

(2016) 1 ADJ 457 : (2016) 115 ALR 199

Allahabad High Court

Case No: Contempt Application (Criminal) No. 28 of 2005

In Re: Ajay Kumar
Pandey

APPELLANT

Vs

RESPONDENT

Date of Decision: Nov. 27, 2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) - Section 24#Constitution of India, 1950 - Article 227,
235#Contempt of Courts Act, 1971 - Section 13(b), 17, 17(2), 2(c)#Criminal Procedure Code,
1973 (CrPC) - Section 407

Citation: (2016) 1 ADJ 457 : (2016) 115 ALR 199

Hon'ble Judges: Sudhir Agarwal and B.K. Srivastava-II, JJ.

Bench: Division Bench

Advocate: Sudhir Mehrotra, for the Appellant; Rajeev Saxena, R.K. Saxena and Rajeev
Sharma, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Sudhir Agarwal, J.

Sri Rajveer Singh, Judicial Magistrate, Auraiya (hereinafter referred to as the ""Presiding
Officer"") vide reference dated

15.01.2005 placed on record the activities of Sri Ajay Kumar Pandey, Advocate
(hereinafter referred to the ""Contemnor""), shown in the court on

15.01.2005 which according to him, constitutes criminal contempt and, therefore, a
request was made to take appropriate action against

Contemnor. The reference was forwarded by District Judge, Auraiya vide endorsement
dated 21.02.2005. He alleged that on 15.01.2005 at

about 1.15 pm when the Presiding Officer was doing judicial work, the alleged Contemnor pressed upon him to decide application No. 131 of

2004. The Presiding Officer stated that Contemnor has shown non confidence in the integrity of Court and, therefore, he (Presiding Officer) has

written to the District Judge, Auraiya for transfer of said application to some other Court. Hearing it the Contemnor started shouting in the open

Court and threatened the Presiding Officer in various ways. The actual contents of the reference letter dated 15.01.2005 reads as under:

Sri Ajay Pandey began to shout, ""You will have to hear and dispose of this application in my favour today itself, otherwise you will also meet the

same fate as of Bachhu Singh and I will get you too suspended/terminated"". He used derogatory language, even mention of which is against dignity.

On my saying, ""Mr. Ajay Pandey, you are doing contempt of the court.", Sri Pandey pumping the table (dais) shouted, ""If you have guts, write to

the High Court and see what happens and what harm the High Court can do to me"". With intervention and great efforts of Court Moharir, A.P.O.

and other counsels Sri Ajay Pandey walked out giving threats.

Holding out threats to this court and the Hon"ble High Court and shreiking loudly Sri Ajay Pandey has undermined dignity and authority of the

court among litigants present in the court.

(English translation by the Court)

2. The Hon"ble Chief Justice has approved the matter to be placed on judicial side before the Bench dealing with criminal contempt on

02.09.2005 and thereafter the Court admitted and issued notice to Contemnor on 19.09.2005. The Contemnor put in appearance and raised

various objections before the Court including that the contempt petition is not maintainable. He pleaded that as per Section 17 of Contempt of

Courts Act, 1971 (hereinafter referred to as the ""Act, 1971"") read with Rule 6 of the High Court Rules it was obligatory on the part of Court/office

to have sent the documents including reference made by Subordinate Court. The notice which was served upon the Contemnor, he made

endorsement on the back of notice that copy of order dated 20.09.2005 which was enclosed with notice communicated about termination of

contempt proceedings, so referred against him, hence contempt proceedings cannot be initiated. The Court took notice that all the points can be

considered after framing charge. Consequently, on 30.01.2008 the Court charged the Contemnor as under:

1. That on 15th January 2005, Sri Rajveer Singh, the then Judicial Magistrate, Auraiya was engrossed in making the disposal of bail applications

and other urgent work of his court. It was around 1.15 p.m. you came in the court and got the file of Misc. Case No. 131 of 2004 presented with

application No. 82. The Presiding Officer told you that since you had already expressed no confidence in the court and made complaint to the

High Court, so it would not be possible for him to make the disposal of the application presented by you. It was also told by him that he had

already sent a letter to the District Judge, Auraiya on 13th January 2005 in that regard. But you controverted it and told that whatever he had

written that was all his fabricated version. The Presiding Officer in the given circumstances declined to pass orders on your application.

2. That, you started shouting in the court and insisted that your application should be heard on that day and orders be passed in your favour

otherwise he would meet the same fate as was that of Sri Bachchu Singh. You also made following utterances:

3. That when you were reminded by the court for not making such contemptuous utterances, you shouted and thumping the table of the dias of

Presiding Officer made the following utterances:

By such words or sign, you not only undermined the authority of the court, but also interfered or obstructed the administration of justice.

3. The order-sheet shows that on various occasions the Contemnor avoided and appeared only when non-bailable warrants were issued against

him on 04.05.2015 and till then the Contemnor has not filed any reply to the charges framed against him. When enquired he sought further time

which was granted and stop order was passed by the Court as under:

Ajay Kumar Pandey, Advocate, contemnor is present in person.

Charges were framed against him vide order dated 30.1.2008.

However, it is stated that he has not submitted any reply to the said charges and prayed for some time.

Ten days and no more time is allowed to the contemnor to file reply to the aforesaid charges.

List on 19th May 2015.

4. Again the matter came up before this Court on 19.05.2015 when the Contemnor stated that certain preliminary objections were raised in this

very contempt but the same were also made by him in another Contempt Application (Criminal) No. 3 of 2013, in which those preliminary

objections were heard and the matter was reserved, therefore, this matter may be taken after delivery of judgment in the aforesaid contempt

application.

5. We find that in Contempt Application (Criminal) No. 3 of 2013 the present Contemnor has raised following preliminary objections:

(i) First, that original contempt Reference letter dated 27.8.2012 has never been received by this Court and proceedings can not go on the basis

of Photostat copy.

(ii) Second, that Judicial Officer who has made Reference himself is a tainted judicial officer and therefore Court should decline to initiate any

contempt proceeding in view of order dated 17/30.1.2013. The contempt petition is bogus and rendered barred by time on 26.8.2013.

(iii) No officer with designation of Piyush Verma Additional District Judge (Ex Cadre 1), Auraiya existed on that date on the roll of Additional

District and Sessions Judge in the State of U.P. Sri Piyush Verma was reverted to the post of Additional Civil Judge, (Junior Division) on

28.03.2013 and was transferred from Auraiya to Jalaun in the same capacity.

(iv) The Registry sent a blank notice without mentioning address of contemnor and without annexing phototated copy of contempt petition. The

proceedings are invalid in view of provisions of Section 17(2) of Contempt of Courts Act 1971(hereinafter referred to as "Act 1971") and Rule 6,

Chapter 35(E) of Allahabad High Court Rules, 1952.

(v) Nobody attempted to serve notice upon contemnor since he was at Delhi from 13.11.2013 to 30.11.2013.

(vi) Sri Piyush Verma, Judicial Officer has concealed several facts in his Reference letter dated 27.8.2012.

6. All these objections were decided by a detailed judgment dated 25.05.2015 and rejected. The Contemnor still did not file any reply to the

charges and instead submitted that whatever documents or affidavits he already filed, the same may be treated his stand and in these

circumstances, this contempt application was heard finally on 07.09.2015.

7. Apparently the charges against Contemnor constitute serious aspersions and allegations levelled by Contemnor upon the Presiding Officer of the

court below against his integrity etc. which has the effect of not only lowering down authority of the Court but also to scandalize it.

8. The term "criminal contempt" has been defined in Section 2(c) of Act, 1971, which reads as under:

(c) "criminal contempt" means the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any

matter or the doing of any other act whatsoever which-

(i) scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court; or

(ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or

(iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner;

9. It cannot be doubted that shouting in the court and levelling serious allegations regarding integrity of a Presiding Officer of Court in an open

court, and in presence of various litigants, advocates and others, is an act which is bound to lower down authority of the Court in the eyes of general public and tends to scandalize the Court.

10. Publication whether by words, spoken or written etc., on any matter or doing of any other act, which scandalizes or tends to scandalize or

lowers or tends to lower the authority of any Court constitutes "criminal contempt". Such act, as aforesaid, if prejudices or interferes or tends to

interfere with due course of any judicial proceeding also amounts to "criminal contempt". Thirdly, if such an act interferes or tends to interfere with

or obstructs or tends to obstruct the administration of justice in any other manner, again it would constitute "criminal contempt". The word

"scandalize" has not been defined in Act, 1971. In Black's Law Dictionary word "scandal" has been described as under:

Scandal consists in the allegation of anything which is unbecoming the dignity of the court to hear, or is contrary to decency or good manners, or

which charges some person with a crime not necessary to be shown in the cause, to which may be added that any unnecessary allegation, bearing

cruelly upon the moral character of an individual, is also scandalous. The matter alleged, however, must be not only offensive, but also irrelevant to

the cause, for however, offensive it be, if it is pertinent and material to the cause the party has a right to plead it. It may often be necessary to

charge false representations, fraud and immorality, and the pleading will not be open to the objection of scandal, if the facts justified the charge.

11. In Aiyer's Law Lexicon, second edition, Page 1727, reference has been made to Millington Vs. Loring (1880) 6 QBD 190, where the word

"scandalous" has been explained as under:

A pleading is said to be "scandalous" if it alleges anything unbecoming the dignity of the court to hear or is contrary to good manners or which

charges a crime immaterial to the issue. But the statement of a scandalous fact that is material to the issue is not a scandalous pleading.

12. In Narmada Bachao Andolan Vs. Union of India (UOI) and Others, , in para 7 of the judgment the Court said:

7. We wish to emphasise that under the cover of freedom of speech and expression no party can be given a licence to misrepresent the

proceedings and orders of the court and deliberately paint an absolutely wrong and incomplete picture which has the tendency to scandalise the

court and bring it into disrepute or ridicule.

13. Recently, the aforesaid definitions of the term "scandalise" has been quoted with approval in Indirect Tax Practitioners Association Vs. R.K.

Jain, .

14. In Subramanian Swamy Vs. Arun Shourie, , the court had occasion to examine Section 13(b) as came to be amended by Act 6 of 2006. The

Court observed that the amended provision enables the Court to permit justification by truth as a valid defence in any contempt proceeding if it is

satisfied that such defence is in public interest and the request for invoking the defence is bona fide, unless the Court finds that it is only a

camouflage to escape the consequences of deliberate or malicious attempt to scandalise the court or is an interference with the administration of

justice.

15. A Division Bench of Andhra Pradesh High Court in State of A.P. Vs. Dr. A. Gopal Menon, Secretary, Vigyanapuri Allottees Welfare

Association, said:

The test for determining whether this kind of contempt has been committed is to find out whether the act in question has a tendency to pollute the

fountain of justice and whether it has a tendency to destroy the confidence of common man in the administration of justice.

16. If an impression is made in the minds of public that Judges of the Court act on extraneous considerations in deciding cases, confidence of the

litigants, in particular, and, public in general, in the administration of justice is bound to be undermined. No greater mischief than that can possibly

be imagined.

17. The allegation of mala fide, bad intention against a Judge clearly amounts to scandalizing the Court and is a ""criminal contempt"". Vilificatory

criticism of a Judge functioning in the court is nothing but a clear criminal contempt since it not only affects the "administration of justice" but also

lowers the authority and dignity of the Court. It creates a distress in the public mind as to the capacity of Judge to meet out even-handed justice.

Reckless and scurrilous attack made against a Judge, imputing oblique motives in discharge of his judicial functions and suggesting unholy

acquaintance and constant contacts with one of the litigant to favour him/them for granting relief amounts to criminal contempt.

18. In *In Re: S. Mulgaokar*, , the Court said that judiciary cannot be immune from criticism, but, when that criticism is based on obvious distortion

or gross mis-statement and made in a manner which seems designed to lower respect for judiciary and destroy public confidence, it cannot be

ignored. When there appears some scheme and a design to bring about results which must damage confidence in judicial system and demoralize

Judges by making malicious attacks, anyone interested in maintaining high standards of fearless, impartial, and unbending justice will feel perturbed.

19. In *In re: Vinay Chandra Mishra (the alleged contemner)*, , the Court observed that normally, no Judge takes action for in facie curiae contempt

against lawyer unless he is impelled to do so. It is not the heat generated in the arguments but the language used, the tone and the manner in which

it is expressed and intention behind using it which determine whether it was calculated to insult, show disrespect, to overbear and overawe the

court and to threaten and obstruct the course of justice. It was also observed that making allegations or aspersions on the integrity of Judge is not

to be misunderstood as a outspoken fearless attitude of an advocate. Brazenness is not outspokenness and arrogance is not fearlessness. Use of

intemperate language is not assertion of right nor is a threat an argument. Humility is not servility and courtesy and politeness are not lack of dignity.

Rule of law is the foundation of the democratic society. If judiciary is to perform its duties and its functions effectively and true to the spirit with

which they are sacredly entrusted to it, the dignity and authority of the courts have to be respected and protected at all costs. The foundation of

judiciary is trust and confidence of people in its ability to deliver fearless and impartial justice. When foundation itself is shaken by acts which tend

to create disaffection and disrespect for authority of court by creating distrust in its working, the edifice of the judicial system gets eroded.

20. Of late, we find a deep increase in tendency of advocates in making allegations against Presiding Officers of the Courts and thereafter also try

to justify their allegations by filing transfer applications with such allegations. In the context of allegations of bias etc. against Presiding Officers

made in transfer applications filed under Section 24 C.P.C. or 407 Cr.P.C., the Court, time and again has held that apprehension of bias must be

shown bona fide and reasonably. It should be substantiated by material placed before the Court. Reminding the duties of advocate, in Smt. Sudha

Sharma Vs. Ram Naresh Jaiswal, , the Court said that a foremost duty cast upon the counsel concerned while drafting and making allegations

against the Judge concerned, is to take utmost care and caution in making wild allegations against the Presiding Judge. The counsel should realise

that he is officer of the Court. Introducing fanciful and imaginary allegations for harbouring apprehension that fair and impartial justice would not be

done should be avoided. Mere suspicion by party is not sufficient. There must be reasonable apprehension based on material.

21. The justice delivery system knows no caste, religion, creed, colour etc. It is a system following principle of black and white, i.e., truth and false.

Whatever is unfair, that is identified and given its due treatment and whatever is good is retained. Whoever suffers injustice is attempted to be given

justice and that is called dispensation of justice. The prevailing system of dispensation of justice in Country, presently, has different tiers. At the

ground level, the Courts are commonly known as ""Subordinate Judiciary"" and they form basis of administration of justice. Sometimes it is said that

subordinate judiciary forms very backbone of administration of justice. Though there are various other kinds of adjudicatory forums, like, Nyaya

Panchayats, Village Courts and then various kinds of Tribunals etc. but firstly they are not considered to be the regular Courts for adjudication of

disputes, and, secondly the kind and degree of faith, people have in regular established Courts, is yet to be developed in other forums. In common

parlance, the regular Courts, known for appropriate adjudication of disputes basically constitute subordinate judiciary, namely, the District Court;

the High Courts and the Apex Court.

22. The hierarchy gives appellate and supervisory powers in various ways. The administrative control of subordinate judiciary has been conferred

upon High Court, which is the highest Court at provincial level and is under constitutional obligation to see effective functioning of subordinate

Courts by virtue of power conferred by Article 235 read with 227 of the Constitution. No similar power like Article 235, in respect of High Court

is exercisable by Apex Court, though it is the highest Court of land. Its judgments are binding on all. Every order and judgment of any Court or

Tribunal etc., in the Country, is subject to judicial review by Apex Court. This is the power on judicial side. Thus scheme under the Constitution

imposes heavy duty and responsibility upon High Court to ensure due or proper honour of subordinate Court and Judge and to save them from

such scurrilous attack.

23. We also find that this very Contemnor has earlier been found guilty of criminal contempt by Apex Court also and punished under the provisions

of Act, 1971 in In Re: Ajay Kumar Pandey, and the Court said that superior Courts, i.e. High Court as also the Apex Court is bound to protect

the Judges of subordinate Courts from being subjected to scurrilous and indecent attacks, which scandalise or have the tendency to scandalise, or

lower or have the tendency to lower the authority of any court as also all such actions which interfere or tend to interfere with the due course of any

judicial proceedings or obstruct or tend to obstruct the administration of justice in any other manner. No affront to the majesty of law can be

permitted. The fountain of justice cannot be allowed to be polluted by disgruntled litigants. The protection is necessary for the courts to enable

them to discharge their judicial functions without fear.

24. This shows that Contemnor is persistent in his act of committing criminal contempt of the Court and has no remorse at all. The statement by

Contemnor that he was trying to expose the Presiding Officer of his corrupt practice is nothing but an attempt on his part to scandalize the Judicial

Officer, particularly when there is nothing before the Court to prove truth of the allegations levelled by Contemnor though we permitted him to do

so.

25. If there is a deliberate attempt to scandalize a Judicial Officer of subordinate Court, it is bound to shake confidence of litigating public in the

system and has to be tackled strictly. The damage is caused not only to the reputation of the concerned Judge, but, also to the fair name of

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 tame a Judge into submission to secure a desired order. The foundation of our system is based on the

independence and impartiality of the men having responsibility to impart justice i.e. Judicial Officers. If their confidence, impartiality and reputation

is shaken, it is bound to affect the very independence of judiciary. Any person, if allowed to make disparaging and derogatory remarks against a

Judicial Officer, with impunity, is bound to result in breaking down the majesty of justice.

26. We cannot ignore the fact that much cherished judicial independence needs protection not only from over zealous executive or power hungry

legislature but also from those who constitute, and, are integral part of the system. Here is a case where an Advocate has appeared in court and

made serious aspersions openly in presence of others against the Presiding Officer of Court. The Advocate forgetting the high status conferred

upon him, by making him an officer of the Court, has chosen to malign Judicial Officer of the Subordinate Court.

27. We do not intend to lay down any code of conduct for the class of the peoples known as ""Advocates"", but certainly we have no hesitation in

observing that no Advocate has any business to condemn a Judge by abusing etc. If there is something lacking on the part of a Judicial Officer

touching his integrity, Advocates, being Officers of the Court, may not remain a silent spectator, but should come forward, raising their voice in

appropriate manner before the proper authority. There cannot be a licence to any member of Bar to raise his finger over competency and integrity

etc. of a Judicial Officer, casually or negligently, or on other irrelevant grounds. Here the competence and capacity of the concerned Judicial

Officer has been attempted to be maligned commenting upon his integrity and honesty. It deserves to be condemned in the strongest words. No

one can justify it in any manner. Thinking of intrusion of such thought itself sounds alert. It is a siren of something which is not only very serious, but

imminent. It is a concept or an idea which should not have cropped up in anybody's mind, connected with the system of justice, and if has cropped

up, deserves to be nipped at earliest, else, it may spreads its tentacles to cover others and that would be a dooms day for the very institution.

28. This Court has a constitutional obligation to protect subordinate judges. In Smt. Munni Devi and Others Vs. State of U.P. and Others, this

Court in para 10, has said:

10. Be that as it may, so far as the present case is concerned, suffice is to mention that the Constitution makers have imposed constitutional

obligation upon the High Court to exercise control over subordinate judiciary. This control is both ways. No aberration shall be allowed to enter

the Subordinate Judiciary so that its purity is maintained. Simultaneously Subordinate Judiciary can not be allowed to be attacked or threatened to

work under outside pressure of anyone, whether individual or a group, so as to form a threat to objective and independent functioning of

Subordinate Judiciary.

29. Criticism of a Court cannot be equated with making scurrilous attack on the conduct and integrity of the Judicial Officer/Presiding Officer of the Court.

30. In the present case, an open attack by misbehaviour and abuse has been shown against concerned Judicial Officer. Wild imaginary allegations

against conduct of Judicial Officer without having any material to substantiate the same cannot be tolerated, inasmuch as, it not only brings into

disrepute the entire justice system but is also likely to cause serious erosion in the confidence of public in case such tendency is not snuffed at the

earliest.

31. In the entirety of facts and circumstances, as discussed above, we are clearly of the opinion that Contemnor is guilty of committing ""criminal

contempt"" as defined in Section 2(c) of Act, 1971 and the charge levelled against him stands proved.

32. Now coming to the question of sentence, we find that here is a case of a Contemnor who has not done the same for the first time but has past

history, where he has been found guilty and punished even by Apex Court. He was imposed maximum punishment of six months but still he has not

improved at all. The Contemnor, therefore, deserves no sympathy.

33. We, therefore, impose punishment of simple imprisonment for six months, besides fine of Rs. 2,000/-. In case of non payment of fine,

Contemnor shall further undergo simple imprisonment for a further period of three months.

34. We are also informed that presently licence to practice of Contemnor as an Advocate has been suspended by the Bar Council. This also

shows the level of non-seriousness on the part of Contemnor to practice law as an officer of the Court in a reasonable lawful manner.

35. Besides, looking to the conduct of Contemnor and continuous interruption and nuisance created in the Subordinate Court, we find it

appropriate to restrain him from entering the premises of District Judgeship Auraiya for a period of five years. This restraint order shall commence

from today.

36. The District Judge is also directed to keep the conduct of Contemnor under constant watch, after he starts entering premises to practice law in

Judgeship Auraiya, and whenever he finds any objectionable or contemptuous attitude of Contemnor, he shall report the matter to this Court

without any further delay.

37. The Reference is allowed in the manner as aforesaid.

38. A copy of this order shall be certified to the District Judge, Auraiya and Chief Judicial Magistrate, Auraiya forthwith for communication and

compliance.

39. The Contemnor was informed of the date of delivery of judgment, today, through Chief Judicial Magistrate, Auraiya. We have received report

of Chief Judicial Magistrate, Auraiya dated 19.11.2015, wherein he has informed that notice of this date for delivery of judgment has been

communicated to Contemnor and acknowledgment thereof is enclosed alongwith the said letter, still Contemnor is not present when matter was

taken up for delivery of judgment.

40. Since Contemnor has been found guilty for criminal contempt and punishment of simple imprisonment of six months and fine of Rs. 2,000/- has

been imposed, we direct Chief Judicial Magistrate, Auraiya to forthwith proceed against Contemnor for having the sentence served by issuing non-

bailable warrant, without any further delay.

41. The office shall communicate this order alongwith judgment of date, to the Chief Judicial Magistrate, Auraiya, forthwith.