

(2012) 12 CAL CK 0052

Calcutta High Court

Case No: T. No. 29 of 2012

In Re: Publication
made in the "Times of
India" and "The
Hindu", both Calcutta
publications dated
15th August, 2012; In
Re: News Telecast
made by "ABP
Ananda" and "24
Ghanta" on 14th
August, 2012

APPELLANT

Vs

RESPONDENT

Date of Decision: Dec. 18, 2012

Acts Referred:

- Constitution of India, 1950 - Article 215
- Contempt of Courts Act, 1971 - Section 15, 2(c)

Citation: (2013) 1 CALLT 65 : (2013) 1 CHN 556 : (2013) CriLJ 932 : (2013) 1 WBLR 206

Hon'ble Judges: Arun Mishra, C.J; Joymalya Bagchi, J

Bench: Division Bench

Advocate: Bikash Bhattachara, Mr. HIRAK MITRA, Barrister-at-law and and Mr. Ranjan Deb,
Barrister-at-law and Amicus Curiae Mr. S. Pal, for ABP Ananda, Mr. R.K. Khanna, Advocate.
for the Hindu, for the Appellant;

Judgement

Joymalya Bagchi, J.

On 16th August, 2012 Mr. Bikash Bhattacharya, Senior Advocate relying on two news items published in two English dailies namely "The Times of India" and "The Hindu" on 15th August, 2012 prayed for suo motu initiation of contempt proceeding under Article 215 of the Constitution of India and u/s 15 of the Contempt of Courts

Act, 1971 against Smt. Mamata Banerjee, the Chief Minister of State of West Bengal. From the aforesaid newspaper publications it appears during a speech delivered by the Chief Minister of the State in a Seminar organized to celebrate the 75th anniversary of the West Bengal Legislative Assembly it was reported that the Chief Minister had stated "keno aajke takar binimoye court bichar hobe ?" (why should judgment be delivered in exchange for money ?). She further stated that corruption has made inroads into the judiciary and democracy as a whole. This is unfortunate. We may have won freedom but not economic freedom."

2. Mr. Bhattacharya had also produced two CDs in respect of the said speech.

3. This Court by an earlier order had directed the concerned television channels, namely "ABP Ananda" and "24 Ghanta" to state on oath the particulars in respect to the telecast made by them with regard to the aforesaid speech and also to produce the original CDs containing the recording of the entire speech. The Court also directed the reporters and/or the Editors as to the correctness of the aforesaid reports relating to the said speech.

4. Pursuant to such direction, the following affidavits were filed by the following newspaper houses/television channels :

1. Sumit Sen, Editor of the times of India together with supportive affidavits of Saugata Roy and Saibal Sen;

2. Affidavit of Sk. Md. Ali, printer of the Times of India;

3. Suman Dey for ABP Ananda;

4. Anjan Bandopadhyay for 24-Ghanta;

5. Siddharth Vardarajan, Editor of the Hindu;

6. Marcus Dam, Deputy Editor and Chief of Bureau of the Hindu;

7. Shiv Sahay Singh, Senior Reporter of the Hindu; and

8. Chitta Debnath, Printer of the Hindu.

5. Thereafter, by order dated 26th September, 2012 this Court appointed Mr. Hirak Mitra, Barrister-at-law and Senior Advocate And Mr. Ranjan Deb, Barrister-at-law and Senior Advocate as amicus curiae to assist the Court in this matter. In addition to the affidavits filed, the original CDs were also produced on behalf of ABP Ananda.

6. On 27th September 2012 the amicus curiae submitted before the Court that they had viewed the CDs supplied by ABP Ananda and they were of the view that a suo motu notice may be issued by the Court as contemplated u/s 15 of the Contempt of Courts Act, 1971.

7. When the matter came up for further hearing on 17th August, 2012, Mr. Bhattacharya, senior counsel drew our attention to the speech made by Smt.

Mamata Banerjee, Chief Minister of the State of West Bengal on the occasion of Platinum Jubilee Celebration of the West Bengal Legislative Assembly on 15th August, 2012. Mr. Bhattacharya referred to the transcript of the said speech which is annexed at page 10 of the affidavit sworn by Shiv Sahay Singh, Senior Editor of the Hindu, Kolkata. Mr. Bhattacharya further submitted that it is clear from the said speech that per se contempt has been committed by the Chief Minister by making the following imputation :

Why will judgements be given only in favour of those who offer money ? I am sorry to say this; people can condemn me for this. I can be arrested and put in jail for this, but somewhere I will have to express my opinion.

I have seen it myself that a number of judgments are purchased.

It was very unfortunate that corruption had become the main pillar from democracy to judiciary everywhere. This is unfortunate. The judiciary has the responsibility was to deliver justice to people.

8. He further submitted that at this stage the Court would be concerned to see whether a prima facie case of contempt is made out or not. The defence should only be construed upon response being obtained from the alleged contemnor. In support of his submission, he relied on [Amicus Curiae Vs. Prashant Bhushan and Another](#), and [In Re: Arundhati Roy](#),

9. Mr. Hirak Mitra, Barrister-at-law and Senior Advocate And Mr. Ranjan Deb, Barrister-at-law and Senior Advocate, learned amicus curiae submitted that their opinion have already been recorded in the earlier order. They submitted that the speech is to be seen in its entirety and that demeanor of the speaker ought to be visually appreciated by seeing the CDs in question.

10. Mr. Pal, senior advocate, appearing for ABP Ananda submitted that the television channel made a live reporting of the entire programme. He refrained from making any submission as to whether the contents of the said speech prima facie discloses an act of criminal contempt as defined in Section 2(c) of the Contempt of Courts Act, 1971.

11. Mr. Khanna, learned advocate appearing for the Hindu submitted that his client had published the said speech in good faith and that the same reporting had also been made in other English and/or vernacular dailies. He drew our attention to the various English and vernacular dailies where the publication was made.

12. In the affidavit of Shiv Sahay Singh it has been stated that he was personally present in the Seminar on that date and had heard the entire speech and had taken the notes thereof. He further states that the transcription of the speech of Ms. Banerjee, annexed to his affidavit, was on the basis of the notes taken by him in the Assembly.

13. We have perused the said transcript of the entire speech of Ms. Banerjee. The seminar was organized on the occasion of the Platinum Jubilee Celebration of the West Bengal Legislative Assembly. The topic of the seminar was "Executive Accountability to the Parliament/Legislature" and the same was held at the Assembly Chamber of the West Bengal Legislative Assembly. It is true that the said speech was not delivered in the course of any parliamentary proceeding and no parliamentary privilege in respect of the same can be claimed by the speaker. However, having read the transcription of the said speech and also having viewed the same from the CD submitted by the various parties, we find that the speech was a discussion on the issue of impact of money power and corruption in the functioning of the various institutions of the State. In the course of the said speech Smt. Banerjee dwelt at length with the impact of money power, particularly use of black money in elections and criticized such practice. In the said speech she, inter alia, stated :

There are many reports who have taken life risk to gather news. Now they are writing news after accepting money. Same is the situation with police and administration. If all politicians are bad (corrupt) who will work for the interest of the country.

x x x

Everyone is giving sermons to others what about their own responsibility. This is an attempt to encourage lawlessness in the country. There are four-five people, who will not take responsibility of MPs and MLAs... will not join politics but would like to control the entire country. They would fix everything including when will the price of petrol increase, how will FDI get into different sectors but will not officially join politics.

x x x

We have to strengthen democracy and bring value based politics.

There is a need for State funding of elections to arrest the use of black money and prevent corruption. Sir, I have seen in north-eastern States that voters are paid to cast their votes in favour of a party. In Tamil Nadu, to contest an MP election at least 20 lakh is required.

Where will I get this money? And why will I. I still believe that at elections in Bengal the least amount of money is required.

We will have to end the use of money in elections. By merely making funds available during elections, certain politicians are bought off. After that, thousands of crores are siphoned out of the country. It would be much better if a corpus is created and elections are funded by the State. Thus the country will be saved and politicians will not have to taken money from illegitimate sources.

Accountability should be for everyone. This is not correct to identify one person and leave out the others.

x x x

14. In this backdrop she referred to the functioning of the judiciary and made certain critical remarks as follows:

Why will judgements be given only in favour of those who offer money ? I am sorry to say this; people can condemn me for this. I can be arrested and put in jail for this, but somewhere I will have to express my opinion.

I have seen it myself that a number of judgments are purchased.

It was very unfortunate that corruption had become the main pillar from democracy to judiciary everywhere. This is unfortunate. The judiciary has the responsibility was to deliver justice to people.

15. Our attention has been drawn by Sri Bhattacharya to such imputations for our consideration as to whether we would invoke our suo motu powers to initiate a contempt proceedings against Smt. Banerjee for such utterances.

16. It is true that the power of the Court to initiate a proceeding for criminal contempt is a plenary one with grave consequences but the same ought to be sparingly exercised. Contempt proceedings should not be initiated at every irritant or pin prick. Deference to judiciary cannot be secured by the scepter of contempt but is to be attained by the sublime quality of our judgment. Prior to invocation of such jurisdiction the Court must be prima facie satisfied that the alleged contumacious act was with the intention of denigrating the judiciary.

17. Lord Denning in Regina vs. Commissioner of Police of the Metropolis, ex parte Blackburn, reported in 1968 (2) WLR 1204 observed as follows :

Let me say at once that we will never use this jurisdiction as a means to uphold our own dignity. That must rest on surer foundations. Nor will we use it to suppress those who speak against us. We do not fear criticism, nor do we resent it. For there is something far more important at stake. It is no less than freedom of speech itself.

It is the right of every man, in Parliament or out of it, in the press or over the broadcast, to make fair comment, even outspoken comment, on matters of public interest. Those who comment can deal faithfully with all that is done in a court of justice. They can say that we are mistaken, and our decisions erroneous, whether they are subject to appeal or not. All we would ask is that those who criticize us will remember that, from the nature of our office, we cannot reply to their criticisms. We cannot enter into public controversy. Still less into political controversy. We must rely on our conduct itself to be its own vindication.

Exposed as we are to the winds of criticism, nothing which is said by this person or that, nothing which is written by this pen or that, will deter us from doing what we believe is right; nor, I would add, from saying what the occasion requires, provided that it is pertinent to the matter in hand. Silence is not an option when things are ill done.

18. Gajendragadkar, C.J. in Special Reference No. 1 of 1964, reported in 1965 (1) SCR 413 observed as follows :

We ought never to forget that the power to punish for contempt, large as it is, must always be exercised cautiously, wisely and with circumspection. Frequent or indiscriminate use of this power in anger or irritation would not help to sustain the dignity or status of the Court, but may sometimes affect it adversely. Wise Judges never forget that the best way to sustain the dignity and status of their office is to deserve respect from the public at large by the quality of their judgment, the fearlessness, fairness and objectivity of their approach, and by the restraint, dignity and decorum which they observe in their judicial conduct."

19. [Shri Baradakanta Mishra Vs. The Registrar of Orissa High Court and Another,](#) observed :

...if Judges decay, the contempt power will not save them and so the other side of the coin is that judges, like Caesar's wife, must be above suspicion....

20. It is common knowledge that in today's society there are discussions and/or deliberations in various quarters with regard to impairment of the efficacy of the judiciary due to prevailing corrupt practices. The imputation in question appears to fall in such genus. To react to each and every such criticism of judicial corruption would perhaps be counter productive as it may give an impression to the people at large that the judiciary is hyper-sensitive to such criticism or any adverse comment on the judiciary. A degree of wide latitude should be given not only to preserve the valuable fundamental freedom to free speech and expression but also but to bear in mind that in a democratic republic any institution, more particularly the judiciary cannot be construed to be "cloistered virtue".

21. However, that does not mean that a callous and scurrilous imputation on judiciary which is patently prompted with the malafide intention to denigrate it be permitted to be ignored. If this is done, it shall be a disservice to rule of law, majesty and independence of judiciary.

22. We must therefore test the imputations in question in the backdrop of the entire speech to satisfy ourselves as to whether contempt proceedings ought to be initiated. The speech essentially deals with the impact of corruption on the role of various institutions including judiciary. It does not appear to be prompted by the desire to denigrate the institution in the eyes of society. It is the nature of an exasperated lament of the speaker to her perceived erosion of morals in every

public institution before an august gathering of legislators and other dignitaries in a seminar organized by West Bengal Legislative Assembly. Under such circumstances, to call upon the speaker to explain as to whether she had any malafide intention of denigrating the judiciary, when no such intention ex facie appears from a plain reading of the transcript of her entire speech, would amount to a fishing and roving enquiry which we are unwilling to embark upon.

23. The decisions cited by Mr. Bhattacharya in support of his submissions are distinguishable on facts.

24. In the decision reported in [Amicus Curiae Vs. Prashant Bhushan and Another](#), the Apex Court laid down the ratio that suo motu contempt issued in respect of a person, where imputation was per se contumacious, cannot be dropped on mere non compliance of procedural requirements. In the instant case, we are of the opinion that the alleged imputation, when read in the backdrop of the entire speech, does not constitute a case of per se contempt.

25. In the decision reported in [In Re: Arundhati Roy](#), the Supreme Court was dealing with a case of "repeated and aggravated" contumacious acts by the contemnor. In fact in the said decision the initial contumacious act during the pendency of the judicial proceeding was ignored by the Supreme Court. However, when the same was repeated in a more "aggravated manner", the Apex Court chose to initiate contempt proceeding and punish the offender.

26. On the other hand in [P.N. Dua Vs. P. Shiv Shanker and Others](#), , the Apex Court declined to initiate contempt proceedings against P. Shiv Shankar, the then Law Minister of the Union of India inspite of his intemperate utterances in a speech delivered at a seminar on "Accountability of the Legislature, Executive and Judiciary under the Constitution of India" holding :

...though there are passages in the speech which, torn out of context, may be liable to be misunderstood, but, reading the speech as a whole and bearing in mind the select audience to which it was addressed it must be held that no contempt has been committed by respondent No. 1...

27. We are, therefore, not persuaded by the submissions of Mr. Bhattacharya that the imputation in the context of the entire speech can be said to be one which transcended the "Lakshman Rekha" of "scandalizing the Court" or "obstructing the administration of justice" or "interfering in the due course of judicial proceeding". We are, therefore, unwilling to suo motu invoke our power to initiate a proceeding for contempt in respect of the aforesaid imputation. We make it clear that our reluctance to initiate such proceeding should not be taken as an approval of the statements made by the speaker. One must not lose sight of the fact that the speaker was not an ordinary personality but the Chief Minister of the State. It is expected that when criticism is made from such high Constitutional functionary, the same should be laced with moderation and temperance. The imputations were

neither moderate nor couched in temperate language although the same in the contextual matter according to us may not constitute an act of criminal contempt. In view of our above observation, we decline to initiate any proceeding for contempt.

Joymalya Bagchi, J.

I agree.