

(2009) 05 P&H CK 0084

High Court Of Punjab And Haryana At Chandigarh

Case No: Crl.O.C.P. No. 1 of 2005

In re : Vinay Chandra Mishra,
1995(3) RCR(Criminal) 655 :
(1995)2 SCC 584.

APPELLANT

Vs

RESPONDENT

Date of Decision: May 29, 2009

Hon'ble Judges: T.S.Thakur, J; Surya Kant, J and Jasbir Singh, J

Advocate: Amol Rattan Singh, Anupam Gupta, Rajiv Atma Ram, K.S. Nalwa, Advocates for
appearing Parties

Judgement

Surya Kant, J.

1. These suo motu contempt proceedings have originated out of an attempt to withhold the production of original official records before this Court with the object to interfere and obstruct the administration of justice.

2. A brief reference to the following facts would facilitate appreciating the nature and magnitude of these proceedings :

[a]. On February 7, 2004, the Department of Home Affairs and Justice, Govt. of Punjab issued an advertisement inviting applications from outstanding sports persons for their recruitment to 7 excadre posts of Deputy Superintendent of Police. The recruitment was to be made by a Selection Committee comprising (i) Principal Secretary, Home (ii) Principal Secretary, Sports and (iii) Director General of Police, Punjab. The eligible candidates were directed to appear along with their original certificates on 13.2.2004 which was later on postponed to 17.2.2004 and the selections were finalized on that very day. The selected candidates were offered appointments on 24.2.2004, thus, bringing the whole selection process to a close within a period of 17 days.

[b]. Two sets of writ petitions, one ? a public interest litigation challenging the advertisement itself and the other filed by the unsuccessful candidates after the

selection process was over, were clubbed together and placed before a Division Bench of this Court for hearing. On 27.2.2004, while granting liberty to the State to file one consolidated written statement instead of filing separate replies in each case, the Bench directed the State to produce the original records on the next date of hearing. Vide another order dated 4.3.2004 passed in CWP No. 3662 of 2004, the Bench directed that the entire record related to the Selection be sealed and made available for the Advocate General, Punjab on that very day to rule out any possibility of it being tampered with. Keeping in view that various questions of law of public importance were involved, these cases were directed to be listed before a Full Bench.

[c]. On May 20, 2004, some additional documents were produced by the State of Punjab in a sealed cover and on opening thereof it transpired that the submitted record was neither original nor complete. One more opportunity was sought and granted to produce the records. On May 25, 2004, the State Counsel produced seven files which were taken on record, perused and then returned to enable the State Counsel to address the Court as the cases were continuously being heard on merit.

[d]. Suffice it to note here that while producing the incomplete and photostat copy of the records of Home Department, the records of Department of Sports and Youth Services were withheld by the respondents though the said record had some bearing on the merits of the case.

[e]. On May 29, 2004, Mr. D.S. Longia, the then Joint Secretary of the Sports Department submitted an application to the Registrar (Judicial) of this Court, inter alia, claiming that he had delivered the file (of the Sports Department) to Mr. B.B.S. Sobti, Senior Additional Advocate General, Punjab at about 9.55 a.m. on 28.5.2004 in court room No.1, for producing the same before the Bench and that he was astonished on reading the newspaper reports on 29.5.2004 that the said Original file had not been produced before the Court. Mr. Longia also appended photo copies of the relevant papers of the said file of the Sports Department along with his above stated application.

[f]. Since Mr. Longia had also made insinuations against the court staff without verifying the correct factual position, the Bench suo motu invoked its powers under Article 215 of the Constitution and issued a notice to Mr. Longia to explain as to why should he not be charged with committing criminal contempt of court.

[g]. No sooner did the contempt proceedings are taken up for hearing on July 7, 2004, than a learned counsel for the writ petitioners moved an application to bring on record a photo copy of the Demi Official letter dated 24.5.2004 purported to have been addressed by Mr. Jagmohan Singh Kang, the then Minister, Sports and Youth Services Department, Govt. of Punjab to the Chief Minister, Punjab complaining that BIS Chahal, Media Advisor to the Chief Minister had rung up the Secretary, Sports and directed him not to produce the original record of the Sports Department

before this Court and also to make a statement to the effect that there was no other related file or paper lying in the custody of the Department. The Demi Official letter revealed that while the Joint Secretary (Mr. Longia) was still in the Court, BIS Chahal called him down over a cell phone for bringing the file and threatened him with consequences. The Minister expressed his regrets that Mr. Chahal was interfering not only in the functioning of the Department where he had no locus standi, but also in the judicial system.

[h]. It is pertinent to mention at this stage that BIS Chahal was then the Media Advisor to the Chief Minister, Punjab and the name of his son (Bikramjit Inder Singh Chahal) figured amongst the seven candidates selected to be appointed to the posts of DSP against sports quota.

[i]. Meanwhile, Mr. Longia, the then Joint Secretary filed his reply affidavit dated 1.7.2004 with a specific plea that he had "handed over the file to Mr. Sobti, Law Officer, in the Court, at about 9.55 a.m. on 28 May, 2004..." and that "for the reasons best known to the concerned Law Officer, the record was not produced before the court on that day. Efforts were made to hold the file. The deponent/respondent did not agree. Several times, the deponent was asked to discuss the matter with Mr. BBS Sobti in the court room and at one time, the deponent was asked to come out of the court room and the matter was discussed with Mr. Sobti when the deponent frankly told them that he has complied with the directions of the court and Minister concerned who had specifically directed the deponent to hand over the record to Mr. Sobti for production before the Court". (emphasis applied)

[j]. It, thus, transpired that the Minister in Charge of the Sports Department had taken a conscious decision to produce the original record before this Court. The records were actually sent through Mr. D.S. Longia who had handed them over to the Sr. Additional A.G. on 28.5.2004 at 9.55 a.m. but the same were still not produced before this Court. The revelations made in the Demi Official letter purportedly addressed by the Minister in charge, Sports Department to the Chief Minister, Punjab coupled with the reply affidavit dated 1.7.2004 filed by Mr. Longia, were sufficient enough to infer that some external force(s) had successfully plotted, prevented and prevailed upon Mr. Sobti to keep the original records away from the Court.

[k]. The writ petitioners moved one more miscellaneous application to place on record the photostat copies of some documents/notings of the Sports Department which they claimed to have been received by their counsel through mail. The Advocate General, Punjab was granted time to verify the genuineness of those documents and in response thereto, Mr. D.S. Bains, IAS, Secretary, Sports and Youth Services, Punjab filed his affidavit, impliedly admitting the contents of those photostat copies though according to him, the notings were internal matters and irrelevant to the controversy pending before this Court.

[I]. These unrebutted documents/officenotings contained the following officenotes dated 28th and 29th May, 2004 :

"I have called for this file from Mr. Pal Singh, Supdt. Sports office after I received a phone call around 6.00 p.m. on 27/5 from Mr. Sobti, Sr. Additional Advocate General. Mr. Sobti informed me that the Hon"ble High Court has summoned the record of the Sports Department in the DSP recruitment case. I have assured him that the same will be produced before the Hon"ble Court tomorrow.

About half an hour later I received a call from Mr. B.I.S. Chahal, Media Adviser who told me not to produce this file before the Hon"ble Court. He said that the Sports department should state that it has no papers and all the relevant papers have been put up before the Hon"ble Court already.

Since the Cabinet meeting was fixed for 6.30 p.m. I discussed this matter with the Sports Minister briefly before the Cabinet meeting started.

Today morning, the Tribune has carried a report that our file has been summoned by the Hon"ble High Court. Feeling concerned about the conflicting demands I consulted the Chief Secretary, P.S.C.M. The C.S. advised me that courts orders should be obeyed and I should send this file to the Hon"ble Court after obtaining orders from the Sports Minister. We should claim a privilege regarding this matter.

It is submitted for orders pl.

Sd/ (D.S. Bains) 28.5.2004

S.M.

As our (Sports Department) file is summoned by the Hon"ble High Court through A.G. Office, we must obey the Hon"ble High Court orders by all means.

I have brought this unfortunate interference by Mr. BIS Chahal in our Department to the notice of P.S.C.M. and requested him to brief the Hon"ble C.M. that Mr. Chahal has advised Secretary and Joint Secretary Sports not to put up the file and other record before the Hon"ble high Court. It is well known that Mr. Chahal's son has been appointed DSP.

Subsequently I felt the need to discuss the matter with the A.G. Punjab Shri Harbhagwan Singh and C.S. that we should obey the orders of the High Court.

File be submitted in time after taking a photo copy of the entire said file.

Sd/ (J.S. Kang) 28.5.04

SSYS

Sd/ (D.S. Bains) 28.5 9.35 a.m.

JSSYS

In compliance with the above orders, file was handed over to Mr. Sobti, Sr. Additional Advocate General at 9.55 A.M.

SSYS may please see for information.

Sd/ (D.S. Laungia) 29.5.04

SSYS" (emphasis applied)

[m]. The above referred office record revealed in no uncertain terms a telephonic conversation between BIS Chahal then Media Advisor to the Chief Minister and Mr. Longia, suggesting that the former not only directed the latter not to produce the records before this Court but also threatened Mr. Longia with dire consequences if he did the contrary.

[n]. Finally, on July 7, 2004, Mr. Sobti, the then Senior Additional AG, Punjab submitted some material in a sealed cover stating that whatever record of the Sports Department was handed over to him, had been produced.

3. On being prima facie satisfied that it was BIS Chahal (hereinafter referred to as the contemner) who had misused his official position and blatantly interfered and attempted to obstruct the administration of justice and subvert the process of law, that this Court vide its order dated October 15, 2004 issued a show cause notice calling for his explanation.

4. On that very day, the Full Bench also pronounced its judgment in the main case and while setting aside the selection to the posts of DSP reserved for outstanding sports persons, it made following observations regarding non production of the records of the Sports Department :

"Since, while issuing notice in these Writ Petitions, this Court had categorically directed that the "entire records" in relation to the selection and appointments of DSPs shall be kept in sealed cover and will remain in the custody of the Advocate General, Punjab, initially we had no reasons to doubt that the "entire records" would obviously include the records of the Sports Department as well. However, when the records were produced and unsealed in our presence, we found that the records of the Sports Department were not there. We also noticed a great reluctance on the part of the learned Senior Counsel representing the State of Punjab to produce these records, a detailed reference to which has been made in separate proceedings. It may, however be mentioned that after adopting one or the other delaying tactics, reluctance and/or lame excuses, some of the records of the Sports Department were produced before us." (emphasis applied)

5. The contemner filed his reply affidavit dated 3.1.2005, inter alia, stating that since he had never talked to or exchanged words with Jagmohan Singh Kang, the then Minister of Sports and Youth Services in relation to the selection of DSPs from the sports quota, "both the documents, DO letter purportedly written by Shri Jagmohan

Singh Kang and the office notings recorded by him are apparently based on hearsay material". The contemner also denied having had any talk with D.S. Longia, the then Joint Secretary, Sports over the issue of production of the record or admonishing or threatening him with consequences in case the record was produced in court. The contemner has further averred that the alleged demiofficial letter of the Sports Minister was never received in the office of the Chief Minister, Punjab, as had been verified by the Chief Minister's office. As regards his conversation with Mr. D.S. Bains, the then Secretary, Department of Sports and Youth Services, para 5(v) of the affidavit reads as follows :

"c) The true sequence of events is that on 27.5.2004 at about 5.00 P.M., a journalist, namely, Shri Devinderjit Singh Darshi, Jag Bani informed the deponent that there was a lot of commotion about the non production of the relevant record of Sports Department by the Government pertaining to the DSPs selection, in the Hon"ble High Court. He wanted to know the deponent's reaction. The deponent was wholly unaware of the details of proceedings in the court. However, being Media Adviser, he was concerned about the likely media coverage of the issue.

d) In this view of the matter, the deponent called up Shri D.S. Bains at 5.51.31 P.M. from his landline telephone No.2742556. He contacted Shri Bains on the latter's cell phone No.9814411188. The deponent expressed his concern about the likely criticism in the press on the non production of the record. Shri D.S. Bains then told the deponent that while the main file pertaining to the selection was lying in the Office of the Chief Minister or was in transit, some notings were recorded in the Sports Department which Shri Bains referred to as the part file. Shri Bains was further kind to inform the deponent that these notings were purely intra Department communications and were no way relevant to the selection process. Shri Bains further highlighted the desirability of claiming a privilege in the matter. At that stage, the deponent casually observed that the orders of the Court should not be disobeyed and if the department was not legally bound to produce the record in question, even then a proper legal course, claiming a privilege, should be adopted....".

6. The contemner, thus, has refuted the officenote dated 28.5.2004 of Mr. Bains, claiming that he had rather asked Mr. Bains to produce the relevant files before this Court, unless the privilege was being claimed, as he was concerned with the likely criticism in the press on nonproduction of the records. The contemner has also relied upon the affidavit of Mr. Longia to deny any conversation having taken place between them through the cell phone of Mr. Sobti (Senior Additional A.G.) on 28.5.2004 at 9.55 a.m.

7. The contemner has thereafter filed an additional affidavit dated 30.1.2008 wherein he claims to have tendered an unconditional apology.

8. After we had heard the learned Amicus Curiae and the learned counsel for the contemner at length on 5.12.2008 and reserved our order, the contemner moved an application seeking permission to make further submissions. We, in the interest of justice, have again heard his learned Senior Counsel and have also taken on record his written submissions. The learned Additional Advocate General, Punjab also produced the records of the Sports Department including the noting files.

9. It is indeed not in dispute that deliberate and willful hindrance against production of the records before a court of law, in order to stall the just and appropriate decision in a case, tantamounts to interfering with the due course of judicial proceedings as well as causing obstruction in the administration of justice and such an act would clearly fall within the mischief of Section 2(c)(ii) and (iii) of the Contempt of Courts Act, 1971 (in short the Act). The expression "criminal contempt" is wide enough to include any act by a person which tends to interfere with the administration of justice or which would lower the authority of court. The public have a vital stake in efficacious and inviolable administration of justice. Those who perform duties in a court of justice are protected and shielded by the law for their discourse. Any designed interference with the discharge of such duties either in and/or outside the court would amount to "criminal contempt", warranting serious cognizance of such conduct. An indifferent approach towards a contumacious act deliberately done to overreach the due process of law without compunction, would in fact amount to a premium to the wrongdoers as observed by the Hon'ble Supreme Court in *Ram Autar Shukla v. Arvind Shukla*, 1995 Supp.(2) SCC 130. Where the conduct of a person tends to bring the authority and administration of law into disrepute or disregard or conduces to interfere and prejudice the litigating public, it will render him guilty of the "criminal contempt" as defined under the Act. In such a case, intention or motive is not the criterion though it may have some bearing for mitigation or aggravation of the sentence, as the case may be. [Ref : *Delhi Development Authority v. Skipper Construction and another*, 1995(3) RCR(Criminal) 797 : (1995)3 SCC 507]. In *R.K. Jain v. Union of India*, 1993(4) SCT 181 : (1993)4 SCC 199, it was ruled that on issuance of rule nisi and a direction to produce the records, the government or any authority whosoever must produce the record in their custody and disobedience thereof would be at the pain of contempt. In the light of these settled principles, we are of the view that if the allegations are held to be true, there can be no other conclusion but to hold the respondent contemner guilty of committing the "criminal contempt" of this Court.

10. We may firstly respond to one of the pleas taken on behalf of the contemner that if his written explanation is found to be unsatisfactory, the powers under subsection (5) of Section 17 of the Act may be invoked and the matter may be remitted to the Sessions Court for taking further evidence.

11. Every High Court, being a Superior Court of record, is embodied with inherent and plenary powers under Article 215 of the Constitution to punish for its contempt

summarily. These powers cannot be tinkered with by legislation like the Contempt of Courts Act, 1971. While exercising its jurisdiction under Article 215 of the Constitution, the High Court may follow a procedure which is fair enough to afford a reasonable opportunity to the contemner to defend himself. Suffice it to say that the powers under the Act are in addition and not in derogation of the High Court's extraordinary jurisdiction under Article 215 of the Constitution. As held by the Hon'ble Supreme Court in *Pritam Pal v. High Court of Madhya Pradesh*, 1993 Supp (1) SCC 529, "the jurisdiction vested is a special one not derived from any other statute" but derived only from Article 215 and that "the constitutionally vested right cannot be either abridged, abrogated or cut down, by any legislation including the Contempt of Courts Act". In *Vinay Chandra Mishra* (1995)2 SCC 584, it was reiterated that the constitutional power to punish for the contempt of itself or of the subordinate courts is independent of a statutory power and the court shall be well within its right for adopting summary procedure and punishing the offender if the contempt is in the nature of *in facie curiae*.

12. The Contempt of Courts (Punjab and Haryana) Rules, 1974 (in short the Rules) have been framed by the High Court under Section 23 of the Act and are contained in Chapter VII, Volume 5 of the High Court Rules and JUDGMENTS. Rule 8(1) thereof provides that any person charged with "criminal contempt" may file an affidavit in support of his defence. If such a person refuses to plead guilty or claims to be tried or when the High Court does not convict him on his pleading guilty, subrule (3) of rule 8 empowers the High Court to "determine the matter of the charge either on the affidavits filed or after taking such further evidence as may be necessary". We find that rule 8(3) of the Rules and subsection (5) of Section 17 of the Act are mutually complimentary and what is required to be given is only a fair and reasonable opportunity of being heard to the contemner. We say so for the reason that, as a matter of course, there is no jurisdictional compulsion for a High Court to summon the records or witnesses whenever a contemner denies the allegations. The power to summon the witnesses or take further evidence is an enabling provision so that wherever the court due to insufficient or scant material on record is unable to form a definite opinion, it may take further evidence on its own or relegate this task to a subordinate court.

13. In *re : Vinay Chandra Mishra*, 1995(3) RCR(Criminal) 655 : (1995)2 SCC 584, their Lordships ruled that although criminal contempt of court amounts to an offence but it is an offence *sui generis* and hence the procedure adopted for such an offence, both under the common law and the statute law, even in this country, has always been summary. In *T. Sudhakar Prasad v. Govt. of Andhra Pradesh*, 2001(1) SCT 354 : (2001)1 SCC 516, it has been reiterated that the powers under Articles 129 and 215 of the Constitution do not confer any new jurisdiction and they merely recognize a preexisting situation that the Supreme Court and the High Courts being the Courts of record have inherent jurisdiction to punish for contempt in a summary manner, which is not governed or limited by any rules of procedure except the principles of

natural justice as the provisions of the Contempt of Courts Act, 1971 are in addition to and not in derogation of Articles 129 and 215 and they cannot be used for limiting or regulating the exercise of the jurisdiction contemplated by the said two Articles. In *Pallav Sheth v. Custodian and others*, 2001(3) RCR(Criminal) 781 : (2001) 7 SCC 549, the Hon"ble Supreme Court clarified that if there is any provision of the law which stultifies or abrogates the power under Article 129 and/or Article 215, such law would not be regarded as having been validly enacted. However, providing for the quantum of punishment or what may or may not be regarded as an act of contempt or even providing for a period of limitation for initiating proceedings for contempt cannot be taken to be a provision which abrogates or stultifies the contempt jurisdiction under Articles 129 or 215 of the Constitution.

14. The respondentcontemner has been granted as many opportunities as he wanted for filing his replyaffidavit or additional affidavits in his defence. The oral submissions made on his behalf have been heard at length besides taking his written submissions on record. We are, therefore, of the view that fair and reasonable opportunity has been afforded to the contemner to defend himself. We are also satisfied that no supplementary evidence need be brought on record to arrive at a definite conclusion in the matter.

15. The crucial question to be determined is as to whether it was the respondentcontemner (BIS Chahal) who exerted influence and hoodwinked Mr. Longia, the then Joint Secretary of the Sports Department and successfully stalled production of the original records of the Sports Department before this Court on May 28, 2004 ?

16. At the cost of repetition, we may point out that the son of the contemner figured amongst the candidates whose selection as DSP was under challenge. The writpetitioners' case was that the contemner misused the powerful political office held by him, manoeuvred the selection process and wielded influence for his son's selection. It can, therefore, be safely inferred that the contemner had a reason to believe that the records of the Sports Department could lead to an adverse inference against the selection and he should see that the same were not produced before this Court.

17. A reference to those officenotings which must have exhorted the contemner against their production would be appropriate at this stage. Shri Jagmohan Singh Kang, Minister for Sports and Youth Services raised various queries vide his note dated 17.2.2004, including : (i) how many posts were to be filled and on what criteria, qualifications or eligibility determined by the experts ?; (ii) whether the vacancies were already in existence ?, and if yes, was sufficient time given for interviews ?; (iii) how and when have these posts been taken out of the purview of PPSC ?; (iv) can these posts be filled up by the Departmental Selection Committee without getting any NOC of the concerned Department ?; and (v) what are the legal implications when the main case is still pending in High Court ?

18. Responding to these queries, Mr. D.S. Bains, Secretary, Sports and Youth Services opined in the note dated 20.2.2004 that he, as a member of the Selection Committee, had suggested that "only two or three posts should be filled from the present lot as the others who have appeared in the interview were not fit to be appointed as DSP, at the best they should be appointed as ASI/SIs. A final view on this has to be taken by the committee".

19. The file was again put up before the Minister incharge, who vide his selfspeaking note dated 21.2.2004, observed that :

"I have examined the issue raised regarding sports persons in the Police Department minutely. Sports persons in the Police Department are being reverted despite the fact that no orders passed to this effect by the Hon"ble High Court has been brought to the notice of the Sports Department. I cannot understand why a cabinet decision is being flouted by the Home Department with impunity. I am told that a wrong affidavit has been filed in the Hon"ble High Court and the cabinet decision has not been highlighted. If this is true, the Home Department should be directed to file an amended application before the Hon"ble High Court immediately. This will take care of the anxiety regarding contempt of court.

In my opinion the fresh appointments to the post of DSP are being made with indecent haste and will not stand the scrutiny of the Hon"ble High Court. The matter is to come up before the Hon"ble Chief Justice on 27.2.2004. I would sincerely advise that this interview process be stopped and recruitment be made through the proper procedure or through the PPSC after giving sufficient and due notice. Only those sports persons (at best 2 or 3) who can bring laurels to the country in the international arena and who are continuing with their sports activities could be appointed as per rules.

xxxx xxxx xxxx

xxxx xxxx xxxx

On the one hand we created posts for sports persons yet they are being reverted. They are losing their seniority. On the other hand we are trying to recruit people as DSPs whose sports credentials are doubtful contrary to the spirit of the Memorandum approved by the CMM.

The hurried appointments which are being made will raise eyebrows and people will doubt the intention of the Congress Government.

In the end I again request you to intervene and stop this recruitment immediately. These posts should be filled up on merit and to ensure justice after following the proper procedure and after giving adequate and due notice...."

(emphasis applied)

20. The file was then put up before the Chief Minister, Punjab who overruled the Minister's objections and approved the selection process.

21. As may be seen from the officenote dated 21.2.2004 of the Minister in charge, Sports Department that after delving deep into the matter and highlighting the procedural impropriety, favouritism and gross violation of the Rules, he raised various objections against the ongoing selections. The contemner, who was holding a key assignment in the Chief Minister's Office, obviously had access to these objections and had an overt motive to get the file of the Sports Department withheld from this Court.

22. Suffice it to say that the objections raised by the Sports Department against taking the posts out of the purview of the PPSC, constituting the Departmental Selection Committee, the unusually hasty selection process or the allegations of favouritism, found favour with the Court and have been explicitly approved by the Full Bench in its decision dated October 15, 2004.

23. The selfspeaking handwritten note of Mr. Bains reveals that the contemner did talk to him more than once and insisted on withholding the records of the Sports Department before this Court. The fact that he talked to Mr. Bains on the latter's cell phone has been admitted by the contemner in his reply affidavit. Knowing fully well that the records of the service provider would establish the calls made through the cell phone of Mr. Bains, the contemner has pretended his concern over the likely adverse reporting by the media against non production of records of the Sports Department. The contemner's afterthoughtplea stands belied by the officenote dated 28.5.2004 of the Minister Incharge wherein the contemner has been accused of interfering in the functioning of the Sports Department and extending threats against production of the records before the High Court. If one reads the Minister's above mentioned office note or the contents of the demiofficial letter addressed to the Chief Minister, no further enquiry regarding the genuineness of the said DO letter is necessitated as they both carry the same tone and tenor.

24. It is apropos to refer to the contemner's replyaffidavit dated 3.1.2005 at this stage. Relying upon the copies of the affidavits of M/s D.S. Longia and D.S. Bains (Annexures R5 and R6 respectively), he maintains that nowhere in their affidavits have they alleged any threat to Mr. Longia or that the contemner talked to Mr. Bains on his cell phone urging him to withhold the records from the High Court. Mr. Longia in his affidavit dated 1.7.2004 has, however, candidly admitted that soon after he handed over the records to Mr. Sobti on 28.5.2004 at about 9.55 a.m., "Efforts were made to hold the file. ... Several times the deponent was asked to discuss the matter with Mr. BBS Sobti in the Court room and one time the deponent was asked to come out of the court room and the matter was discussed with Mr. Sobti....". Thus, there was someone other than Mr. Sobti who had been compelling Mr. Longia not to produce the record. The sequence of events read with the office notes of 28th and 29th May, 2004 settle the dust, and leaves no room to doubt that

it was the contemner only who had wished to have benefited out of non submission of the records of the Sports Department and had actually impeded the production of those records.

25. Mr. Bains has also, in his affidavit, acknowledged his office note dated 20.2.2004 as well as that of the Minister incharge dated 21.2.2004. These officenotes, as explained earlier, highlight the sordid saga of the selection process. We have no reason to doubt that misusing his official position the then mighty contemner, firstly tried to influence the officers of the Sports Department but after having failed at that level, he manipulated the non production of the record in connivance and tacit support of Mr. BBS Sobti, the then Sr. Additional A.G.. whose conduct has also not been above board in the whole episode.

26. We, therefore, unhesitatingly hold that the misdemeanor of the respondentcontemner led to the repeated defiance of the directions issued by this Court for the production of the entire records.

27. During the course of oral as well as written submissions, the contemner has made imputations against Mr. D.S. Bains, the then Secretary, as well as the Minister Incharge of the Sports Department, Shri Jagmohan Singh Kang. It is urged that Mr. Bains is closely allied to Mr. Sukhbir Singh Badal with whom he had worked as a Private Secretary when the latter was a Union Minister and was, therefore, hand in glove with those who were bent upon defaming the then Chief Minister, Captain Amrinder Singh. The allegation, on the face of it, is an afterthought concoction. We say so for the reason that no such accusation has been made by the contemner in his first replyaffidavit dated 3.1.2005. Had there been even an iota of truth in this allegation, no occasion would have arisen for inclusion of Mr. D.S. Bains as a member of the Selection Committee.

28. The contemner's plea that the Minister incharge, Mr. Jagmohan Singh Kang, also wanted to tarnish the image of the then Chief Minister appears to be totally scandalous and motivated. In a democratic setup like ours, mere expression of divergent views by a Minister on an issue of public importance and that too in the office files only, can by no figment of imagination, be termed as an act of mud slinging against the Chief Minister. The allegations have come forward for the first time during the course of hearing and in the written submissions. There is nothing on record to substantiate these allegations. We accordingly reject the same.

29. Adverting to the plea regarding acceptance of unconditional apology purported to have been tendered by the contemner vide his additional affidavit dated 30.1.2008, we are of the considered view that firstly, the apology tendered by the contemner can in no way be termed unconditional as it is preceded by an explanation. In case the defence plea does not find favour with this Court that the contemner wants his unconditional apology to be accepted. Secondly, unconditional apology is not a complete answer to the violations and infractions of the orders of

the court, more so when the contemptuous action is deliberately designed by somebody holding a responsible public office. We cannot overlook mentioning the conduct of the respondentcontemner during the pendency of these contempt proceedings. After seeking exemption from personal appearance for one particular date, the respondentcontemner went abroad and failed to appear before this Court despite unequivocal directions issued on 14.3.2007, 21.3.2007, 18.4.2007 and 2.5.2007. This Court was finally constrained to issue bailable warrants vide order dated 9.5.2007 through the First Secretary of Indian High Commission at London and then only the contemner's presence could be secured. The respondentcontemner has exhibited scant respect for the majesty of law and it was only when he was left with no escape route, that he tendered the so-called unconditional apology which lacks sincerity as well as bona fide.

30. In *M.B. Sanghi Advocate v. High Court of Punjab & Haryana and others*, 1991(3) RCR(Criminal) 310 : (1991)3 SCC 600, the Supreme Court ruled that, "an apology is not a weapon of defence to purge the guilty of their offence; nor is it intended to operate as a universal panacea, but it is intended to be evidence of real contriteness". In *TMA Pai Foundation and others v. State of Karnataka*, 1996(1) RCR(Criminal) 167 : 1995(4) SCT 447 : (1995)4 SCC 1, the Supreme Court expressed its concern and observed that "it is equally necessary to erase the impression which appears to be gaining around with the "mantra" of unconditional apology is a complete answer to violations and infractions of the orders of this Court". These principle have been reiterated in *Rajiv Choudhary v. Jagdish Narain Khanna & Ors.*, 1996(1) RCR(Criminal) 377 : (1996)1 SCC 508 also. In *Rajender Sail v. M.P. High Court Bar Association*, 2005(2) RCR(Criminal) 718 : 2005(2) Apex Criminal 158 : (2005)6 SCC 109, the Apex Court warned that :

"If a person committing gross contempt of court were to get the impression that he will get off lightly it would be a most unfortunate state of affairs. Sympathy in such a case would be totally misplaced, mercy having no meaning. His action calls for deterrent punishment so that it also serves as an example to others and there is no repetition of such contempt by any other person."

Guided by these parameters, we decline to accept the contemner's apology.

31. This takes us to the last contention, namely, that the contempt proceedings could not have been initiated against the respondent solely on the basis of the notings in the officefiles. Reliance has been placed on the decision of Hon"ble Supreme Court in *State of Bihar and others v. Kripalu Shankar and others*, 1988(1) RCR(Criminal) 453 : (1987)3 Supreme Court Cases 34.

32. In *Kripalu Shankar's case (supra)*, an advertisement for the post of Public Relations Officers was challenged before the High Court on the allegations that it was drafted to suit one Subhash Chander Jha. On going through the records summoned for production, the High Court took the view that since its previous

directions in another writ petition were disregarded, therefore, rule was issued to the respondents to show cause as to why they be not punished for contempt of the court. The respondents pleaded that no contempt had been committed by them for the reason that expression of views in the notings made on the files, whether right or wrong, did not amount to contempt of court. The respondents, however, were held guilty by the High Court on the premise that the file is not an individual's private property; it is a public property and the opinions expressed therein are liable to reduce the credibility and binding nature of the orders passed by the High Court. Setting aside the High Court order, their Lordships of the Supreme Court ruled that, "to rely upon the notings in a file for the purpose of initiating contempt, in our view, therefore, would be to put the functioning of the government out of gear". It was held that the notings in a file did not have behind them the sanction of law as an effective order. It is only a subjective expression by the concerned officer on the subject under review.

33. As may be seen, the facts of the case in hand are altogether different. The contempt proceedings have not been initiated by this Court after going through the office notes of S/Shri D.S. Bains and Jagmohan Singh Kang. On the contrary, it is the blatant defiance of its directions to produce the records of the Sports Department which led to initiation of these proceedings. The office notes have been referred to and relied upon to falsify the contemner's defence that he exerted no pressure upon S/Shri D.S. Bains and D.S. Longia for withholding the records or that he had not threatened the latter, in or outside the court room, on the cell phone of Mr. BBS Sobti.

34. In the light of the discussion and for the reasons stated above, we hold that the respondentcontemner is guilty of interfering and obstructing the process of judicial proceedings as well as the administration of justice by his act of preventing the production of the records of the Sports Department before this Court on 28.5.2004 and has, thus, committed the "criminal contempt" of this Court within the meaning of Section 2(c)(ii) and (iii) of the Contempt of Courts Act, 1971.

35. In the peculiar facts and circumstances of this case and even when there is no legal compulsion for us to separately hear the contemner on the question of sentence, we consider it appropriate to give him an opportunity to do so. The matter shall now be listed for hearing on the question of sentence on 21st August, 2009.

JUDGMENT accordingly.