

(1995) 01 AHC CK 0120

Allahabad High Court

Case No: Contempt Appeal No. 215 of 1991

Suresh Chandra

APPELLANT

Vs

Rajnish Saxena

RESPONDENT

Date of Decision: Jan. 17, 1995

Acts Referred:

- Contempt of Courts Act, 1971 - Section 12(1), 12(3), 13, 19(1)

Citation: (1995) CriLJ 2785 : (1995) 1 UPLBEC 405

Hon'ble Judges: S.K. Phaujdar, J; R.B. Mehrotra, J

Bench: Division Bench

Advocate: V.S. Saxena, Manoj Misra, Bharti Sapru and Sudhir Chandra, for the Appellant;
P.S. Baghel and Sudhir Chandra, for the Respondent

Final Decision: Partly Allowed

Judgement

R.B. Mehrotra, J.

The present contempt appeal has been filed against the judgment of a learned single Judge of this Court, dated 5th Feb. 1991, u/s 19(1)(a) of the Contempt of Courts Act, 1971.

2. In the impugned judgment, the learned single Judge has found the present appellant guilty of committing contempt with impugnt by repeatedly violating the order of the High Court dated 9th Dec. 1988 passed in Civil Misc. Writ Petition No. 16115 of 1988 Rajneesh Saxena v. Committee of Management, S.M. College, Chandausi. The learned single Judge, after considering the circumstances of the case, has held that the apology tendered by the appellant contemner was not bona fide but a ruse to escape punishment and in the circumstances the learned single Judge arrived at a conclusion that a fine alone will not meet the ends of justice and a sentence of imprisonment is necessary. Consequent thereto, the learned single Judge ordered that the appellant contemner should suffer a civil prison for a period not exceeding one month, and in addition pay a fine of Rs. 2,000/- failing which the

appellant was required to be detained for a further period of one month in civil prison.

3. I have heard learned counsel for the appellant Sri Sudhir Chandra, Senior Advocate ably assisted by Ms. Bharti Sapru and Sri P.S. Baghel, the learned counsel for the respondent.

4. Before noticing the submissions made by the counsel for the parties, it is necessary to mention it at the outset that the learned single Judge in the impugned judgment has observed as under:

"The facts as they are, what the court has to consider is how justice must treat the contemnor, in law. On behalf of the contemnor the only argument which has been made is that he leaves the entire matter at the mercy of the court. The argument, in effect, accepts the charges and the facts, of having shown contempt to the orders of the court. The contemnor, thus, pleadings guilty and seeks mercy. In ordinary parlance this is known as contrition. In the jurisprudence which governs the law of contempt there are parameters within which an act of contrition is to be judged."

5. Despite the aforesaid observations, Sri Sudhir Chandra, the learned senior Advocate appearing for the contemnor appellant, in the present appeal, has again addressed the entire matter on merits strenuously contending that the appellant has not committed the contempt and the learned single judge has made wrong observations in the judgment. The appellant has also challenged the correctness of the observations made by the learned single Judge in his judgment, particular reference may be made to Ground No. "I" of the Grounds of Appeal wherein the appellant has contended that the learned single Judge has made wrong observations in his judgment.

6. Before advertng to the merits of the submission, at the out-set we reject the aforesaid submission so far as the correctness of the observations; made by the learned single Judge in his judgment are concerned. In [State of Maharashtra Vs. Ramdas Shrinivas Nayak and Another](#), , the Hon"ble Supreme Court held:

"When we drew the attention of the learned Attorney General to the concession made before the High Court, Shri A.K. Sen, who appeared for the State of Maharashtra before the High Court and led the arguments for the respondents there and who appeared for Shri Antulay before us intervened and protested that he never made any such concession and invited us to peruse the written submission made by him in the High Court. We are afraid that we cannot launch into an inquiry as to what transpired in the High Court. It is simply not done. Public policy bars us Judicial decorum restrains us. Matters of Judicial record are unquestionable. They are not open to doubt. Judges cannot be dragged into the arena "Judgments cannot be treated as mere counters in the game of litigation." (Per Lord Atkinson in *Somasundaran v. Subramanian* AIR 1926 PC 136). We are bound to accept the statement of the Judges recorded in their judgment, as to what transpired in court.

We cannot allow the statement of the Judges to be contradicted by statements at the Bar or by affidavit and other evidence. If the Judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well settled that statements of fact as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party while the matter is still fresh in the minds of the Judges, to call the attention of the very Judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error (Per Lord Buckmaster in *Madhusudan v. Chadrabati* AIR 1917 PC 30). That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. Of course a party may resile and an Appellate Court may permit him in rare and appropriate cases to resile from a concession on the ground that the concession was made on a wrong appreciation of the law and had led to gross injustice, but, he may not call in question the very fact of making the concession as recorded in the judgment."

7. The appellant has not made any effort to approach the learned single Judge for correcting the observations, if any, made by the learned single Judge, if according to the appellant the observation made in the judgment, were not correct. There is no plea in the present appeal that the concession was not made or the appellant pleaded guilty under a misconception of law or of facts. Such a plea can be permitted only in exceptional circumstances. In the present case, no such plea has been raised before us nor the learned counsel for the appellant has made any such submission, on the other hand the learned counsel addressed us in great detail on the merits of the matter submitting that that the appellant has not committed any contempt of court. The appellant cannot be permitted to make such a submission in the present appeal after having admitted his guilt before the learned single Judge.

8. However, for purposes of appreciating the submission of the learned counsel for the appellant that in the facts and circumstances of the case, the punishment awarded to the appellant is excessive, we are examining the facts of the present case only for the limited purposes of considering the aforesaid question as to whether in the facts and circumstances of the case the sentence of fine of Rs. 2,000/- and a further sentence of one month in civil prison is excessive.

9. Respondent in the present matter Sri Rajneesh Saxena filed a writ petition being Civil Misc. Writ Petition No. 16115 of 1988. *Rajneesh Saxena v. Committee of Management and others* in this Court. In the aforesaid writ petition, the petitioner prayed for a relief for a writ of mandamus directing the respondents not to interfere in the working of the petitioner as Lecturer in Chemistry (Organic) in S.M. College, Ghandausi and also further a writ of mandamus commanding the respondents to pay salary and other benefits which are admissible to the petitioner on the post of

Lecturer of the college. The grievance of the petitioner in the aforesaid matter was that the petitioner was appointed in place of a permanent lecturer in the college and continued to work at the end of the session and the post on which the petitioner was appointed has been advertised and the post is being filled only on ad hoc basis which cannot be permitted.

10. The matter came up before Division Bench of this Court on 22-8-1988 wherein the Division Bench granted two weeks" time to the petitioner to file a supplementary affidavit annexing therewith the letter of his appointment. In compliance with the aforesaid order, the petitioner filed a supplementary affidavit wherein in paragraph "g" the petitioner categorically stated that in the appointment letter it was mentioned that the petitioner will get U.G.C. pay scale salary in grade of Rs. 700-1600/- in the next session and till then the petitioner shall have to work on consolidated salary of Rs. 5000/-.

11. A counter affidavit was filed on behalf of the S.M. College, Chandausi wherein it was specifically stated that the petitioner has not been appointed as a lecturer and it was also stated that the petitioner was appointed in a stop gap arrangement at the rate of Rs.500/- per month from 17-11-1987 to 31-12-1987 and thereafter from 1-1-1988 to 17-3-1988, he was paid salary at the rate of Rs. 700/- per month in total.

12. After hearing the counsel for both the parties, the aforesaid writ petition was admitted by a Division Bench of this Court on 9-12-1988, and an interim order was passed by the Division Bench after hearing the counsel for the parties. This interim order was valid till final decision of the matter and it was not an ex parte interim order wherein the Division Bench directed the respondents that the petitioner shall continue to work as ad hoc teacher in the respondent institution and shall be paid his salary as and when it falls due in accordance with law till a regularly selected candidate by the Commission becomes available for appointment or the services of the petitioner are terminated in accordance with law whichever is earlier.

13. Before us the learned Senior Advocate has addressed at length that the interim order passed by the Division Bench was not justified in the circumstances of the case as admittedly the petitioner was appointed on part time basis and had no right to continue as ad hoc teacher in the college. The learned counsel for the respondent has countered the submission on merits but we refuse to examine the contentions of both the side so far the merit of the order passed by the Division Bench is concerned as it is beyond the scope of the contempt court to go behind the order of which the contempt is alleged. Moreover, the appellant having admitted his guilt before the learned single Judge, such an argument in the present appeal is wholly misconceived, as such we are not dwelling on the merits of the submission made by the appellant's counsel on the aforesaid count. In this connection, it may also be noted that in view of the order passed by the Division Bench that the petitioner will continue in service till the services of the petitioner are terminated in accordance with law, another order has been passed against the petitioner whereby the

petitioner's services have been terminated by the Committee of Management, vide resolution of the Committee of Management dated 17-2-1990 which was communicated by the appellant, the Hon'rary Secretary of S.M. College, Chandausi, vide letter, dated 27-2-1990 to respondent Sri Rajneesh Saxena. Aggrieved by the aforesaid order, the respondent had filed another writ petition in this Court wherein also the order of termination passed against the petitioner has been stayed by a Division Bench of this Court, vide order, dated 11th of April, 1990. The aforesaid order was also passed after hearing the learned counsel for the appellant, who was arrayed as a respondent in the aforesaid matter. The aforesaid writ petition has also been admitted by a Division Bench of this Court. Both the aforesaid writ petitions filed by the petitioner respondent are pending final decision in this Court.

14. Since the appellant contemner did not comply with the order of the Division Bench of this Court, dated 9-12-1988 and was trying to fill up the post on which the respondent was working who was permitted to continue by the order of the Division Bench as ad hoc lecturer in the college, the respondent filed a contempt application in this Court which was numbered as Contempt Application No. 49 of 1989 . wherein the respondent complained that the appellant has not complied with the order of the Court, dated 9-12-1988.

15. On 15-11-1990, the contempt application came up before the learned single Judge. The learned single Judge passed a very detailed order on 15-11- 1990 which form part of the judgment of the learned single Judge, as such is not being repeated here. In the aforesaid order, the learned single Judge has referred to the earlier proceedings in the contempt matter which, inter alia, mentions that the appellant contemner had offered unconditional apology in August, 1989 by an affidavit. The matter came up before the Court on 2-1-1990 and after hearing, it was demonstrated to the court that the order of the Division, Bench, dated December, 9, 1989 had yet to be complied with. Thereafter on 2-1-1990, a submission had been made on behalf of the appellant contemner that the appellant contemner will ensure that the salary as is payable to an ad hoc teacher, strictly according to the direction in the order, dated 7th of December, 1988 is delivered to the petitioner. On this assurance, the Court again gave an opportunity to the contemner appellant to comply with the Court's order. Thus it was a clear undertaking on behalf of the appellant that he will ensure that the order of the Court is complied with and the salary of the petitioner respondent as ad hoc teacher is delivered to the petitioner respondent. There is no dispute between the parties that the salary was not delivered to the petitioner respondent within the stipulated period given in the undertaking. The only defence which the appellant in the present appeal has taken is that since the college was in grant in aid of the Government and the payment of salary of the teachers was the liability of the State Government, the Management was only required to submit the bill for payment to the District Inspector of Schools. Nothing more is in the hands of the Management, as such whatever was possible for compliance of the Court's order, within the permissible limits of law, the

appellant did, as such the appellant has not violated the undertaking given by him to the Court. The submission is patently incorrect and contrary to the record. The undertaking given to the court by the present appellant was that he will ensure that the salary as is payable to an ad hoc teacher is delivered to the petitioner respondent. This undertaking was clearly violated as the salary of an ad hoc teacher was not delivered to the petitioner respondent and the appellant cannot be heard saying that he complied with the undertaking only by writing a letter to the District Inspector of Schools recommending that the respondent should be paid his salary. This is not compliance of the undertaking. As we have expressed earlier that it is not open to the appellant to make any submission on the merits of the matter as he had admitted his guilt. The submission was being tested only for the purposes of considering the extent of the punishment and we are clearly of the view that the appellant did not comply with the undertaking given to the Court. The appellant himself was conscious of it and when confronted with the aforesaid situation, the appellant accepted his guilt and left the entire matter to the mercy of the court. Lengthy submissions made on behalf of the appellant regarding compliance of the undertaking are not being referred to as they are not relevant in the context of the present appeal. As observed earlier, it is not open to the appellant to challenge the statement made by the learned single Judge in his judgment.

16. We are fully satisfied on merits of the case also that the appellant was guilty of committing contempt of the court for not obeying the order of the Division Bench, dated 9-12-1988 and for not honouring the subsequent undertaking given to the Court, However, we ourselves sought information as to whether ultimately the above order of this Court has been complied with by the appellant till date or till pendency of the contempt matter before the learned single Judge and with the aforesaid object we asked the respondent's counsel to file an affidavit bringing on record the aforesaid fact. Admittedly the appellant did not bring any such fact before the learned single Judge nor made any such submission, as such we do not find any fault with the judgment of learned single Judge, but for doing justice in the matter, we permitted the respondent to place on record the latest position regarding compliance of the order of the Division Bench and in response to our order, dated 4th Oct. 1994, the respondent has filed an affidavit wherein he has stated that for the first time on 11-6- 1990, the entire salary in pursuance of the Court's order, dated 9-2-1988 amounting to Rupees 41,527/- has been credited in his account and the respondent is still continuing as an ad hoc lecturer in the institution. Learned counsel for the respondent has submitted that there are still some omissions in compliance of the Court's order and there is undue delay in compliance of the Court's order, as such the gravity of the contempt committed by the appellant cannot be over- looked by the aforesaid payment made to the respondent. However, here we propose to examine the contentions of the learned counsel for the parties as to the quantum of the punishment which is a contemner is to be awarded for disobeying the Court's order particularly taking into

consideration the circumstance that ultimately the appellant did comply with the court's order as late as on 11-6-1990. This fact was not brought to the notice of the learned single Judge. Section 13 of the Contempt of Courts Act, 1971 provides that notwithstanding anything contained in any law for the time being in force no court shall impose a sentence under this Act for a contempt of court unless it is satisfied that the contempt is of such a nature that it substantially interferes, or tends substantially to interfere with the due course of justice. Section 12(1)" of the Act provides that a maximum punishment which a contemner can be awarded is simple imprisonment for a term which may extend to six months, or with fine which may extend to two-thousand rupees, or with both, Section 12(3) provides that if a person is found guilty of a civil contempt and the court considers that the fine will not meet the ends of justice and that a sentence of imprisonment is necessary shall instead of sentencing him to simple imprisonment, direct that he be detained in a civil prison. Section 13 of the Act is an overriding provision for awarding sentence of imprisonment or directing detention in a civil prison in exceptional circumstances wherein the court is satisfied that the contempt is of such a nature which substantially interferes, or tends substantially to interfere with the due course of justice.

17. In *Salvatore Shillitani v. United States of America* 16 Law Ed 2d 622; 384 US 364, the Supreme Court of the United States of America while considering the various provisions of the Contempt of Courts Act in United States of America observed:

"In *re Nevitt*, 117 F 448, (461) (CA8th Cir 1902), the action "is essentially a civil remedy designed for the benefit of other parties and has quite properly been exercised for centuries to secure compliance with judicial decrees." *Green v. United States* 356 US 165 : 2 L Ed 2d 672 : (1958) 78 SCt 632 (Black, J., dissenting). In short, if the petitioners had chosen to obey the order they would not have faced jail...."

18. The mitigating circumstance in the present matter is that though the appellant has violated the undertaking given to the court but. the appellant was only an Hon"rary Secretary of the college and the college under the provisions of the U.P. State Universities Act was on the grant in aid of the Government and the responsibility of paying salary was on the State Government. However, this cannot absolve the appellant for violating the undertaking given to the Court as noticed by the learned single Judge in his detailed judgment but can be a circumstance to consider the quantum of punishment particularly keeping in regard to the circumstance that ultimately the order of the court has been substantially complied with, and the respondent has got his entire salary, the ends of justice will meet if the contemner appellant is punished only with imposition of fine and he may not be required to undergo civil prison. He has already deposited the fine in Court for which no fresh direction is necessary.

19. We accordingly partly allow the appeal and we modify the judgment of the learned single Judge only to the extent that the appellant contemner is sentenced to

a fine of Rs. 2,000/- only for committing contempt of Court's order as detailed in the judgment of the learned single Judge. He need not be detained in civil prison as directed by the learned single Judge.