

(2010) 02 AHC CK 0340

Allahabad High Court

Case No: Criminal Contempt No. 14 of 2009

In Re: Manoj Nigam, Advocate

APPELLANT

Vs

RESPONDENT

Date of Decision: Feb. 16, 2010

Acts Referred:

- Contempt of Courts Act, 1971 - Section 2

Citation: (2010) 2 ACR 2050

Hon'ble Judges: S.S. Tiwari, J; Imtiyaz Murtaza, J

Bench: Division Bench

Advocate: A.G.A, for the Appellant; Sanjay Kumar, for the Respondent

Final Decision: Allowed

Judgement

S.S. Tiwari, J.

The contempt proceeding in hand has its genesis in the Reference dated 13.7.2007 made by Sri. Ravindra Kumar II, Civil Judge (S.D.) Kanpur Nagar duly forwarded by the District Judge, Kanpur Nagar dated 13.7.2007 whereby the officer has referred the matter to this Court for initiation of contempt proceeding against Manoj Nigam, advocate, Civil Courts, Kanpur Nagar.

2. It would transpire from the reference made to this Court that on 11.7.2007, while the litigant namely Mohiuddin Khusro was present in the Court presided over by Sri. Ravindra Kumar II Civil Judge (S.D.), Kanpur Nagar, in connection with Misc. Cases Nos. 5/74/2004, Aslam v. Mohiuddin Khusro, 17/174/2005 Aslam v. Mohiuddin Khusro and 75/70/1983, Aslam v. Mohiuddin Khusro, between 2.30 and 3 p.m. when the Court had passed orders on adjournment application in Original Misc. Case No. 75/70/83 and had passed on the papers to Reader to get the notice served to Mohiuddin Khusro as he was present and while the Court was busy hearing other cases, the officer heard sound of someone being slapped and when he paid attention to what was happening in Court he saw the contemnor slapping litigant

Mohiuddin Khusro. It is stated that the contemnor gave two slaps on the face of litigant aforesaid in front of him. It is further stated that the officer called on both the contemnor and the litigant to come forward. When the Court queried the contemnor why he slapped the litigant he explained that he was using derogatory language. It is further stated that the occurrence was witnessed besides him, by the Reader as also the steno who were present in the Court. The incident as occurred, it is further stated, has been noted down on the file of Original Misc. Case No. 75/70/83, Aslam Parvez v. U.P. Sunni Central Wakf Board and the matter was renumbered as Misc. Case No. 182/74/07.

3. On 10.9.2009 the Administrative Judge passed a detailed order upon which file was laid before Hon''ble Chief Justice on which the order dated 11.9.2009 was passed directing to post the matter before the Court assigned with the jurisdiction.

4. Upon the report of Administrative Judge, in which delay of about one and half year was pointed out in processing the file, query was made from the office for the causative factor of delay upon which the Registrar General explained that the file was returned on 28.8.2009 without any order from the end of the then Administrative Judge.

5. Sri. Sanjai Kumar, 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 prayed for discharging the contemnor. He prayed for lenient view stating that the contemnor was, at the relevant time, articulated to Sri. P.N. Nigam as Junior 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 again followed by the submission that the contemnor on account of his inexperience and being unable to bear with repeated provocation of Mohiuddin, in a fit of passion, was lashed into slapping him. The learned Counsel also submitted that it was his first aberration and therefore, he should be purged and should be given a chance to expiate his aberrant behaviour.

6. Here in this case, we are pained and anguished that we have deals with a case involving a lawyer under the Contempt of Courts Act. We proceed further with the case indicating to ourselves a 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 maintenance of dignity of the Courts is one of the cardinal principles of rule of law in a free democratic country and when the acts complained of, appear to result in undermining the dignity of the Courts and course of justice the same must be held to repugnant and punished.

7. 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.

8. It would be obvious from the record that the contemnor filed affidavit sworn on 29.11.2009 in reply to charge served on him in which he did not refute the charge stating that being junior and inexperienced, and also that he was repeatedly provoked and abused by Mohiuddin Khusro, he lost his mental equilibrium and delivered slap on his face and at that time, it faded out from his memory that he was present in Court. In para 3 he averred that Sri. P.N. Nigam, advocate was appearing for Aslam in Misc. Case No. 75/70/83, Aslam v. Mohiuddin Khusro pending in the Court of II Civil Judge (S.D.) Kanpur Nagar. In para 4 he averred that being son and junior of Sri. P.N. Nigam, was present in the Court alongwith his father. In para 5, it is averred that in the said case, an application for adjournment was moved on behalf of Mohiuddin Khusro which was strongly opposed by Sri. P.N. Nigam, advocate. In para 6, it is averred that the adjournment was granted on payment of Rs. 400 as cost for adjournment with last opportunity to Mohiuddin Khsuro. In para 7, it is averred that Mohiuddin Khusro was annoyed by imposition of cost and condition imposed by the Court as last opportunity and he hurled filthy abuses before him at Sri. P.N. Nigam, after he left the Court. In para 8, he averred that he warned Mohiuddin Khusro twice or thrice but it had not chastening effect in his behaviour and continued abusing. In para 9, it is averred that he being son and junior of Sri. P.N. Nigam, advocate, lost his mental equilibrium and unmindful of fact that he was present in the Court delivered slap to Mohiuddin Khsuro. In para 10, he is averred that the contemnor has put in more than 16 years of practice with unblemished career as an advocate. In para 11, it is averred that after the episode the deponent realized his mistake and felt sorry for his conduct. In para 12, it is averred that the contemnor offers unconditional apology for his act and conduct he is charged and further undertakes to be more careful in future in not repeating such acts.

9. It would thus transpire that the contemnor has not denied the charge against him and at no point of time, he refuted the allegations or justified his conduct. Be that as it may, the conduct of the contemnor in slapping the litigant in full view of the Court when the Court was busy hearing other cases, it is discernible, was an attempt to bring down the image of judiciary in the estimation of the public and to impair the administration of justice or tend to bring the administration of justice into disrepute inasmuch as the Court was compelled to take notice of the slapping and noted down the entire episode in the order sheet and subsequently forwarded the matter to the District Judge for onward transmission to the High Court by way of reference and by this reckoning, the working of the Court was obstructed for sometime. The contemnor is a lawyer having practice spanning 16 years as averred by him in the affidavit and a lawyer of this standing cannot be deemed to be inexperienced or novice in the profession who can claim pardon on account of his inexperience or

being new entrant. It is also worthy of mention that no system of justice can tolerate such unbridled licence on the part of a person particularly a lawyer, to permit himself the liberty of undermining the prestige of the Court by picking quarrel with a litigant and then slapping him in the face. Justice is a most precious concern of mankind. Its achievement through judicial institutions and processes is sensitive and fragile. The members of the bar must not forget their duties to the Court nor should they disregard propriety. Indignation or provocation however righteous may be should not be susceptible to the perception that it has become riotous indignation.

10. In the facts and circumstances, he is held guilty of having committed contempt u/s 2(c) of the Contempt of Courts Act.

11. In the above conspectus, the reference made to this Court is allowed and the contemnors are held guilty of criminal contempt.

12. We accordingly convict him u/s 2(c) of the Contempt of Courts Act and sentence him to undergo simple imprisonment for one month attended with a fine of Rs. 20,000. However, on the point of sentence, looking to the fact, the contemnor has not been involved earlier, it would suffice to say that the sentence of imprisonment shall remain suspended for a period of two years during which a close watch shall be kept on his conduct by the District Judge concerned. It needs hardly be said that in case, the contemnor is noticed to have repeated his intemperate performance, the sentence of imprisonment passed on him shall stand revived and he shall be taken into custody to serve out the sentence. The contemnor shall pay the fine within two months. In default, it is directed that the contemnors shall undergo simple imprisonment for one month each.

The petition shall be listed in the second week of May, 2010 for ensuring compliance.