

(1999) 01 MP CK 0020

Madhya Pradesh High Court

Case No: Cont. Petition (Cr.) No. 8 of 1998

State of M.P.

APPELLANT

Vs

Virendra Singh Parihar, Advocate

RESPONDENT

Date of Decision: Jan. 30, 1999

Acts Referred:

- Constitution of India, 1950 - Article 215
- Contempt of Courts Act, 1971 - Section 12, 2
- Criminal Procedure Code, 1973 (CrPC) - Section 197
- Penal Code, 1860 (IPC) - Section 201, 203, 204, 217, 218

Citation: (1999) 2 JLJ 402 : (1999) 2 MPLJ 236 : (1999) 4 RCR(Criminal) 658

Hon'ble Judges: R.P. Gupta, J; D.M. Dharmadhikari, J

Bench: Division Bench

Advocate: V.P. Singh, for the Appellant; K.P. Mishra, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

R.P. Gupta, J.

This reference u/s 12 of the Contempt of Courts Act has been made by Shri U.C. Mishra, J.M.I.C. Sidhi against Shri Virendra Singh Parihar, Advocate, Sidhi insofar as he attempted to intimidate Shri M.C. Soni, J.M.I.C., Sidhi by filing criminal complaint against him for alleged offences committed by Shri Soni punishable under Sections 217/219 and 166, Indian Penal Code. Section 166 provides punishment against public servant disobeying law with intent to cause injury to any person. Section 217 provides punishment against public servant disobeying direction of law with intent to save person from punishment or property from forfeiture. Section 219, Indian Penal Code provides punishment against public servant corruptly making report contrary to law in judicial proceedings.

The complaint dated 10-10-1996 filed by the contemner against Shri Soni and co-accused Abhiramsingh Tiwari S.D.P.O. was that a private complaint filed by this contemner against one N.K. Shrivastava for various offences under Sections 201 203 204 217 218 was heard by Shri M.C. Soni, J.M.I.C., Sidhi and after statement of the complainant u/s 200, Criminal Procedure Code Shri Soni directed it to be sent to area police officer for report. The accused No. 2 Abhiramsingh Tiwari was area S.O. A large number of adjournments were granted for awaiting report but the S.O. did not send the report. Action was not taken by the Magistrate against S.O. even after show cause notice and S.O. did not send the report even after show cause notice. Ultimately the Magistrate Shri Soni, after hearing the arguments as to maintainability of the complaint, dismissed it after about 2 years on the ground that the sanction for prosecution was required against M.K. Shrivastava accused who was an executive engineer. The allegations were that this order was passed mala fide in order to protect the accused and the Magistrate as also the S.O. Abhiramsingh were in conspiracy so that no report was made by the S.O. to the Magistrate and the respondent Shrivastava was protected. So both have acted mala fide.

This complaint of the present contemner against Magistrate Shri Soni as also Abhiramsingh was dismissed by order dated 2-11-1996 by Shri Ravindrasingh J.M.I.C., Sidhi, on the ground that Shri Soni was protected under the provisions of Section 3(1) of the Judges Protection Act, 1985. The complaint against Abhiramsingh was also dismissed holding that no sanction was obtained against him u/s 197, Criminal Procedure Code which was essential as the allegations were in respect of acts done by the Magistrate in his capacity as a Judge and the S.O. in his capacity as public servant. The allegations made in the complaint were that these officers had attempted to protect respondent Shrivastava dishonestly and mala fide.

Shri Ravindrasingh J.M.I.C. had directed issue of notice to the contemner as to why proceedings u/s 12 of the Contempt of Courts Act be not started against him on his act of scandalizing Shri Soni's Court by allegations of dishonesty and mala fide in the complaint. A notice was issued accordingly.

In the reply to the show cause notice Shri Virendrasingh had justified his allegations in the complaint against the Magistrate on the ground that the orders passed were not justified. He justified the complaint also against the magistrate. There was no contest made as to contents of allegations in the complaint against the magistrate. So those are not disputed facts now.

A reference was received in the High Court through the Distt. and Sessions Judge, Sidhi. This court took cognizance of the contempt committed by this contemner vide order dated 6-4-1998 and directed issue of notice against him.

In reply filed in this court by the contemner he has tendered unqualified apology through his counsel Shri K.P. Mishra submitting that he never entertained any idea

of interference in administration of justice. He has filed an affidavit to this effect.

Criminal contempt has been defined in Section 2(c) of the Contempt of Courts Act, 1971, as meaning the publication (whether by words, spoken or written, or by signs or by visible representations or otherwise) of any matter or the doing of any other act whatsoever which :

- (i) scandalizes or tends to scandalize, 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 proceedings,
- (iii) interferes or tends to interfere with or obstructs or tends to obstruct the administration of justice in any manner.

The contemner is an advocate who filed criminal complaint against the Magistrate in respect of judicial orders passed by the magistrate. He clearly intended to intimidate the system of judiciary at that level by asserting for consumption of one and all that, if the orders were not passed in his favour, the Judges would be harassed by criminal complainant, it is a process of intimidating the judicial system by such complaints by overawing the Judges. Allegations of dishonest acting in conspiracy with police officers on the part of judicial officer, while deciding the case, amounts to scandalizing the Court and in fact the whole system at that level. It is bound to lower the respect of the judicial system in the mind of public and also to prejudicially affect the system.

A Division Bench of Andhra Pradesh High Court held in 1976 Cr.L.J. 746 that scandalous and scurrilous notice sent to judge by litigant amounts to criminal contempt and the fact that the notice was sent after disposal of the suit makes no difference.

After considering the factum of criminal complaint filed by this contemner against Shri Soni we are fully satisfied that there is no doubt that this accused, being an advocate of that Court, deliberately committed these acts and he committed criminal contempt of Court.

The two questions which remain are as under :--

- (i) Whether the apology tendered by the accused purges the contempt completely and if so no punishment need be awarded to him.
- (ii) If his apology is not accepted being not considered genuine or insufficient to purge contempt, what punishment shall be awarded to him.

The contemner is an advocate. He knows the effect of his acts. He has deliberately filed the complaint with allegations of dishonesty against the Magistrate in passing the judicial orders. He was himself party, as complainant, to the case, pertaining to

which he filed criminal complaint against the presiding magistrate. The previous conduct of this contemner becomes relevant at this stage. Two other proceedings of criminal contempt committed by him have been pending in this court and this court had heard them. In one contempt of Court proceedings arising in Contempt Petition (Cr.) No. 14 of 1997 decided on 14-7-1998, he tendered apology. He had scandalized the Distt. Court. His apology was accepted by this Court. Another matter of criminal contempt No. 4/98 is also pending against him in this court and is being decided today wherein he had made scandalous remarks against a judge of the Distt. Court in a complaint sent by him to this Court. This court is bound to take judicial notice of these decided proceedings.

So what is revealed from the above is that he has developed a tendency to make attempt to over-awe the judicial officers by threatening them one way or the other by making scandalous remarks against them or making criminal complaints against them. He wants to cow down the judicial officers by such conduct on his part so that they should beware of him. The intention of an advocate in conducting himself in this manner towards the judicial officers can only be to terrorise them in respect of their career and to persuade them to pass orders favourable to him in his cases. Such conduct stems out of bad faith of the contemner with ulterior motives. This Court cannot shirk its duty to protect the Judges of the subordinate courts from abuse and scandalization and threats and intimidation of false complaints in respect of their judicial decisions in the cases referred before them. Such acts are clearly contempt of Court and must be stopped even if such acts be by an Advocate of the Court. In fact an Advocate of the Court has more onerous duty to uphold the dignity of the Courts where he works and gets his own dignity by the dignity of the Court. If an Advocate's conduct stoops low to such an extent, this Court is left with no option than to take deterrent steps. We find him guilty of committing criminal contempt of Court. Filing such complaints against a judicial officer tends to overawe all judicial officers in discharge of their duties impartially and also scandalizes or tends to scandalize his court. This type of scandalization of Court necessarily tends substantially to interfere with the due course of justice. It is awful that a criminal complaint before a Magistrate is filed against the Magistrate in respect of judicial decisions in spite of the protection available to the deciding Magistrate under the provisions of the Judges Protection Act. We thus hold the respondent guilty of committing criminal contempt of Court punishable u/s 12 of the Act.

14A. The question is whether the apology of this contemner should be accepted and acted upon by this Court. Apology should stem from a sincere expiation from the heart and to avoid such conduct in future and to feel and express the apology for the past conduct. If the apology is merely a outer form to avoid the consequences of the contempt of Court it is best not accepted. It is best in the interest of the judicial system as a whole that it is not accepted. The conduct of this contemner in deliberately committing contempt of Court time and again and then expressing apology before the High Court indicates that his apology is merely in outer form to

avoid serious consequence. We feel that we should not accept his apology as sufficient to purge this contempt of Court by him.

The punishment u/s 12 of the act can be imprisonment upto 6 months or fine upto Rs. 2,000/- or both. Article 215 of the Constitution of India lays down that every High Court shall be court of record and shall have all the powers of such a court including the powers to punish for contempt of itself.

Subordinate courts in the districts work under the supervision, judicially as well as administrative of their High Courts. This is clear from Articles 227 and 235 of the Constitution of India. The High Court has inherent powers as a court of record to punish for its contempt, any contemner. The same powers extend regarding contempt of Courts subordinate to High Court. The powers are further expressly laid down by Article 215 of the Constitution of India also. The Article records what was inherent in the High Court ever since High Courts were constituted as courts of records. Article 215 lay down that "Every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself." This power is to be exercised judicially but it cannot be abridged or controlled by any Act of legislature. Section 12 or other provisions of the Act do not actually limit those powers and only lay down broad guidelines. This has been so recognized in some earlier cases which arose before Delhi High Court in *Rajprakash v. Choudhary Plastic Works and Anr.*, ILR Delhi 1981(2) 939 and before Karnataka High Court in *S.N. Nagaraja Rao v. Chikkachennappa*, 1981 Cri.L.J. 843 and in [Mohd. Osman Shaheed Vs. Mohd. Baqur Hussain Shaa and Others](#). The Division Bench of Delhi High Court in the case of *Rajprakash v. Choudhary Plastic Works*, ILR Delhi 1981 (2) 939 considered whether Section 12 of the Contempt of Courts Act lays down a limitation on the power of the High Court for imposing punishment on a contemner in spite of Article 215 of the Constitution while no such limitation is laid down under Article 215. The Division Bench observed in para 3 of the judgment that "this power" (to punish for contempt of Court) preserved and declared by the Constitution is an absolute power which cannot be abridged by any law. This power postulated by Article 215 of the Constitution, cannot be abridged or controlled by any Act of the legislature. So no limitation as postulated by Section 12 of the Contempt of Courts Act, 1971 can be read with exercise of that power. It becomes thus clear that a High Court in exercise of its contempt jurisdiction can devise preventive and reformatory measures against the contemner instead of actually punishing him after holding him guilty.

We feel that we should devise a means to control his conduct in relation to the Courts where he practices. We feel that putting him on probation of 2 years may bring a change of his habit. In doing so we are neither applying the provisions of Criminal Procedure Code nor Probation of Offenders Act. We have inherent jurisdiction as Court of Record as also under Article 215 of the Constitution to pass such orders or sentence as may be suitable in the particular facts and circumstances

of contempt and in the interest of the institution. Probation is now one of the known methods of controlling a habitual contemner, particularly an Advocate of the Court, and if he fails to abide by the terms of the probation he can be compelled to appear before the Court to receive a substantive sentence. We, therefore, in interest of the judicial system and even keeping in view the best interest of this contemner as an Advocate to give him a chance to improve himself and to desist from such activities towards courts, direct that instead of being sentenced at present, he be released on probation of good conduct for period of 2 years. The terms of probation would be that he shall furnish a personal bond with one surety in the sum of Rs. 5,000/- to ensure that during the period of 2 years he shall not commit contempt of Court and shall conduct himself in a noble manner. If during this period he commits a contempt of Court he shall be liable to be called before this Court to receive his substantive sentence in this case. The bonds shall be furnished before C.J.M. Sidhi within one month of this order. If he fails to execute the bonds he shall be liable to appear or be brought before this Court to receive the substantive sentence in this case. C.J.M. Sidhi will send report about furnishing of bonds to this Court.