

(2010) 02 AHC CK 0109

Allahabad High Court

Case No: Criminal Contempt No. 31 of 2005

Manju Lata
Consolidation Officer

APPELLANT

Vs

Jasbir Singh Pawar
Advocate

RESPONDENT

Date of Decision: Feb. 5, 2010

Hon'ble Judges: Imtiyaz Murtaza, J and Shyam Shankar Tiwari, J

Judgement

Imtiyaz Murtaza, J.

Present contempt proceeding has its genesis in the Reference made to this Court by Smt. Manjulata Consolidation officer, Sadar Kairana Muzaffarnagar for initiation of proceeding under section 2 (c) of the contempt of Court Act, 1971 punishable under section 12 of the Act. Upon receipt of reference, it would appear, the matter was processed by the office and initially the matter was referred to Administrative Judge Muzaffarnagar who opined that contempt proceedings be instituted in the matter vide comments of Administrative Judge, Muzaffarnagar dated 12.9.2005 which are excerpted below.

"I have perused the application moved by Ms. Manju Lata, Consolidation officer, Sadar/Kairana Muzaffarnagar together with report of O.S.D. (Computer) duly endorsed by Registrar General from which, prima facie, I am of the view that contempt proceedings be instituted in the matter."

2. The matter thereafter went ahead to the end of Hon. Chief Justice who appended his approval vide order dated 15.9.2005 and thereafter, the matter came to be referred to on judicial side and the same was admitted by the Division Bench and notice was issued vide order dated 26.9.2005 of the Court. The charge was framed and served to the contemnor on 16.2.2006.

3. According to the allegations as embodied in the reference made to this Court, on 30.5.2005 at about 11.30 a.m, while the officer was present in court and was pronouncing the judgment in case no. 867 Maqsood v. State, which leaned against

Maqsood, the party to the case of which the contemnor was the counsel, the contemnor entered the court room in a jiffy and started yelling, using filthy language against the Presiding officer stating how she dared to pronounce a decision leaning against the interest of his client and that he would teach her how the orders are passed attended with further toxic vitriol as to who had appointed her as Consolidation officer attended with further diatribe that her face should be blackened and she should be mounted on a donkey and should be paraded all over the city. He did not stop at this and continued shouting, using a language which scandalized and lowered the position of the Consolidation officer causing interference in the course of judicial proceedings and administration of Justice.

4. Sri Satish Trivedi, appearing for the contemnor did not argue on merits of the case and instead, invoked the compassion of the Court for accepting the unqualified apology which the contemnor has already tendered and discharging the contemnor. He prayed for lenient view stating that the contemnor was fairly senior having already put in 20 years of practice attended with further submission that at no point of time, his conduct had departed from the path of rectitude and sobriety or of a conduct expected of a lawyer of this stature. To prop up his submission invoking compassion, the learned counsel submitted that the contemnor cannot be said to be addicted to using contemptuous language and making scurrilous attacks as it is his first aberration and therefore, he should be purged and should be given a chance to expiate his aberrant behaviour.

5. Here in this case, we are faced with a unpleasant task of dealing with a case involving a lawyer under the Contempt of Court Act. We proceed further with the case with the piece of advice that the Court should not be over or hypersensitive and should not exercise this jurisdiction on any exaggerated notion of the dignity of the Judges and must act with the dispassionate dignity and decorum which befits the judicial office. At the same time it should be borne in mind that the Court is the protector of public justice.

6. Before we proceed further, we must observe that the apology is not a protective gear to be used as a shield to protect the contemnor as a last resort. The apology, in order to dilute the gravity of the offence, we must say, should be voluntary, unconditional and indicative of remorse and contrition and it should be tendered at the earliest opportunity.

7. It would be obvious from the record that the contemnor filed counter affidavit in which he has denied the words attributed to him attended with averment that he neither loosened diatribe against the Presiding officer nor criticized the order passed by her. He also denied that he threatened the said officer. To sum up, he averred that he did not do any overt or covert act which could be construed to be obstruction in her judicial work. Dwelling on the facts he averred that he appeared as a counsel for Jeeju in the case who is alleged to have executed sale deed of a nontransferable Bhmidhari land in favour of Ratan Singh. Subsequently Jeeju denied

to have executed any sale deed. In para 5 of the counter affidavit, it is averred that he had made a complaint dated 30.5.2005 addressed to District Magistrate pinpointing instances of corruption being indulged in by the officer. In para 6 of the counter affidavit, it is averred that he had also made a complaint addressed to Settlement officer Consolidation Muzaffarnagar concerning suit no. 866 Ratan Singh v. Jeeju pursuant to which Settlement Officer consolidation summoned the file, and stayed its operation. In para 7 it is averred that on 8.6.2005, when he appeared before the Consolidation officer in the case of Ishmat Ilahi v. Abdulla, she humiliated him without any rhyme or reason pursuant to which he made a written complaint in the Bar Association. In para 8, it is averred that on his complaint, the District Magistrate had appointed Chandra Pal Singh Addl. District Magistrate to enquire into the imputations of corruption who it is further averred, gave his report and in the light of report of enquiry, the District Magistrate referred the matter for action to Consolidation Commissioner. In para 12, it is averred that aggrieved by the complaint, she made the reference for initiating proceeding for contempt attributing certain words which he had never uttered in court. Lastly i.e in para 18, it is averred that he is a disciplined and serious minded Advocate and he has always been respectful to the courts attended with averments that he is repentant if somehow or the other he has injured her feelings and tender unconditional apology. It would also appear from the record that the contemnor subsequently filed a supplementary affidavit alongwith application dated 5.3.2007 in which he prayed for affording opportunity to cross examine the officer. He reiterated the allegations against the officer that she was indulging in corruption practice. The contemnor also filed supplementary affidavit on 2.11.2006 in which he expressed that he tenders unqualified apology. In para 3 of the said affidavit, he sought permission to withdraw his earlier affidavits placed on record. This affidavit was prefaced with unqualified apology vide para 2 of the said affidavit. Being relevant, the para 2 of the said affidavit is quoted below.

"That the deponent craves indulgence of this Court to permit him to withdraw his earlier affidavits (two affidavits), which were placed on record on his behalf in the circumstances which were not within the control of the deponent. However, as the counsel for the deponent/contemnor Sri Shyam Lal Mishra left for heavenly abode during the pendency of the instant application, the deponent most humbly requests that this Hon. Court may be pleased to permit him to withdraw both the affidavits filed on his behalf and the same may not be treated as part of this contempt application."

8. The contemnor again filed counter affidavit alongwith application dated 5.11.2007 in which he has averred that pursuant to enquiry, the officer has been suspended which submission, it would appear from the record, is belied by the letter of the District Magistrate which is annexed as Annexure C.A. I from a perusal of which it would transpire that the District Magistrate submitted his report to the Consolidation Commissioner recommending suspension of the officer. In the same

counter affidavit is annexed the communication from Settlement officer Consolidation (Annexure C.A. 2) intimating that departmental enquiry has been set up against the officer. No where, it finds mention that the officer has been placed under suspension.

9. Here, it would suffice to say, we are concerned with the issue whether the contemnor has committed contempt of court or not and not with the issue whether the officer was indulging in corrupt practices or not. Even if it be assumed that the officer had indulged in corrupt practices and there were specific instance, proper course open to the contemnor was to have raised the issue by citing instances of corrupt practices to the higher authorities by way of representation or complaint which he has already done but by no reckoning it was open to him to let out bile against the officer in the court in a language which scandalized the court or lowered its position.

10. The above narration would go to show that the contemnor denied the allegations and referred to complaint made by him against the officer addressed to the District Magistrate and also to the Settlement officer Consolidation and also reiterated his allegations against the officer of her indulging in corruption. Even in the counter affidavit filed alongwith application dated 5.11.2007 sworn by contemnor himself, he has reiterated his allegations and erroneously stated that the enquiry officer suspended the officer finding her guilty of corrupt practices. Para 4 of the counter affidavit filed alongwith application dated 5.11.2007 is excerpted below.

"That the first enquiry against the applicant has been made by the A.D.M. (Administration) Muzaffarnagar and the enquiry officer suspended her vide order dated 18.7.2005."

11. It would thus crystallize that the contemnor throughout the contempt proceeding took inconsistent stand and blew hot and cold in the same breath. On one hand he contested the allegations to the fullest and propped up the allegations by filing various documents and at one stage, demanded to cross examine the officer and on the other hand, he tendered the apology as a last resort in the event of this Court finding him guilty of having committed contempt of court. There could not be both justification and apology.

12. Before we proceed further, we would like to quip here that if the judiciary has to perform its function in a fair and free manner, the dignity and authority of the court has to be respected by all concerned failing which the very constitutional scheme and public faith in the judiciary would run the risk of being eroded. Since the contemnor is an Advocate, the matter requires to be considered with a little more seriousness. An Advocate, we feel called to say, is not not exempt from ordinary disability which the law imposes and his position is not inviolable and his privileges cannot extend to interfere with the administration of justice. On the other hand he

is expected to help in subserving the course of justice and not impede it in any manner. A legal practitioner has no doubt his duties towards his client but at the same time he has equally important duty and obligation upon him to cooperate with the court in the orderly and pure administration of justice. Any departure would be construed to be violative and neglecting his duties and obligations. A lawyer is a person educated and trained in law. The use of language has to be balanced and in fitness of things within the framework of the law of the land. He cannot and should not be reckless in use of language. There are barriers which must be known to a lawyer and it should not be crossed. He should not overstep the limits of decency and ethics in the matter of his behavior towards the court.

13. In *Delhi Judicial Service Association v. State of Gujrat*, (1991) 4 SCC 406, the Apex Court held as under.

" The definition of criminal contempt is wide enough to include any act by a person which would tend to interfere with the administration of justice or which would lower the authority of court. The public have a vital stake in effective and orderly administration of justice . The Court has the duty of protecting the interest of the community in the due administration of justice and so, it is entrusted with the power to commit for contempt of court, not to protect the dignity of the Court against insult or injury, but to protect and vindicate the right of the public so that the administration of justice is not perverted, prejudiced, obstructed or interfered with."

14. In *N.B.Sanghvi v. High Court of Punjab and Haryana* (1991) 3 SCC 600 the Apex Court observed as under:

"The tendency of maligning the reputation of Judicial Officers by disgruntled elements who fail to secure the desired order is ever on the increase and it is high time it is nipped in the bud. And, when a member of the profession resorts to such cheap gimmicks with a view to browbeating the Judge into submission, it is all the more painful. When there is a deliberate attempt to scandalize which would shake the confidence of the litigating public in the system, the damage caused is not only to the reputation of the concerned judge but also to the fair name of the judiciary. Veiled threats, abrasive behaviour, use of disrespectful language and at times blatant condemnatory attacks like the present one are often designedly employed with a view to taming a Judge into submission to secure a desired order. Such cases raise larger issues touching the independence of not only the concerned Judge but the entire institution. The foundation of our system which is based on the independence and impartiality of those who man it will be shaken if disparaging and derogatory remarks are made against the Presiding Judicial Officers with impunity. It is high time that we realise that the much cherished judicial independence has to be protected not only from the executive or the legislature but also from those who are an integral part of the system. An independent judiciary is of vital importance to any free society. Judicial independence was not achieved overnight. Since we have inherited this concept from the British, it would not be out of place to mention the

struggle strongwilled judges like Sir Edward Coke, Chief Justice of the Common Pleas, and many others had to put up with the Crown as well as the Parliament at considerable personal risk. And when a member of the profession like the appellant who should know better so lightly trifles with the much endeared concept of judicial independence to secure small gains it only betrays a lack of respect for the martyrs of judicial independence and for the institution itself. Their sacrifice would go waste if we are not jealous to protect the fair name of the judiciary from unwarranted attacks on its independence."

15. The precise words attributed to the contemnor to have been uttered in the court are quoted below.

"Tumhari Adesh Khilaph Karne Ki Himmat Kaisey Hui. Bahar Nikal Kar Aa Abhi Adesh Karna Sikhate Hai. Isey Adhikari Kisney Bana Diya. Iska to Muh Kala Kar Key Gadhey Par Baitha Kar Sahar Me Ghumana Chahiye."

16. As stated supra, the contemnor has denied to have uttered those words in court. It brooks no dispute that as to the incident that happened in court, the version of presiding officer is entitled to preeminence and obvious acceptance and only in rarest case it may be disregarded. Nothing has been brought on record to warrant the belief that the contemnor has been made a scape goat merely because he had highlighted her acts of corrupt practices. It is quite possible that after he indulged in scurrilous attack on instinct of self preservation, he made the complaint to screen himself against possible action. Although he sought permission in one of his affidavits cited above to cross examine the officer, but at this stage, he tendered unqualified apology without insisting on his demand to cross examine the officer.

17. A Judge or Magistrate has a duty to discharge his/her judicial functions and he/she passes order in the manner as he/she likes fit to the best of his/her capability in the facts and circumstances of the case. The courts cannot be intimidated to seek favourable orders. In the present case, the conduct of the contemnor amounts to intimidating the court and lowering the authority and it clearly amounts to interference with due course of judicial proceedings which were being conducted by the Presiding officer. The power of the High Court of superintendence and control over the subordinate judiciary under Article 235 of the Constitution includes within its ambit the duty protect members of the subordinate courts. In the above conspectus, the charge related to criminal contempt framed against the contemnor is fully established.

18. In the above conspectus, we have no hesitation to say that the charges of criminal contempt established against a practising lawyer cannot be taken with a pinch of salt who carries the trapping of an officer of the Court whose duty is to assist the Court and uphold the majesty of law and dignity of the person manning the court. No judicial system can tolerate such ignoble act and conduct of a practising Advocate. The crucial question that remains is what would be the

appropriate punishment to the contemnor.

19. In connection with whether the apology commends itself for acceptance or not, we may refer to the decision of the Apex Court in *Preetam Pal v. High Court M.P.* 1993 (1) SCC 529 in which the Apex Court observed as under:

"To punish an advocate for contempt of court, no doubt must be regarded as an extreme measure, but to preserve the proceedings of the courts from being deflected or interfered with, and to keep the streams of justice pure, serene and undefiled, it becomes the duty of the court though painful to punish the contemnor in order to preserve its dignity. No one can claim immunity from the operation of the law of contempt if his act or conduct in relation to court or court proceedings interferes with is calculated to obstruct the due course of justice."

20. In *L.D. Jaikwal v. State of U.P.*, [1984] 3 SCC 405, the Apex Court described the apology as a "paper apology and refused to accept it in the following words:

"We do not think that merely because the appellant has tendered his apology we should set aside the sentence and allow him to go unpunished. Otherwise, all that a person wanting to intimidate a Judge by making the grossest imputations against him has to do, is to go ahead and scandalize him, and later on tender a formal empty apology which costs him practically nothing. If such an apology were to be accepted, as a rule, and not as an exception, we would in fact be virtually issuing a "licence" to scandalize courts and commit contempt of court with impunity. It will be rather difficult to persuade members of the Bar, who care for their selfrespect, to join the judiciary if they are expected to pay such a price for it. And no sitting judge will feel free to decide any matter as per the dictates of his conscience on account of fear of being scandalized and persecuted by an advocate who does not mind making reckless allegations if the Judge goes against his wishes. If this situation were to be countenanced, advocates who can cow down the Judges, and make them fail in line with their wishes, by threats of character assassination and persecution, will be preferred by the litigants to the advocates who are mindful of professional ethics and believe in maintaining the decorum of courts."

21. In the above perspective, it cannot be ruled out that the contemnor set up the entire theory in order to save his skin. In this view of the matter, the apology offered does not commend to us for acceptance and it is turned down.

22. Reverting to the case in hand, we are of the firm opinion that the apology tendered by the contemnor does not exude bona fide or manifest genuineness ostensibly for the reasons that the apology has been tendered at a stage when the contemnor sensed that his goose was cooked. As stated supra, in vindication of his stand, he refers to various actions taken by him against the officer including the complaints made to the District Magistrate and also to the Settlement officer consolidation attended with complaint made to Bar Association. He also refers to the order passed by Settlement officer Consolidation. He also reiterated that on his

complaint, enquiry was ordered and the officer was suspended by the enquiry officer although there is nothing on record to indicate that the enquiry officer was vested with the power of suspending the officer. It is in this conspectus, we feel compelled to say that the apology submitted by him does not seem to inspire a real contriteness on his part but is used as a device to screen himself from the rigours of law. The Apex in the aforesaid judgment in M.S.Singhvi has rightly observed that the incidence of contempt is ever on the increase. There is a felt need to curb such incidence. To cap it all, the majesty and dignity of the court has to be preserved. It should not be forgotten that frequent attacks on the dignity of the courts would shake the very foundation of the judiciary. The courts have to perform judicial functions in responsible yet disagreeable ambiance and they require utmost protection. The attack made on presiding officers disparaging in character and derogatory to his/her dignity would vitally shake the confidence of the public in him/her. The vitriolic attacks made on the officer were much more than mere insult and in effect they scandalized the court in such a way as to create distrust in the popular mind and impair confidence of the people in court. The administration of justice must remain independent, clean, fearless and impartial. If an Advocate uses the vile of browbeating the Presiding officer by his toxic vitriolic attack, it is indeed disquieting and should not be viewed with equanimity. In the above perspective, it cannot be ruled out that the contemnor set up the entire theory in order to save his skin. In this view of the matter, the apology offered does not commend to us for acceptance and it is turned down.

23. In the above conspectus, the reference made to this Court is allowed and the contemnor Jasvir Singh Pawar is held guilty of criminal contempt.

24. We accordingly convict him under section 12 of the Contempt of Courts Act and sentence him to undergo simple imprisonment for one month and to pay a fine of Rs.20,000/-. In default, it may be prescribed, the contemnor shall undergo further simple imprisonment for two weeks. However, the punishment so imposed shall be kept in abeyance for a period of sixty days so as to enable the contemnor to approach the Apex Court if so advised. It needs hardly be said that immediately after expiry of sixty days in case no stay order is furnished by the contemnor, he would be taken into custody forthwith to serve out the sentence immediately.

25. The matter shall be listed before this Court in the second week of May 2010 for ensuring compliance.