.

2. INTERIM RELIEF:

a. Petitioner prays that pending a hearing and determination of this matter, that any and all incarcerations, resulting from non-summary criminal contempt proceedings, pursuant to (sham) convictions, rendered without trial or plea of guilty, be stayed, without prejudice to further relief, if events prove that necessary!

b. The stage is presently being set, with this Court as a participant therein, in further convictions and/or incarcerations, without benefit of trial, in this continuing attempt at extortion!

c. Thus in proceedings in this Court on September 13, 1985, incidently involving Associate Justice ERNST H. ROSENGERGER, and a law assistant for more than two (2) hours, petitioner was served with another criminal contempt motion for "prosecution [of an] appeal" to this Court.

f. Yesterday [figuratively], petitioner was expressly enjoined by Hon. IRA GAMMERMAN from communicating with the Grievance Committee; today [apparently implied], it is being contended that Hon. IRA GAMMERMAN has enjoined your petitioner from coming to this Court on an appealable order; petitioner fears for tomorrow!

3. Non-Summary Criminal Contempt:

a. The legal proposition that state non-summary criminal contempt is a "crime in every fundamental respect", within the protection of the XIV Amendment of the United States Constitution, has been settled (Bloom v. Illinois, 391 U.S. 194).

b. The practice in this State of having private adversarial counsel initiate, prosecute, and control, non-summary criminal contempt proceedings, in underlying civil actions and proceedings, almost totally without judicial administrative supervision is constitutionally and legally unacceptable (Berger v. United States, 295 U.S. 78, 88).

c. Polo Fashions v. Stock Buyers (760 F.2d 698 [6th Cir.]), with some additions, sets forth petitioner's arguments on this matter.

d. Omitted, but crucial and decisive, in petitioner's view of his position, is the "due process" obligations of the prosecuting attorney, voluntarily or upon demand (United States v. Agurs, 427 U.S. 97).

e. Additionally, there is an intolerable degree of constitutional infringement of "equal protection of the laws" when private adversarial counsel is permitted to totally control non-summary criminal contempt. The criminal prosecution does not become dependent on the crime, or of the degree of the alleged transgression, but of the resources of private adversarial counsel and that of his client.

4. Thus, on Friday afternoon, September 13, 1985, more than two (2) hours were expended with Leon Canning, Esq., a law assistant of this Court, and partially with Associate Justice ERNST H. ROSENBERGER, where the proceedings and papers filed pursuant thereto clearly reveal an absolutely meritless and contrived privately initiated criminal contempt proceeding against your petitioner because he would not agree to adjourn an appeal.

The statements made before Hon. ERNST H. ROSENBERGER, Leon Canning, Esq., and documents filed in this Court reveal a proposed criminal contempt proceeding against HYMAN RAFFE, totally without factual support, merely as a means of an attempted private extortion!

When such attempted extortion by private adversarial counsel, employing criminal procedures, whose resources consist of a judicial trust and Citibank, N.A., the state judicial machinery are exclusively controlled and employed for selective and invidious enforcement.

5. THE ORDERS OF MR. JUSTICE KLEIN AND SAXE:

a. In addition to the arguments presented in hastily prepared briefs immediately after the entry of such orders, and prior to actual incarceration, it can now be demonstrated, that such convictions were secured by prosecutorial fraud and the failure to disclose decisive vindicating and exculpatory material!

b. This material does not negate the fact that absent a plea of guilty no american court and no american judge, as a matter of ministerial compulsion, can render a judgment of conviction, sentence, and incarcerate without a trial for any crime, without a trial.

6a. The threatened incarceration of Hyman Raffe for extortion purposes was the object, which meant the temporary elimination of Sam Polur, Esq., as well as your petitioner.

b. Compelled, for collateral reasons, by this Court's remark in its opinion of July 29, 1985, that there was a failure to "deny", petitioner, in open court, on July 30, 1985, before Hon. Alvin F. Klein, asserted that the uncorroborated affidavit of Donald F. Schneider, Esq., was perjurious, admitted that he, not Sam Polur, Esq., served the summons in question, and described the surrounding circumstances, which were witnessed by Michael J. Gerstein, Esq. and David S. Cook, Esq.

c. Neither Mr. Schneider nor Mr. Gerstein denied the perjurious nature of Mr. Schneider then or since! Nor has Mr. Cook ever denied the Schneider affidavit not to be perjurious.

d. Thus, not only did Hon. Alvin F. Klein, convict, sentence, and incarcerate Sam Polur, Esq., based merely upon an affidavit that he served a single summons on Donald f. Schneider, Esq., without a trial, but kept him incarcerated when it was uncontroverted that such affidavit was perjurious (cf. Brady v. Maryland, 373 U.S. 83)!

e. The plot had gone too far for Mr. Justice Klein to vacate such conviction of Sam Polur, Esq.!

7a. Associate Justice BENTLEY KASSAL was literally inundated on July 25, 1985, by the repeated false statements, ad nauseam, of Michael J. Gerstein, Esq. and Donald F. Schneider, Esq., that the Order(s) of Hon. IRA GAMMERMAN were not appealed!

Those knowingly false statements, this Court memorialized by repeating same several times in its opinion of July 29, 1985!

b. Only the direct question put to petitioner on September 5, 1985, by Associate Justice ARNOLD L. FEIN, caused your petitioner to breach his constitutional right to remain silent on the merits (Gompers v. Buck's Stove, 221 U.S. 418, 448).

c. In the actual possession of Mr. Gerstein and Mr. Schneider were recently served papers of your petitioner which reminded them that the perfected appeals of the Orders of Hon. IRA GAMMERMAN were waiting review by this Court. Nevertheless, the incorporation by this Court in its opinion of July 29, 1985 of their canards, compelled them to deny the existence of such perfected appeals to this Court.

d. Petitioner's communication of September 6, 1985, bottomed on documentation in this Court, has not been responded to or controverted in any manner!

8a. Skillfully, the Kreindler & Feltman firms, the self-styled public prosecutors, concealed from Hon. BENTLEY KASSAL, and every other involved jurist, the minutes of December 19, 1984, other relevant minutes before Hon. IRA GAMMERMAN, and other documents which reveal fraud on their part, even on Mr. Justice GAMMERMAN himself, the lack of personal jurisdiction, even as to Hyman Raffe, the improper and corrupt means by which such Orders dated January 23, 1985 were obtained, and other exculpatory information.

b. Instructively, in no known document, including the Orders of Mr. Justice ALVIN F. KLEIN or Mr. Justice DAVID B. SAXE, has it ever been asserted by anyone, including the Kreindler & Feltman firms, that the Orders of Mr. Justice IRA GAMMERMAN are "lawful mandate(s)" (Judiciary Law §750(a)[3]).

Associate Justice BENTLEY KASSAL, and this Court in its opinion of July 29, 1985, simply assumed they were from, probably no more than a cursory inspection.

c. To this very day, neither the Kreindler nor Feltman firms assert such Gammerman orders are "lawful", instead they quote from this Court's opinion that they are lawful or valid.

9a. Thus, even in a judicial forum, in a criminal proceeding, the constitutional right to remain silent, and the appropriate stratagem to do so before trial, can become an albatross around the accused's neck, where the public prosecutors, actual or self-styled. are unscrupulous!

b. Thus, for post conviction information of prosecutorial misconduct, including in this Court, those convictions must be vacated (Brady v. Maryland, supra).

c. Since application for relief at nisi prius cannot be made, except by permission [always denied], and except on pains of triggering another criminal contempt proceeding, this tribunal must be the tribunal of first resort!

Interestingly, in the criminal contempt application before Associate Justice ERNST H. ROSENBERGER, on September 13, 1985 (returnable October 3, 1985), the movants contend that petitioner (and Mr. Raffe) are in criminal contempt for violating orders of nisi prius in "prosecuting this appeal".

Thus, they apparently now contend, although there is no such language, that since Mr. Justice IRA GAMMERMAN can enjoin petitioner from communicating with the Grievance Committee (an arm of this court), he has the power to prevent review of his orders!

d. If there are enough accusations, albeit absurd and meritless, the fact becomes established, even in the minds of the most distinguished and reserved jurists!

10. THE OPINION OF THIS COURT:

a. For more than 800 years, the traditional writ of habeas corpus ad subjiciendum was concerned only with the legality of incarceration or detention.

b. On July 29, 1985, while petitioner properly only concerned himself with the illegality of the conviction, to wit., conviction and incarceration without any trial, Michael J. Gerstein, Esq. of Kreindler & Relkin, P.C. and Donald F. Schneider, Esq., of Feltman, Karesh & Major, Esqs., literally swamped Associate Justice BENTLEY KASSAL with factually false and misleading information, totally unrelated to legality of the conviction and incarceration.

c. Such factually false and misleading statements, and more, found itself in a hospitable habitat in the opinion of July 29, 1985 (People ex rel Sassower [Polur] v. Cunningham), causing petitioner, for collateral reasons, to prematurely disclose some of his evidence and contentions.

The net effect of such opinion has substantially prejudiced the right to now obtain a fair trial, unless it is expunged.

d. Petitioner refrains from a "phrase by phrase" refutation of the assertions contained in such opinion, except as heretofore refuted, hoping to take some remaining advantage by trial surprise.

e. Expunged or not, it is difficult to conceive that any jurist would dramatically contradict the matters contained in this Court's opinion!

11. 22 NYCRR § 603.12(b):

a. Petitioner will not attempt herein to set forth the efforts made by the Supreme Court of the United States to reconcile the law of criminal contempt (summary and non-summary), with constitutional values and mandate.

b. Such reconciliation, insofar as non-summary criminal contempt is concerned, has been sufficiently resolved so as to make such "crimes" procedurally indistinguishable from other crimes (Bloom v. Illinois, supra).

c. Nevertheless, substantively undefined, criminal contempt, is sufficiently indefinite, as to make it legally unacceptable.

The failure of the legislature to set "criminal contempt" as a "serious crime" (Judiciary Law §90[4]), as distinguished from "interference with the administration of justice", precludes this Court from providing, as a statutory definition, otherwise.

Indeed, petitioner's contends that absent unjustified "interference with the administration of justice", criminal contempt of court cannot exist!

12. TRIAL BY JURY:

The constitutional and legal right to a trial by jury is dependent, not only by the term of incarceration, but also the collateral consequences.

Where, as here, the Court and/or legislature has labelled the crime as "serious", the right to a trial by jury exists.

13. HABEAS CORPUS:

a. The court's experience that few writs of habeas corpus have merit, may be correct, since they invariably are presented by long term prisoners.

b. Short term prisoners, generally do not present writs, and petitioner could only find one (1) short term prisoner out of thirteen, who was lawfully incarcerated.

c. The supremacy clause in the United States Constitution and the strict federal exhaustion (Rose v. Lundy, 455 U.S. 509), mandates the state judiciary to provide extraordinarily expedition for such exhaustion to be accomplished, if the federal guarantee is to have any meaning for the short term prisoner.

WHEREFORE, it is respectfully prayed that the within application be granted, in all respects.

Respectfully,

GEORGE SASSOWER, Esq.
Attorney for petitioner,
pro se.

STATE OF NEW YORK)
CITY OF NEW YORK) ss.:
COUNTY OF KINGS)

GEORGE SASSOWER, Esq., first being duly sworn, deposes, and says:

I am the petitioner herein and have read the foregoing Petition and the same is true of my own knowledge except as to matters stated therein to be on information and belief, and as to those matters deponent believes them to be true.

GEORGE SASSOWER

Sworn to before me this
15th day of September, 1985

Barbara Tatesure

BARBARA TATESURE
Notary Public State of New York
No. 24—4760746
Qualified in Kings County
Commission Expires March 30, 1986